# WEST VIRGINIA CODE CHAPTER 48 ARTICLE 14

WV Legislature

# PART 1. ACTION TO OBTAIN AN ORDER FOR SUPPORT OF MINOR CHILD.

## §48-14-101. When action may be brought for child support order.

An action may be brought in family court to obtain an order for the support of a minor child when:

(1) The child has a parent and child relationship with an obligor;

(2) The obligor is not meeting an obligation to support the child;

(3) An enforceable order for the support of the child by the obligor has not been entered by a court of competent jurisdiction; and

(4) There is no pending action for divorce, separate maintenance or annulment in which the obligation of support owing from the obligor to the child is at issue.

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## §48-14-102. Who may bring action for child support order.

An action may be brought under the provisions of section one hundred one of this article by:

(1) A custodial parent of a child when the divorce order or other order which granted custody did not make provision for the support of the child by the obligor;

(2) A primary caretaker of a child;

(3) A guardian of the property of a child or the committee for a child; or

(4) The Bureau for Child Support Enforcement, on behalf of the state, when the Department of Human Services is providing assistance on behalf of the child or the person to whom a duty of support is owed, in the form of temporary assistance to needy families or medical assistance, and any right to support has been assigned to the department or in any other case wherein a party has applied for child support enforcement services from the Bureau for Child Support Enforcement.

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## §48-14-103. Venue for action for child support order.

An action under the provisions of this section may be brought in the county where the obligee, the obligor or the child resides.

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**§48-14-104. Obligee may seek spousal support in addition to child support.**

When an action for child support is brought under the provisions of this section by an obligee against his or her spouse, such obligee may also seek spousal support from the obligor, unless such support has been previously waived by agreement or otherwise.

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## §48-14-105. Mandatory provision for wage withholding.

Every order of support heretofore or hereafter entered or modified under the provisions of this section shall include a provision for the income withholding in accordance with the provisions of 12-101, et seq., and 14-401, et seq.

WV Legislature

## §48-14-106.Modification of support order.

(a) At any time after the entry of an order for support, the court may, upon the verified petition of an obligee or the obligor, revise or alter such order and make a new order as the altered circumstances or needs of a child, an obligee or the obligor may render necessary to meet the ends of justice.

(b) The Supreme Court of Appeals shall make available to the family courts a standard form for a petition for modification of an order for support, which form will allege that the existing order should be altered or revised because of a loss or change of employment or other substantial change affecting income or that the amount of support required to be paid is not within fifteen percent of the child support guidelines. The clerk of the circuit court and the secretary-clerk of the family court shall make such forms available to persons desiring to petition the court pro se for a modification of the support award.

(c) Upon entry of an order modifying a child support amount the court shall, no later than five days from entry of the order, provide a copy of the modified order to the Bureau for Child Support Enforcement. If an overpayment to one of the parties occurs as a result of the modified terms of the order, funds properly withheld by the Bureau for Child Support Enforcement pursuant the terms of the original order shall not be returned until such time as the Bureau for Child Support Enforcement receives repayment from the party in possession of the overpayment.

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## §48-14-107. Modification of support order with the assistance of Bureau for Child Support Enforcement.

In addition to any other procedure which may exist by law, any party seeking the recalculation of support and modification under a child support order due to a substantial change in circumstances pursuant to the provisions of section one hundred six of this article may seek and obtain the assistance of the Bureau of Child Support Enforcement, pursuant to the procedures established under the provisions of sections two hundred one through two hundred six, inclusive, article eighteen of this chapter, in the preparation, assessment and presentation of an appropriate petition for modification of a support order, including the identification and narrowing of issues associated with a requested recalculation of support prior to filing the petition, and the preparation and presentation of an appropriate petition and proposed order for modification for consideration by the family court.

WV Legislature

**§48-14-108. Deceased parties in support cases.**

(a) In the event of the death of any party to a domestic relations support action, support payments or a refund of support payments due to the party by the obligee, obligor or the Bureau for Child Support Enforcement, not in excess of $1,000, may, upon proper demand, be paid, in the absence of actual notice of the pendency of probate proceedings, without requiring letters testamentary or of administration in the following order of preference to decedent's:

(1) Surviving spouse;

(2) Children eighteen years of age and over in equal shares;

(3) Father and mother, or survivor; and

(4) Sisters and brothers.

(b) Payments under this section shall release and discharge the obligee, obligor or the Bureau for Child Support Enforcement to the amount of such payment.

