

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

Do Not Mark In this Box

RECEIVED
96 AUG 30 AM 8:51
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Child Support Enforcement Division TITLE NUMBER: 97

CITE AUTHORITY 48A-2-31

AMENDMENT TO AN EXISTING RULE: YES ☒ NO ☐

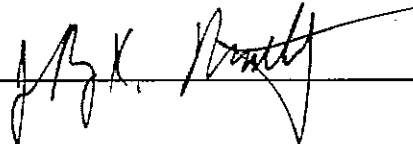
IF YES, SERIES NUMBER OF RULE BEING AMENDED: ~~78-14~~ 5

TITLE OF RULE BEING AMENDED: Providing Information to Credit
Reporting Agencies

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



WEST VIRGINIA
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #3

RECEIVED

96 AUG 30 AM 9:00

DEPT OF WEST VIRGINIA
OFFICE OF THE SECRETARY

NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

AGENCY: Child Support Enforcement Division TITLE NUMBER: 97

CITE AUTHORITY 48A-2-31

AMENDMENT TO AN EXISTING RULE: YES ☒ NO ☐

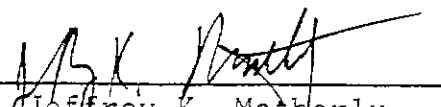
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 97 - 5

TITLE OF RULE BEING AMENDED: Providing Information to Credit
Reporting Agencies

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.


Jeffrey K. Matherly
DHHR - General Counsel

RECEIVED

AUG 30 1996

Legislative Rule Making
Review Committee

DATE: August 10, 1996

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Martha J. Hill, Director, CSED

LEGISLATIVE RULE TITLE: Providing Information to Credit Reporting Agencies

1. Authorizing statute(s) citation W.Va. Code 48A-2-31, 42 U.S.C. 666(a) (7),

45 CFR 105

2. a. Date filed in State Register with Notice of Hearing

7/25/96

b. What other notice, including advertising, did you give of the hearing?

N/A

c. Date of Hearing(s) 8/26/96

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached _____ No comments received X

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

f. Name and phone number(s) of agency person(s) to contact for additional information:

R. Jeffrey Johnson

CHILD SUPPORT ENFORCEMENT DIV.

BUILDING 6, ROOM B-817

558-0908

CAPITOL COMPLEX

CHARLESTON, WV 25305

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing: _____

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

d. Attach findings and determinations and reasons:

Attached _____

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Providing Information to Credit Reporting Agencies

Type of Rule: X Legislative Interpretive Procedural

Agency Child Support Enforcement Division

Address 1900 Kanawha Blvd., East
Bldg. 6, Room 817
Charleston, WV 25305

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$	\$	\$	\$	\$
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERNATIONS					
EQUIPMENT					
OTHER					

2. Explanation of above estimates:

N/A

3. Objectives of these rules:

To bring the rule in compliance with statutory changes, including the name change of the agency.

Rule Title: Providing Information to Credit Reporting Agencies

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

N/A

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

Credit Bureaus may see a slight increase in the number of referrals.

C. Economic Impact on Citizens/Public at Large.

N/A

Date: 7-23-96

Signature of Agency Head or Authorized Representative

Martha J. Hall

TITLE 97
LEGISLATIVE RULES
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

RECEIVED
\$6 AUG 30 AM 8:51
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 14
PROVIDING INFORMATION TO CREDIT
REPORTING AGENCIES

\$97-14-1. General.

1.1. Scope. - This legislative rule establishes procedures whereby the Department of Health and Human Resources, ~~Child Advocate Office~~ Child Support Enforcement Division ~~regarding~~ may report the amount of overdue support owed by an obligor residing in this state to any consumer reporting agency upon its request.

1.2. Authority. - West Virginia Code §48A-2-31, 42 U.S.C. §666(a) (7), 45 C.F.R. §105.

1.3. Filing Date. -

1.4. Effective Date. -

1.5. Repeal of Former Rule. - This legislative rule repeals the following West Virginia Legislative Rule: "Department of Human Services, Series 14, Providing Information to Credit Reporting Agencies" filed June 3, 1989.

\$97-14-2. Providing Information to Credit Reporting Agencies.

2.1. Past due support owed by an obligor residing in this State will be made available to any consumer reporting agency upon the request of the agency if the amount of ~~overdue support~~ the arrearage ~~once thousand dollars (\$1,000) or~~

~~more.~~

~~2.2. In cases in which the amount of past due support is less than once thousand dollars (\$1,000), the credit information shall not be released.~~

is equal to:

a. one month's support, if the order requires monthly payments

b. four weeks' support, if the order requires weekly or biweekly payments.

