

ENROLLED

H. B. 3134

(By Delegates Brown, Frazier, Moore, Miley,
Poore and Fleischauer)

[Passed March 12, 2011; in effect ninety days from passage.]

AN ACT to amend and reenact §48-1-204, §48-1-244 and §48-1-302 of the Code of West Virginia, 1931, as amended; to amend and reenact §48-14-408 and §48-14-410 of said code; and to amend and reenact §48-24-106 of said code, all relating to child support enforcement; lowering the accrued interest rate; requiring employers provide information as to the issuance of a bonus to the Bureau for Child Support Enforcement; extending the time parties may agree to for payment of arrearages under a payment plan from twenty-four to sixty months; requiring certain employers to submit support withheld electronically; and making various technical corrections.

Be it enacted by the Legislature of West Virginia:

That §48-1-204, §48-1-244 and §48-1-302 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §48-14-408 and §48-14-410 of said code be amended and reenacted; and that §48-24-106 of said code be amended and reenacted, all to read as follows:

ARTICLE 1. GENERAL PROVISIONS; DEFINITIONS.

§48-1-204. Arrearages or past due support defined.

“Arrearages” or “past due support” means the total of any matured, unpaid installments of child support required to be paid by an order entered or modified by a court of competent jurisdiction, or by the order of a magistrate court of this state, and shall stand, by operation of law, as a decretal judgment against the obligor owing such support. The amount of unpaid support shall bear interest from the date it accrued, at a rate of five percent per annum, and proportionately for a greater or lesser sum, or for a longer or shorter time. Except as provided in rule 23 of rules of practice and procedure for family law and as provided in section 1-302, a child support order may not be retroactively modified so as to cancel or alter accrued installments of support.

§48-1-244. Support defined.

“Support” means the payment of money, including interest:

(1) For a child or spouse, ordered by a court of competent jurisdiction, whether the payment is ordered in an emergency, temporary, permanent or modified order, the amount of unpaid support shall bear simple interest from the date it accrued, at a rate of five percent per annum, and proportionately for a greater or lesser sum, or for a longer or shorter time;

(2) To third parties on behalf of a child or spouse, including, but not limited to, payments to medical, dental or educational providers, payments to insurers for health and hospitalization insurance, payments of residential rent or mortgage payments, payments on an automobile or payments for day care; or

(3) For a mother, ordered by a court of competent jurisdiction, for the necessary

expenses incurred by or for the mother in connection with her confinement or of other expenses in connection with the pregnancy of the mother.

§48-1-302. Calculation of interest.

(a) Notwithstanding any other provisions of the code, if an obligation to pay interest arises under this chapter, the rate of interest is five percent per annum and proportionate thereto for a greater or lesser sum, or for a longer or shorter time. Interest awarded shall only be simple interest and nothing in this section may be construed to permit awarding of compound interest. Interest accrues only upon the outstanding principal of such obligation.

(b) Notwithstanding any other provision of law, no court may award or approve prejudgment interest in a domestic relations action against a party unless the court finds, in writing, that the party engaged in conduct that would violate subsection (b), Rule 11 of the West Virginia Rules of Civil Procedure. If prejudgment interest is awarded, the court shall calculate prejudgment interest from the date the offending representation was presented to the court pursuant to subsection (a) of this section.

(c) Upon written agreement by both parties, an obligor may petition the court to enter an order conditionally suspending the collection of all or part of the interest that has accrued on past-due child support prior to the date of the agreement: *Provided*, That said agreement shall also establish a reasonable payment plan which is calculated to fully discharge all arrearages within sixty months. Upon successful completion of the payment plan, the court shall enter an order which permanently relieves the obligor of the obligation to pay the accrued interest. If the obligor fails to comply with the terms of

the written agreement, then the court shall enter an order which reinstates the accrued interest.

(d) Amendments to this section enacted by the Legislature during the 2006 regular session shall become effective January 1, 2007.

ARTICLE 14. REMEDIES FOR THE ENFORCEMENT OF SUPPORT OBLIGATIONS.

§48-14-408. Determination of amounts to be withheld.

Notwithstanding any other provision of this code to the contrary which provides for a limitation upon the amount which may be withheld from earnings through legal process, the amount of an obligor's aggregate disposable earnings for any given workweek which may be withheld as support payments is to be determined in accordance with the provisions of this subsection, as follows:

(1) After ascertaining the status of the payment record of the obligor under the terms of the support order, the payment record shall be examined to determine whether any arrearage is due for amounts which should have been paid prior to a twelve-week period which ends with the workweek for which withholding is sought to be enforced.