WV Legislature

# PART 2. LIENS AGAINST PERSONAL PROPERTY

# FOR OVERDUE SUPPORT.

## §48-14-201. Arrearages stand by operation of law as judgment against support obligor.

When an obligor is in arrears in the payment of support which is required to be paid by the terms of an order for support of a child, an obligee or the Bureau for Child Support enforcement may file an abstract of the order giving rise to the support obligation and an "affidavit of accrued support," setting forth the particulars of such arrearage and requesting a writ of execution, suggestion or suggestee execution. The filing of the abstract and affidavit shall give rise, by operation of law, to a lien against personal property of an obligor who resides within this state or who owns property within this state for overdue support.

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**§48-14-202. Registration of foreign order.**

If the duty of support is based upon an order from another jurisdiction, the obligee shall first register the order in accordance with the provisions of part 16-601, et seq., of this chapter: Provided, That nothing in this subsection shall prevent the Bureau for Child Support enforcement from enforcing foreign orders for support without registration of the order in accordance with the provisions of part 16-501, et seq., of this chapter.

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## §48-14-203. Affidavit of accrued support.

(a) The affidavit of accrued support may be filed with the clerk of the circuit court in the county in which the obligee or the obligor resides, in the county where the order originated or where the obligor's source of income is located.

The affidavit may be filed when a payment required by such order has been delinquent, in whole or in part, for a period of fourteen days.

(b) The affidavit shall:

(1) Identify the obligee and obligor by name and address, and shall list the last four digits of the obligor's Social Security number or numbers, if known;

(2) Name the court which entered the support order and set forth the date of such entry;

(3) State the total amount of accrued support which has not been paid by the obligor; and

(4) State the name and address of the obligor's source of income, if known.

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## PART 2. LIENS AGAINST PERSONAL

## PROPERTY FOR OVERDUE SUPPORT.

### §48-14-204. Execution and notice.

(a) Upon receipt of the affidavit, the clerk shall issue a writ of execution, suggestion or suggestee execution and shall mail a copy of the affidavit and a notice of the filing of the affidavit to the obligor at his or her last known address. If the Bureau for Child Support enforcement is not acting on behalf of the obligee in filing the affidavit, the clerk shall forward a copy of the affidavit and the notice of the filing to the Bureau for Child Support enforcement.

(b) The notice provided for in subsection (a) of this section must inform the obligor that if he or she desires to contest the affidavit on the grounds that the amount claimed to be in arrears is incorrect or that a writ of execution, suggestion or suggestee execution is not proper because of mistakes of fact, he or she must, within fourteen days of the date of the notice: (1) Inform the Bureau for Child Support enforcement in writing of the reasons why the affidavit is contested and request a meeting with the Bureau for Child Support enforcement; or (2) where a court of this state has jurisdiction over the parties, obtain a date for a hearing before the court and mail written notice of such hearing to the obligee and to the Bureau for Child Support enforcement on a form prescribed by the administrative office of the Supreme Court of Appeals and made available through the office of the clerk of the circuit court.

(c) Upon being informed by an obligor that he or she desires to contest the affidavit, the Bureau for Child Support enforcement shall inform the court of such fact, and the court shall require the obligor to give security, post a bond or give some other guarantee to secure payment of overdue support.

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**§48-14-205. Circuit clerk to provide form affidavits.**

The clerk of the circuit court shall make available form affidavits for use under the provisions of this article. Such form affidavits shall be provided to the clerk by the Bureau for Child Support enforcement. The notice of the filing of an affidavit shall be in a form prescribed by the Bureau for Child Support enforcement.

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## §48-14-206. Priority over other legal process.

Writs of execution, suggestions or suggestee executions issued pursuant to the provisions of this article shall have priority over any other legal process under the laws of this state against the same income, except for withholding from income of amounts payable as support in accordance with the provisions of section 14-401 of this chapter, and shall be effective notwithstanding any exemption that might otherwise be applicable to the same income.

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**§48-14-207. Amount to be withheld from income.**

Notwithstanding any other provision of this code to the contrary, the amount to be withheld from the disposable earnings of an obligor pursuant to a suggestee execution in accordance with the provisions of this article shall be the same amount which could properly be withheld in the case of a withholding order under the provisions of 14-401, et seq.

WV Legislature

## §48-14-208. Filing of false affidavit constitutes false swearing.

A person who files a false affidavit is guilty of false swearing and, upon conviction thereof, shall be punished as provided by law for such offense.

