

WEST VIRGINIA
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #2

FILED

JUL 11 1 56 PM '00

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Department of Health and Human Resources
Bureau for Child Support Enforcement TITLE NUMBER: 97

RULE TYPE: Legislative; CITE AUTHORITY 48A-2-9

AMENDMENT TO AN EXISTING RULE: YES X NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 4

TITLE OF RULE BEING AMENDED: Interstate Income Withholding

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON August 16, 2000 AT 4:30 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

Bureau for Child Support Enforcement

Attn: General Counsel

350 Capitol Street, Room 147

Charleston, WV 25301-3703

THE ISSUES TO BE HEARD SHALL BE
LIMITED TO THIS PROPOSED RULE.

Joan E. Orl
Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

Department of Health and Human Resources
Bureau for Child Support Enforcement
Title 97 Series 4

Interstate Income Withholding

Title 97 Series 4

Brief Summary of this Rule

This rule is being repealed. Legislative Rule §78-6-1, which was effective February 26, 1988, makes the Policy Manual of the Bureau for Child Support Enforcement a legislative rule. The topic of Interstate Income Withholding is covered within the Policy Manual of the Bureau for Child Support Enforcement in Section 05000.50. Therefore, the subject matter covered in Legislative Rule §97-4-1 is also covered in the Policy Manual, and is covered in more depth and clarity in the Policy Manual. The Policy Manual is available in the Secretary of State's Office, as are the Legislative Rules, so the subject matter remains available to the public.

Department of Health and Human Resources
Bureau for Child Support Enforcement
Title 97 Series 4

Interstate Income Withholding

Title 97 Series 4

STATEMENT OF CIRCUMSTANCES

Our agency is requesting repeal of this rule. The same material covered by this rule is also located in our agency Policy Manual in Section 05000.50, and is set forth there in more depth and clarity. The information in our agency Policy Manual has the force and effect of a Legislative Rule (see Legislative Rule § 78-6-1) and the Bureau for Child Support Enforcement Policy Manual is available to the public at our offices and at the office of the Secretary of State.

□
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Interstate Income Withholding

Type of Rule: x Legislative _____ Interpretive _____ Procedural

Agency: Department of Health & Human Resources

Address: State Capitol Complex, Building 3

Regulatory Development Room

Charleston, WV 25305

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERATIONS					
EQUIPMENT					
OTHER					

2. Explanation of Above Estimates:

N/A

3. Objectives of These Rules:

This proposed Rule Change will revoke Legislative Rule 97-4-1. The issues related to this change are covered in more depth and detail by the Bureau for Child Support Enforcement Policy and Procedure Manual which has the force and effect of a Legislative Rule. (See Legislative Rule 78-6-1)

Rule Title: Interstate Income Withholding

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

No Change

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens:

No Change

C. Economic Impact on Citizens/Public at Large.

No Change

Date: July 11, 2000

Signature of Agency Head or Authorized Representative:

Joan E. Owl

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TITLE 97

LEGISLATIVE RULE

DEPARTMENT OF HEALTH AND HUMAN RESOURCES OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 4

INTERSTATE INCOME WITHHOLDING

~~§97-4-1. General:~~

~~1.1. Scope. — This legislative rule establishes procedures to extend the Department of Health and Human Resources, Child Support Enforcement Division system of income withholding to income derived within this State where applicable support orders were issued in other states. The purpose is to assure that child support owed by obligors in this state, or any other state, will be collected regardless of the residence of the child or its custodial parent. This rule is proposed to bring the Child Support Enforcement Division in compliance with 42 U.S.C. §666(b)(9); 45 C.F.R. §303.100.~~

~~1.2. Authority. — W. Va. Code §§48A-2-23, 48A-2-10, 48A-2-11.~~

~~1.3. Filing Date. — August 30, 1996.~~

~~1.4. Effective Date. — July 1, 1997.~~

~~1.5. Definitions:~~

~~Absent Parent (AP): Any individual who is absent from the home and is legally responsible for providing financial support for a dependent child. This term is used interchangeably with non-custodial parent.~~

~~Arrearage Trigger: An amount that may be required by court order prior to institution of a wage withholding.~~

~~IV-D Agency: A single and separate organizational unit in a State that has the responsibility for administering the State Plan under Title IV-D of the Act. The Child Support Enforcement Division.~~

~~IV-D of the Social Security Act: This section of federal law requires states to have a Child Support Enforcement program is a state participates in the Aid to Families with Dependent Children Program. Child Support Enforcement programs are referred to as IV-D programs.~~

~~Non-Public Assistance (NPA): Child support cases where the custodial parent is not receiving public assistance.~~

~~Obligor: The person or the estate of the decedent who owes or is alleged to owe a duty of support; who is alleged, but has not been adjudicated, to be a parent of a child; or who is liable under a support order; also known as the absent parent, non-custodial parent or payor.~~

~~RURES: Revised Uniform Reciprocal Enforcement of Support Act. (See URESA)~~

~~UIFSA: Uniform Interstate Family Support Act. An interstate child support enforcement act designated to replace the original URESA Act. Under UIFSA, only one order is in effect and enforceable at a time.~~