(2) Prior to January 1, 2001, when none of the withholding is for amounts which came due prior to such twelve-week period, then:

(A) When the obligor is supporting another spouse or dependent child other than the spouse or child for whom the proposed withholding is being sought, the amount withheld may not exceed fifty percent of the obligor's disposable earnings for that week; and

(B) When the obligor is not supporting another spouse or dependent child as described in paragraph (A) of this subdivision, the amount withheld may not exceed sixty percent of the obligor's disposable earnings for that week.

(3) Prior to January 1, 2001, when a part of the withholding is for amounts which came due prior to such twelve-week period, then:

(A) Where the obligor is supporting another spouse or dependent child other than the spouse or child for whom the proposed withholding is being sought, the amount withheld may not exceed fifty-five percent of the obligor's disposable earnings for that week; and

(B) Where the obligor is not supporting another spouse or dependent child as described in paragraph (A) of this subdivision, the amount withheld may not exceed sixty-five percent of the obligor's disposable earnings for that week.

(4) Beginning January 1, 2001, when none of the withholding is for amounts which came due prior to such twelve-week period, then:

(A) When the obligor is supporting another spouse or dependent child other than the spouse or child for whom the proposed withholding is being sought, the amount withheld may not exceed forty percent of the obligor's disposable earnings for that week; and

(B) When the obligor is not supporting another spouse or dependent child as described in paragraph (A) of this subdivision, the amount withheld may not exceed fifty percent of the obligor's disposable earnings for that week.

(5) Beginning January 1, 2001, when a part of the withholding is for amounts

which came due prior to such twelve-week period, then:

(A) When the obligor is supporting another spouse or dependent child other than the spouse or child for whom the proposed withholding is being sought, the amount withheld may not exceed forty-five percent of the obligor's disposable earnings for that week; and

(B) Where the obligor is not supporting another spouse or dependent child as described in paragraph (A) of this subdivision, the amount withheld may not exceed fifty-five percent of the obligor's disposable earnings for that week.

(6) In addition to the percentage limitations set forth in subdivisions (2) and (3) of this section, it shall be a further limitation that when the current month's obligation plus arrearages are being withheld from salaries or wages in no case shall the total amounts withheld for the current month's obligation plus arrearage exceed the amounts withheld for the current obligation by an amount greater than twenty-five percent of the current monthly support obligation.

(7) The provisions of this section shall apply directly to the withholding of disposable earnings of an obligor regardless of whether the obligor is paid on a weekly, biweekly, monthly or other basis.

(8) The Bureau for Child Support Enforcement has the authority to prorate the current support obligation in accordance with the pay cycle of the source of income. This prorated current support obligation shall be known as the "adjusted support obligation". The current support obligation or the adjusted support obligation is the amount, if unpaid, on which interest will be charged.

(9) When an obligor acts so as to purposefully minimize his or her income and to thereby circumvent the provisions of part 4 of this article which provide for withholding from income of amounts payable as support, the amount to be withheld as support payments may be based upon the obligor's potential earnings rather than his or her actual earnings, and such obligor may not rely upon the percentage limitations set forth in this subsection which limit the amount to be withheld from disposable earnings.

(10) Notwithstanding any other provision of this section, the Bureau for Child Support Enforcement may withhold not more than fifty percent of any earnings denominated as an employment-related bonus to satisfy an outstanding child support arrearage.

(A) Two weeks prior to issuing any bonus equal to or in excess of \$100 to an employee or employees, an employer shall notify the Bureau for Child Support Enforcement, in a manner prescribed by the bureau, of the employee or employees' name, address, social security number, date of birth and amount of the bonus.

(B) If it is determined that an employee owes an arrearage, an income withholding notice shall be issued pursuant to chapter forty-eight, article fourteen, to the employer.

§48-14-410. Sending amounts withheld to bureau; notice.

After implementation in accordance with the provisions of section 14-409, a source of income shall send the amount to be withheld from the obligor's income to the Bureau for Child Support enforcement and shall notify the Bureau for Child Support enforcement of the date of withholding, the same date that the obligor is paid. If the

source of income has more than fifty employees, the source of income shall submit the support withheld via electronic means in a manner prescribed by the Bureau for Child Support enforcement.

ARTICLE 24. ESTABLISHMENT OF PATERNITY.

§48-24-106. Establishing paternity by acknowledgment of natural father.

A written, notarized acknowledgment executed pursuant to the provisions of section ten, article five, chapter sixteen of this code legally establishes the man as the father of the child for all purposes and child support may be established in accordance with the support guidelines set forth in article 13-101, et seq.