WV Legislature

## §48-14-209. Application to support orders of another state.

The provisions of this article apply to support orders issued by a court of competent jurisdiction of any other state.

WV Legislature

## §48-14-210. Application to income withholding.

The provisions of this article do not apply to income withholding, as provided in section 14-401 of this chapter.

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## §48-14-211. Release of lien.

Upon satisfaction of the overdue support obligation, the obligee shall issue a release to the obligor and file a copy thereof with the clerk of the county commission in the county in which the lien arose pursuant to this section. The Bureau for Child Support enforcement shall issue a release in the same manner and with the same effect as liens taken by the Tax Commissioner pursuant to section twelve, article ten, chapter eleven of this code.

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# PART 3. LIENS AGAINST REAL PROPERTY

# FOR OVERDUE SUPPORT.

## §48-14-301. Liens against real property by operation of law.

An order for support entered by a court of competent jurisdiction will give rise, by operation of law, to a lien against real property of an obligor who resides or owns property within this state for overdue support upon the filing by the obligee, or, when appropriate, the Bureau for Child Support enforcement, an abstract of the order giving rise to the support obligation and an "Affidavit of Accrued Support" setting forth the particulars of the arrearage.

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## §48-14-302. Affidavit of accrued support.

The affidavit and abstract as provided in section four, article three, chapter thirty-eight of this code shall be filed with the clerk of the county commission in which the real property is located or in the county where the order originated. The affidavit shall:

(1) Identify the obligee and obligor by name and address, and shall list the last four digits of the obligor's Social Security number or numbers, if known;

(2) Name the court which entered the support order and set forth the date of such entry;

(3) Allege that the support obligor is at least thirty days in arrears in the payment of child support; and

(4) State the total amount of accrued support which has not been paid by the obligor.

WV Legislature

**§48-14-303. Registration of foreign order.**

If the duty of support is based upon a foreign order the obligee shall first register the order in accordance with the provisions of article 16 of this chapter: Provided, That nothing in this subsection shall prevent the Bureau for Child Support enforcement from enforcing foreign orders for support without registration of the order in accordance with the provisions of article 16 of this chapter.

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**§48-14-304. Full faith and credit to liens arising in another state.**

This state will accord full faith and credit to liens described in section 301 of this article arising in another state, when the out-of-state agency, party, or other entity seeking to enforce such a lien complies with the procedural rules relating to recording or serving liens that arise within the other state.

WV Legislature

## §48-14-305. Release of lien.

Upon satisfaction of the overdue support obligation, the obligee shall issue a release to the obligor and file a copy thereof with the clerk of the county commission in the county in which the lien arose pursuant to this section. The Bureau for Child Support enforcement shall issue a release in the same manner and with the same effect as liens taken by the Tax Commissioner pursuant to section twelve, article ten, chapter eleven of this code.

WV Legislature

## §48-14-306. Filing of false affidavit constitutes false swearing.

Any person who files a false affidavit shall be guilty of false swearing and, upon conviction thereof, shall be punished as provided by law for such offense.

WV Legislature

## §48-14-307. Application to support orders of another state.

The provisions of this part 14-301, et seq., shall apply to support orders issued by a court of competent jurisdiction of any other state.

WV Legislature

## §48-14-308. Enforcement by the Bureau for Child Support enforcement of lien on real property.

The Bureau for Child Support enforcement may enforce a lien upon real property pursuant to the provisions of article three, chapter thirty-eight of this code.

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**§48-14-401. Support orders to provide for withholding from income.**

(a) Every order entered or modified under the provisions of this article that requires the payment of child support or spousal support must include a provision for automatic withholding from income of the obligor in order to facilitate income withholding as a means of collecting support.

(b) Every support order heretofore or hereafter entered by a court of competent jurisdiction is considered to provide for an order of income withholding, notwithstanding the fact that the support order does not in fact provide for an order of withholding. Income withholding may be instituted under this part for any arrearage without the necessity of additional judicial or legal action.