~~URES: Uniform Reciprocal Enforcement of Support Act. A law which was enacted at the State level and which provides a mechanism for establishing and enforcing support obligations when the non-custodial parent lives in one state and the custodial parent and child(ren) live in another. The URES model was an early attempt to provide the states with a universal child support tool that worked across state lines. URES was developed before the passage of Title IV-D of the Social Security Act and before IV-D Agencies existed.~~

~~§97-4-2. Interstate Income Withholding:~~

~~2.1. Interstate wage withholding is available to enforce an existing order for support cases without proceeding through the URES or UIFSA process.~~

~~2.2. The Child Support Enforcement Division will be involved in interstate withholding in three (3) types of situations:~~

~~1. An obligee resides in the State of West Virginia and the obligor is in another state.~~

~~2. An obligor resides in West Virginia and the obligee resides in another state.~~

~~3. Both parties reside outside of West Virginia but the obligor's employment or source of income is located in West Virginia.~~

~~2.3. Procedures for interstate income withholding when the obligee resides in West Virginia.~~

~~If the obligee is not currently receiving IV-D NPA services, an application for IV-D NPA or income withholding only services is required prior to processing the withholding. During the interview with the caretaker/obligee, the legal assistant must determine the following:~~

- ~~1. The obligor's name, address and social security number;~~
- ~~2. The name and address of the obligor's employer or source of income;~~
- ~~3. Where the support order originated;~~
- ~~4. The legal assistant will determine from the Interstate Withholding Directory the information that the other state requires to process the withholding;~~
- ~~5. The legal assistant will obtain and assemble the required documentation. This may involve obtaining certified copies of documents from other states if the support order was not issued in West Virginia, and complete the Interstate Transmittal form, from the automated system to send to the other state.~~
- ~~6. The legal assistant will send the original package to the state in which the obligor resides, a copy to the Child Support enforcement Division Central Registry. The Legal Assistant will also place a copy in the Child Support Enforcement Division record.~~

~~2.4. Procedures to implement an income withholding request from another state.~~

~~The following documentation from the other state IV-D agency to initiate withholding for an obligor residing in this state is required:~~

- ~~1. A certified copy of the support order with all modification;~~
- ~~2. A certified copy of an income withholding order/notice, if any, still in effect;~~
- ~~3. A copy of the portion of the income withholding statute of the jurisdiction which issued the support order which states the requirements for obtaining income withholding under the law of that jurisdiction;~~
- ~~4. A sworn statement of the caretaker or certified statement of a court or governmental entity of the arrearages and the assignment of support rights, if any;~~

~~5. A statement of:~~

~~a. The name, address, and Social Security Number of the absent parent, if known;~~

~~b. The name and address of the absent parent's employer or of any other source of income of the absent parent earned in this state against which income withholding is sought;~~

~~c. The name and address of the agency or person to whom support payments collected by income withholding shall be transmitted.~~

~~2.5. The income withholding request will be sent by the other state to the Central Registry of the Child Support Enforcement Division and then forwarded to the appropriate regional Child Support Enforcement Division office.~~

~~2.6 The Child Support Enforcement Division Central Registry shall examine the documentation from the requesting state to determine whether or not it conforms to West Virginia requirements.~~

~~2.7. The Child Support Enforcement Division Central Registry will remedy any defect it can without the assistance of the requesting state. If the Central Registry is unable to make such correction, the requesting state shall immediately be notified of the necessary additions or corrections. In neither case shall the documentation be returned. The Child Support Enforcement Division Central Registry will forward the documentation to the Child Support Enforcement Division regional office and the regional office is to proceed with any other action that may be necessary while awaiting the necessary information from the other state.~~

~~West Virginia immediate income withholding extends to out of state cases as well, therefore, once all of the information is obtained, within 15 calendar days of locating the absent parent's employer or source of income, the withholding is to begin using the same timeframes as are required for State cases.~~

~~If an arrearage trigger is required on the case, the meeting with the Child Support Enforcement Division and a hearing before the Family Law Master will be scheduled at the regional office of the Child Support Enforcement Division and before the Family Law Master in the county where the absent parent lives or where the absent parent's source of income is located.~~

~~If an arrearage trigger is required on the case, within 15 calendar days of location of the obligor and his or her employer or source of income, the notice of withholding must be sent to the absent parent.~~

~~— The same timeframes required in in-state cases for notice to the employer/source of income applies in these cases. —~~

~~— If the requesting state does not forward a certified copy of the support order with all modifications because the order is a West Virginia order, the Legal Assistant shall obtain a copy of the appropriate order and any modifications from the proper court clerk. —~~

~~— 2.8. The regional Office of the Child Support Enforcement Division will: —~~

~~— 1. If only an income support order or support order with a conditional order of withholding (i.e., the arrearage trigger must be met in the future) is received from another state; determine if the trigger amount for income withholding has been reached under the law of the state which entered the order, not the law of West Virginia. If the individual is behind in an amount to trigger income withholding under the other state's law, the legal assistant is to send the notice to Withholding Request from Another State to the absent parent and then proceed exactly as if the Child Support Enforcement Division Policy Manual section on withholding procedures for in-state cases, or; —~~

~~— 2. If an active income withholding order is received (i.e., the trigger was met in the other state and income withholding begun), the legal assistant will immediately send the notice to the obligor and then proceed exactly as in the Child Support Enforcement Division Policy Manual section on withholding procedures for in-state cases. —~~