~~However, this information will be made available only after proper notice of the proposed action has been sent to the obligor, and the obligor has been given ten days (10) days to contest the accuracy of the information. In such cases, Form CAO-30 must be sent to the obligor prior to releasing the information. After the 10 day time period, if the obligor has not contested, the Central CAO will forward the information to the Consumer Reporting Agency.~~

Notice must be given to the obligor before the information is released to the reporting agency. In all cases, Form ENF-6 must be sent to the obligor prior to the release of the information, following which the obligor has

10 days in which to contest the accuracy of the information.

2.3. In cases in which the obligor contests the accuracy of the information, such obligor shall be afforded due process as required by the laws of this state.

If the obligor contests the information, he is to be given the opportunity to request a hearing.

If a request is made by a consumer reporting agency for information on a single individual, the information can be provided on the form provided by the requesting agency, or in the form specified by the requesting agency. Often, however, the reporting agency will request that we provide them with a list of those in arrears. In that situation, the state office is to provide that information using the tax offset tapes.

ANALYSIS OF PROPOSED LEGISLATIVE RULE

Agency: Child Support Enforcement Division
Subject: Providing Information to Credit Reporting Agencies
CSR Cite: 97CSR14 (new cite, old cite not provided)
Counsel: JAA

PERTINENT DATES

Filed for public comment: July 25, 1996
Public comment period ended: August 26, 1996
Filed following public comment period: August 30, 1996
Filed LRMRC: August 30, 1996
Filed as emergency: n/a

Fiscal Impact: None.

ABSTRACT

Brief Summary

This rule establishes the procedures whereby the Child Support Enforcement Division reports to consumer reporting agencies, the overdue support payment owned by a parent residing in this state. This rule modifications update the rule to reflect changes to the code. The title of the agency has been changed throughout the rule from the "Child Advocate Office" to the "Child Support Enforcement Division." The modifications to the rule modify the criteria for establishing when a parent, who is past due in providing child support, is to be reported to a consumer reporting agency. Notification and appeal requirements for the parent in arrears are also modified.

Section Summary

Section 2 deletes the threshold amount of arrearage to be met before being reported to a consumer reporting agency of \$1,000.00 and states that the amount must be at least one months support. The notification requirements to the parent are also changed. Following notification, the parent has ten days to object and request a hearing to the arrearage determination.

AUTHORITY

Statutory authority: W.Va. Code, §48A-2-31 which provides:

- (a) For purposes of this section, the term "consumer reporting agency" means any person who, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages, in whole or in part, in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.
- (b) The commission shall propose and adopt a **procedural rule** in accordance with the provisions of sections four and eight, article three, chapter twenty-nine of this code, establishing procedures whereby information regarding the amount of overdue support owed by an obligor residing in this state will be made available by the child support enforcement division to any consumer reporting agency, upon the request of such consumer reporting agency.
- (c) (1) When the amount of any overdue support is equal to or less than the amount of arrearage which would cause the mailing of a notice as provided for in subsection (b), section three, article five of this chapter, information regarding such amount may not be made available;
- (2) When the amount of any overdue support exceeds the amount of arrearage which would cause the mailing of a notice as provided for in subsection (b), section three, article five of this chapter, information regarding such amount shall be made available.
- (d) The procedural rule proposed and adopted shall provide that any information with respect to an obligor shall be made available only after notice has been sent to such obligor of the proposed action, and such obligor has been given a reasonable opportunity to contest the accuracy of such information.
- (e) The procedural rule proposed and adopted shall afford the obligor with procedural due process prior to making information available with respect to the obligor.
- (f) The information made available to the requesting consumer reporting agency regarding overdue support may be in the same form as information submitted to the secretary of the treasury of the United States.
- (g) The child support enforcement division may impose a fee for furnishing such information, not to exceed the actual cost thereof.

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

Yes. See II.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

No. The statute authorizing this rule, §48A-2-35 directs the agency to file a procedural rule, not a legislative rule. Counsel recommends that the rule be withdrawn and refiled as a procedural rule.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

No..

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN

**COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND
WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE
CODE?**

No. §29A-3-11 requires that the agency file relevant federal regulations with the rule. None were filed.

VIII. OTHER.

Counsel has modifications to suggest.