(c) Every such order as described in subsection (a) of this section shall contain language authorizing income withholding for both current support and for any arrearages to commence without further court action as follows:

The order shall provide that income withholding shall begin immediately, without regard to whether there is an arrearage;

(A) When a child for whom support is ordered is included or becomes included in a grant of assistance from the division of human services, its successor the Department of Human Services beginning January 1, 2024, or a similar agency of a sister state for temporary assistance for needy families benefits, medical assistance only benefits or foster care benefits and is referred to the Bureau for Child Support Enforcement; or

(B) When the support obligee has applied for services from the Bureau for Child Support Enforcement created pursuant to §48-18-101 *et seq.*, of this code, or the support enforcement agency of another state or is otherwise receiving services from the Bureau for Child Support Enforcement as provided for in this chapter. In any case where one of the parties demonstrates, and the court finds, that there is good cause not to require immediate income withholding, or in any case where there is filed with the court a written agreement between the parties which provides for an alternative arrangement, such order shall not provide for income withholding to begin immediately, pursuant to §48-14-403 of this code.

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# PART 4. WITHHOLDING FROM INCOME OF

# AMOUNTS PAYABLE AS SUPPORT.

## §48-14-402. Commencement of withholding from income without further court action.

(a) Except as otherwise provided in section 14-403, a support order as described in section 14-401 must contain or must be deemed to contain language requiring automatic income withholding for both current support and for any arrearages to commence without further court action on the date the support order is entered.

(b) The Supreme Court of Appeals shall make available to the family courts standard language to be included in all such orders, so as to conform such orders to the applicable requirements of state and federal law regarding the withholding from income of amounts payable as support.

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## §48-14-403. Exception to requirement for automatic withholding from income.

If one of the parties demonstrates, and the court finds, that there is good cause not to require immediate income withholding, or in any case where there is filed with the court a written agreement between the parties which provides for an alternative arrangement, the support order may not provide for income withholding to begin immediately.

(1) The order must provide that income withholding will begin immediately upon the occurrence of any of the following:

(A) When the payments which the obligor has failed to make under the order are at least equal to the support payable for one month, if the order requires support to be paid in monthly installments;

(B) When the payments which the obligor has failed to make under the order are at least equal to the support payable for four weeks, if the order requires support to be paid in weekly or bi-weekly installments;

(C) When the obligor requests the Bureau for Child Support enforcement to commence income withholding; or

(D) When the obligee requests that such withholding begin, if the request is approved by the court in accordance with procedures and standards established by rules promulgated by the commission pursuant to this section and to chapter twenty-nine-a of this code.

(2) The court shall consider the best interests of the child in determining whether "good cause" exists under this section. The court may also consider the obligor's payment record in determining whether "good cause" has been demonstrated.

(3) When immediate income withholding is not required due to the findings required by this section, the Bureau for Child Support enforcement shall mail a notice to the obligor pursuant to section 14-405 of this article upon the occurrence of any of the conditions provided for in subdivision (1) of this section.

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## §48-14-404. Enforcement of withholding by Bureau for Child Support Enforcement.

The withholding from an obligor's income of amounts payable as spousal or child support or fees awarded by a court of competent jurisdiction to the state in connection with the establishment of paternity and support or the enforcement of a support order shall be enforced by the Bureau for Child Support Enforcement in accordance with the provisions of part 4 of this article. If an overpayment of spousal or child support occurs and an arrearage exists, the Bureau for Child Support Enforcement shall first offset the overpayment of spousal or child support against the arrearage. If no arrearage exists with which to offset the overpayment or the arrearage is not sufficient to offset the overpayment and the obligee does not enter into a repayment agreement with the Bureau for Child Support Enforcement, the Bureau for Child Support Enforcement may issue an income withholding to the obligee's employer to recoup the amount of the overpayment. The income withholding shall be in the same manner as provided in this article: Provided, That in no circumstances may the amount withheld exceed thirty-five percent of the disposable earnings for the period, regardless of the length of time that the overpayment has been owed.

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**§48-14-405. Information required in notice to obligor.**

When income withholding is required, the Bureau for Child Support enforcement shall send by first-class mail or electronic means to the obligor notice that withholding has commenced. The notice shall inform the obligor of the following:

(1) The amount owed;

(2) That a withholding from the obligor's income of amounts payable as support has commenced;

(3) That the amount withheld will be equal to the amount required under the terms of the current support order, plus amounts for any outstanding arrearage;

(4) The definition of "gross income" as defined in section 1-228 of this chapter;

(5) That the withholding will apply to the obligor's present source of income and to any future source of income and, therefore, no other notice of withholding will be sent to the obligor. A copy of any new or modified withholding notice will be sent to the obligor at approximately the same time the original is sent to the source of income;

(6) That any action by the obligor to purposefully minimize his or her income will result in the enforcement of support being based upon potential and not just actual earnings;

(7) That payment of the arrearage after the date of the notice is not a bar to such withholding;

(8) That the obligor may request a review of the withholding by written request to the Bureau for Child Support enforcement when the obligor has information showing an error in the current or overdue support amount or a mistake as to the identity of the obligor;

(9) That a mistake of fact exists only when there is an error in the amount of current or overdue support claimed in the notice or there is a mistake as to the identity of the obligor;

(10) That matters such as lack of visitation, inappropriateness of the support award or changed financial circumstances of the obligee or the obligor will not be considered at any hearing held pursuant to the withholding, but may be raised by the filing of a separate petition in family court;

(11) That if the obligor desires to contest the withholding, the obligor may petition the family court for a resolution; and

(12) That while the withholding is being contested through the court, the income withholding may not be stayed but may be modified.

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## §48-14-406. Notice to source of income; withholding in compliance with order.

(a) Withholding shall occur and the notice to withhold shall be sent either by first-class mail or by electronic means to the source of income when the support order provides for immediate income withholding pursuant to sections four hundred one and four hundred two of this article or if immediate income withholding is not so provided, when the support payments are in arrears in the amount specified in section four hundred three [§48-14-403] of this article.

(b) The source of income shall withhold so much of the obligor's income as is necessary to comply with the order authorizing such withholding, up to the maximum amount permitted under applicable law for both current support and for any arrearages which are due. Such withholding, unless otherwise terminated under the provisions of this part, shall apply to any subsequent source of income or any subsequent period of time during which income is received by the obligor.

(c) In addition to any amounts payable as support withheld from the obligor's income, the source of income may deduct a fee, not to exceed $1, for administrative costs incurred by the source of income for each withholding.

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**§48-14-407. Contents of notice to source of income.**

(a) The source of income of any obligor who is subject to withholding, upon being given notice of withholding, shall withhold from such obligor's income the amount specified by the notice and pay such amount to the Bureau for Child Support Enforcement for distribution. The notice given to the source of income shall contain only such information as may be necessary for the source of income to comply with the withholding order and no source of income may require additional information or documentation. Such notice to the source of income shall include, at a minimum, the following:

(1) The amount to be withheld from the obligor's disposable earnings and a statement that the amount to be withheld for support and other purposes, including the fee specified under subdivision (3) of this subsection, may not be in excess of the maximum amounts permitted under Section 303(b) of the federal Consumer Credit Protection Act or limitations imposed under the provisions of this code;

(2) That the source of income shall send the amount to be withheld from the obligor's income to the Bureau for Child Support Enforcement, along with such identifying information as may be required by the bureau, the same day that the obligor is paid;

(3) That, in addition to the amount withheld under the provisions of subdivision (1) of this subsection, the source of income may deduct a fee, not to exceed $1, for administrative costs incurred by the source of income for each withholding;

(4) That withholding is binding on the source of income until further notice by the Bureau for Child Support Enforcement or until the source of income notifies the Bureau for Child Support Enforcement of a termination of the obligor's employment in accordance with the provisions of section four hundred twelve of this article;

(5) That the source of income is subject to a fine for discharging an obligor from employment, refusing to employ or taking disciplinary action against any obligor because of the withholding;

(6) That when the source of income fails to withhold income in accordance with the provisions of the notice, the source of income is liable for the accumulated amount the source of income should have withheld from the obligor's income;

(7) That the withholding under the provisions of this part shall have priority over any other legal process under the laws of this state against the same income and shall be effective despite any exemption that might otherwise be applicable to the same income;

(8) That when an employer has more than one employee who is an obligor who is subject to wage withholding from income under the provisions of this code, the employer may combine all withheld payments to the Bureau for Child Support Enforcement when the employer properly identifies each payment with the information listed in this part. A source of income

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is liable to an obligee, including the State of West Virginia or the Department of Human Services where appropriate, for any amount which the source of income fails to identify with the information required by this part and is therefore not received by the obligee;

(9) That the source of income shall implement withholding no later than the first pay period or first date for payment of income that occurs after fourteen days following the date the notice to the source of income was mailed; and

(10) That the source of income shall notify the Bureau for Child Support Enforcement promptly when the obligor terminates his or her employment or otherwise ceases receiving income from the source of income and shall provide the obligor's last known address and the name and address of the obligor's new source of income, if known.

(b) The Bureau for Child Support Enforcement shall, by administrative rule, establish procedures for promptly refunding to obligors amounts which have been improperly withheld under the provisions of this part. When a court reduces an order of support, the Bureau for Child Support Enforcement is not liable for refunding amounts which have been withheld pursuant to a court order enforceable at the time that the bureau received the funds unless the funds were kept by the state. The obligee or obligor who received the benefit of the withheld amounts shall be liable for promptly refunding any amounts which would constitute an overpayment of the support obligation.

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**§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.

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(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

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shall be issued pursuant to chapter forty-eight, article fourteen, to the employer.

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## §48-14-409. Time for implementing withholding.

Every source of income who receives a notice of withholding under the provisions of this section shall implement withholding no later than the first pay period or first date for the payment of income which occurs after fourteen days following the date the notice to the source of income was mailed.

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## §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.

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**§48-14-411. Time withholding is to stay in effect.**

Withholding of amounts payable as support under the provisions of this part 4 of this article is binding on the source of income until further notice by the Bureau for Child Support enforcement or until the source of income notifies the Bureau for Child Support enforcement of a termination of the obligor's employment in accordance with the provisions of section 14-412.

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## §48-14-412. Notice of termination of employment or receipt of income.

A source of income who employs or otherwise pays income to an obligor who is subject to withholding under the provisions of this part 4 shall notify the Bureau for Child Support enforcement promptly when the obligor terminates employment or otherwise ceases receiving income from the source of income, and shall provide the Bureau for Child Support enforcement with the obligor's last known address and the name and address of the obligor's new source of income, if known.

WV Legislature

## §48-14-413. Combining withheld amounts.

When an employer has more than one employee who is an obligor who is subject to wage withholding from income for amounts payable as support, the employer may combine all withheld payments to the Bureau for Child Support enforcement when the employer properly identifies each payment with the information listed in this part 4. A source of income is liable to an obligee, including the State of West Virginia or the Department of Human Services where appropriate, for any amount which the source of income fails to identify in accordance with this part 4 and is therefore not received by the obligee.

WV Legislature

## §48-14-414. Sending amounts withheld to division; notice.

A source of income is liable to an obligee, including the State of West Virginia or the Department of Human Services where appropriate, for any amount which the source of income fails to withhold from income due an obligor following receipt by such source of income of proper notice under section 14-407: *Provided*, That a source of income shall not be required to vary the normal pay and disbursement cycles in order to comply with the provisions of this section.

WV Legislature

## §48-14-415. Misdemeanor offense of concealing payment of income to obligor; penalty.

Any source of income who knowingly and willfully conceals the fact that the source of income is paying income to an obligor, with the intent to avoid withholding from the obligor's income of amounts payable as support, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $100.

WV Legislature

## §48-14-416. Request to source of income for information regarding payment of income.

When the Bureau for Child Support enforcement makes a written request to a source of income to provide information as to whether the source of income has paid income to a specific obligor, within the preceding sixty-day period, the source of income shall, within fourteen days thereafter, respond to such request, itemizing all such income, if any, paid to the obligor during such sixty-day period. A source of income shall not be liable, civilly or criminally, for providing such information in good faith.

WV Legislature

## §48-14-417. Priority of support collection over other legal process.

Support collection under the provisions of this section shall have priority over any other legal process under the laws of this state against the same income, and shall be effective despite any exemption that might otherwise be applicable to the same income.

WV Legislature

## §48-14-418. Misdemeanor offense for source of income's action against an obligor; penalty.

Any source of income who discharges from employment, refuses to employ, or takes disciplinary action against any obligor subject to income withholding required by this part 4 because of the existence of such withholding and the obligations or additional obligations which it imposes on the source of income, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $500 nor more than $1,000.

WV Legislature

**§48-14-419.**

Repealed.

Acts, 2005 Reg. Sess., Ch. 39.

WV Legislature

# PART 5. ENFORCEMENT OF SUPPORT ORDERS

# BY CONTEMPT PROCEEDINGS.

## §48-14-501. Commencement of contempt action.

In addition to or in lieu of the other remedies provided by this article for the enforcement of support orders, the Bureau for Child Support enforcement may commence a civil or criminal contempt proceeding in accordance with the provisions of section 1-304 against an obligor who is alleged to have willfully failed or refused to comply with the order of a court of competent jurisdiction requiring the payment of support. Such proceeding shall be instituted by filing a petition for an order to show cause why the obligor should not be held in contempt.

WV Legislature

**§48-14-502. Willful failure or refusal to comply with order to pay support.**

If the court finds that the obligor willfully failed or refused to comply with an order requiring the payment of support, the court shall find the obligor in contempt and may do one or more of the following:

(1) Require additional terms and conditions consistent with the court's support order.

(2) After notice to both parties and a hearing, if requested by a party, on any proposed modification of the order, modify the order in the same manner and under the same requirements as an order requiring the payment of support may be modified under the provisions of Part 5-701, et seq. A modification sought by an obligor, if otherwise justified, shall not be denied solely because the obligor is found to be in contempt.

(3) Order that all accrued support and interest thereon be paid under such terms and conditions as the court, in its discretion, may deem proper.

(4) Order the contemnor to pay support in accordance with a plan approved by the Bureau for Child Support Enforcement or to participate in such work activities as the court deems appropriate.

(5) If appropriate under the provisions of section 1-304:

(A) Commit the contemnor to the regional jail; or

(B) Commit the contemnor to the regional jail with the privilege of leaving the jail, during such hours as the court determines and under such supervision as the court considers necessary, for the purpose of allowing the contemnor to go to and return from his or her place of employment.

WV Legislature

## §48-14-503. Limitation on length of commitment.

(a) In a commitment under subdivision (5) of section 14-502 the court shall confine the contemnor for an indeterminate period not to exceed six months or until such time as the contemnor has purged himself or herself, whichever shall first occur.

(b) An obligor committed under subdivision (5), section five hundred two of this article shall be released by court order if the court has reasonable cause to believe that the obligor will comply with the court's order.

WV Legislature

## §48-14-504. Violation of work release conditions.

If an obligor is committed to jail under the provisions of paragraph (B), subdivision (5), of section 14-502 and violates the conditions of the court, the court may commit the person to the county or regional jail without the privilege provided under said paragraph (B) for the balance of the period of commitment imposed by the court.

WV Legislature

## §48-14-505. Misdemeanor offense of escape from custody; penalty.

If a person is committed to jail under the provisions of paragraph (B), subdivision (5), of section 14-502 and willfully fails to return to the place of confinement within the time prescribed, such person shall be considered to have escaped from custody and shall be guilty of a misdemeanor, punishable by imprisonment for not more than one year.

WV Legislature

# PART 6. HIGH-VOLUME AUTOMATED ADMINISTRATIVE ENFORCEMENT

# OF CHILD SUPPORT IN INTERSTATE CASES.

## §48-14-601. Definitions.

As used in this chapter:

(1) "High-volume automated administrative enforcement" in interstate cases means at the request of another state, the identification by a state, through automated data matches with financial institutions and other entities where assets may be found, of assets owned by persons who owe child support in other states, and the seizure of such assets by the state, through levy or other appropriate processes.

(2) "Assisting state" means a state which matches the requesting state's delinquent obligors against the databases of financial institutions and other entities within its own state boundaries where assets may be found, and, if appropriate, seizes assets on behalf of the requesting state.

(3) "Requesting state" means a state transmitting a request for administrative enforcement to another state.

(4) "State" means a state of the United States, or the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term "state" shall also include Indian tribes and a foreign jurisdiction that has enacted a law or established procedures for issuance and enforcement of support which are substantially similar to the procedures under this chapter or under the uniform reciprocal enforcement of support act, the revised uniform reciprocal enforcement of support act, or the uniform interstate family support act.

WV Legislature

**§48-14-602. Use of automated administrative enforcement.**

The Bureau for Child Support enforcement shall use automated administrative enforcement to the same extent as used for intrastate cases in response to a request made by another state to enforce support orders, and shall promptly report the results of such enforcement procedures to the requesting state.

WV Legislature

## §48-14-603. Enforcing support orders through automated administrative enforcement.

(a) The Bureau for Child Support enforcement may, by electronic or other means, transmit to, or receive from, another state a request for assistance in enforcing support orders through automated administrative enforcement. Such request shall include:

(1) Information as will enable the assisting state to compare the information about the cases to the information in the databases of the state;

(2) All supporting documentation necessary under the laws of this state to support an attachment of the asset or assets, should such assets be located; and

(3) Said transmittal shall constitute a certification by the requesting state:

(A) Of the amount of past-due support owed; and

(B) That the requesting state has complied with all procedural due process requirements applicable to each case.

(b) A requesting state may transmit to an assisting state either:

(1) A request to locate and seize assets; or

(2) A request to seize an asset already identified by the requesting state.

WV Legislature

## §48-14-701. Posting of bonds or giving security to guarantee payment of overdue support.

An obligor with a pattern of overdue support may be required by order of the court to post bond, give security or some other guarantee to secure payment of overdue support. The guarantee may include an order requiring that stocks, bonds or other assets of the obligor be held in escrow by the court until the obligor pays the support.

WV Legislature

## §48-14-801. When monthly payments may be increased to satisfy overdue support.

(a) For the purpose of securing overdue support, the Bureau for Child Support Enforcement has the authority to increase the monthly support payments of an obligor by as much as $100 per month to satisfy the arrearage when:

(1) An obligor has failed to make payments as required by a support order and arrears are equal to an amount of support payable for six months if the order requires support to be paid in monthly installments; or

(2) An obligor has failed to make payments as required by a support order and arrears are equal to an amount of support payable for twenty-seven weeks if the order requires support to be paid in weekly or biweekly installments.

(b) For the purpose of securing overdue support, the Bureau for Child Support Enforcement has the authority to increase the monthly support payments of an obligor by as much as $200 per month to satisfy the arrearage when:

(1) An obligor's gross income equals or exceeds $65,000; and

(2) An obligor has failed to make payments as required by a support order and arrears are equal to an amount of support payable for twelve months if the order requires support to be paid in monthly installments; or

(3) An obligor has failed to make payments as required by a support order and arrears are equal to an amount of support payable for fifty-four weeks if the order requires support to be paid in weekly or biweekly installments.

(c) An increase in monthly support under this section will be in addition to any amounts withheld from income pursuant to this article.

(d) This increase in monthly support may be enforced through the withholding process.

WV Legislature

## PART 8. INCREASE IN PAYMENTS TO SATISFY ARREARAGE.

### §48-14-802. Notice of increase in monthly payments to satisfy overdue support.

Notice of the increase shall be sent to the obligor at the time such increase is implemented. If the obligor disagrees with the increase in payments, he or she may file, within thirty days of the date of the notice, a motion with the court for a determination of whether there should be an increase in monthly payments and the amount of that increase, if any.

WV Legislature

## §48-14-803. Application to support orders of courts of competent jurisdiction.

The provisions of sections 14-801 and 14-802 apply to support orders issued by a court of competent jurisdiction of this or any other state.

WV Legislature

# PART 9. PROCEDURES BEFORE THE

# BUREAU FOR CHILD SUPPORT ENFORCEMENT.

## §48-14-901. Procedure when person contests action proposed to be taken against him

(a) In any case arising under the provisions of this article wherein a notice is served upon a person requiring him or her to notify the Bureau for Child Support enforcement if the person is contesting action proposed to be taken against him

(1) If the person so notified does not submit written reasons for contesting the action within the time set to contest the proposed action, and does not request a meeting with the Bureau for Child Support enforcement, then the Bureau for Child Support enforcement shall proceed with the proposed action; or

(2) If the person so notified does submit written reasons for contesting the action within the time set to contest the proposed action, and requests a meeting with the Bureau for Child Support enforcement, then the Bureau for Child Support enforcement shall schedule a meeting at the earliest practicable time with the person and attempt to resolve the matter informally.

(b) If the matter cannot be resolved informally, the Bureau for Child Support enforcement shall make a determination as to whether the proposed action is proper and should actually occur.

(c) The determination of the Bureau for Child Support enforcement shall be made within forty-five days from the date of the notice which first apprised the person of the proposed action. Upon making the determination, the Bureau for Child Support enforcement shall inform the parties as to whether or not the proposed action will occur, and, if it is to occur, of the date on which it is to begin, and in the case of withholding from income, shall furnish the obligor with the information contained in any notice given to an employer under the provisions of section 14-407 with respect to such withholding.

WV Legislature

# PART 10. OFFENSES.

## §48-14-1001. Misrepresentation of delinquent support payments; penalty.

If any person knowingly and willfully makes any false, fictitious or fraudulent statement or representation, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, thus misrepresenting the amount of child support actually due and owing, and if such statement, representation, writing or document causes bureau for support enforcement attorney in reliance thereon to institute an action or proceeding or otherwise commence to enforce a support obligation under this article or under section 1-305, such person is guilty of false swearing and, upon conviction thereof, shall be punished as provided by law for such offense.

WV Legislature