WEST VIRGINIA CODE CHAPTER 48 ARTICLE 15

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PART 1. DEFINITIONS.

§48-15-101. Applicability of definitions.

For purposes of this article, the words or terms defined in this article, and any variation of those words or terms required by the context, have the meanings ascribed to them. These definitions are applicable unless a different meaning clearly appears from the context.

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§48-15-102. Action against a license defined.

"Action against a license" means action taken by the Bureau for Child Support enforcement to cause the denial, nonrenewal, suspension or restriction of a license applied for or held by: (A) A support obligor owing overdue support; or (B) a person who has failed to comply with subpoenas or warrants relating to paternity or child support proceedings.

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§48-15-103. Application defined.

"Application" means a request to have a license issued, a request for a renewal of an existing license or a request to change the status of an existing license.

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§48-15-104. License defined.

"License" means a license, permit, certificate of registration, registration, credential, stamp or other indicia that evidences a personal privilege entitling a person to do an act that he or she would otherwise not be entitled to do, or evidences a special privilege to pursue a profession, trade, occupation, business or vocation.

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Part 2. Action Against License.

§48-15-201. Licenses subject to action.

The following licenses are subject to an action against a license as provided for in this article:

(1) A business registration certificate issued under article twelve, chapter eleven of this code authorizing a person to transact business in the State of West Virginia;

(2) A permit or license issued under chapter seventeen-b of this code authorizing a person to drive a motor vehicle;

(3) A commercial driver's license issued under chapter seventeen-e of this code authorizing a person to drive a class of commercial vehicle;

(4) A permit, license or stamp issued under article two or two-b, chapter twenty of this code regulating a person's activities for wildlife management purposes, authorizing a person to serve as an outfitter or guide or authorizing a person to hunt or fish;

(5) A license or registration issued under chapter thirty of this code authorizing a person to practice or engage in a profession or occupation;

(6) A license issued under article twelve, chapter forty-seven of this code authorizing a person to transact business as a real estate broker or real estate salesperson;

(7) A license or certification issued under article fourteen, chapter thirty-seven of this code authorizing a person to transact business as a real estate appraiser;

(8) A license issued under article twelve, chapter thirty-three of this code authorizing a person to transact insurance business as an agent, broker or solicitor;

(9) A registration made under article two, chapter thirty-two of this code authorizing a person to transact securities business as a broker-dealer, agent or investment advisor;

(10) A license issued under article twenty-two, chapter twenty-nine of this code authorizing a person to transact business as a lottery sales agent;

(11) A license issued under article thirty-two or thirty-four, chapter sixteen of this code authorizing persons to pursue a trade or vocation in asbestos abatement or radon mitigation;

(12) A license issued under article eleven, chapter twenty-one of this code authorizing a person to act as a contractor;

(13) A license issued under article two-c, chapter nineteen of this code authorizing a person to act as an auctioneer; and

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(14) A license, permit or certificate issued under chapter nineteen of this code authorizing a person to sell, market or distribute agricultural products or livestock.

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§48-15-202. Persons subject to notice of action against license.

The Bureau for Child Support enforcement shall send a written notice of an action against a license to a person who:

(1) Owes overdue child support, if the child support arrearage equals or exceeds the amount of child support payable for six months;

(2) Has failed for a period of six months to pay medical support ordered under article 12-101, et seq., of this code; or

(3) Has failed, after appropriate notice, to comply with subpoenas or warrants relating to paternity or child support proceedings.

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§48-15-203. Exhaustion of other statutory enforcement methods.

In the case of overdue child support or noncompliance with a medical support order, notice of an action against a license shall be served only if other statutory enforcement methods to collect the support arrearage have been exhausted or are not available.

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§48-15-204. Service of notice of action against a license.

The bureau shall send a notice of action against a license by regular mail and by certified mail, return receipt requested, to the person's last-known address or place of business or employment. Simultaneous certified and regular mailing of the written notice shall constitute effective service unless the United States Postal Service returns the mail to the Bureau for Child Support enforcement within the thirty-day response period marked "moved, unable to forward," "addressee not known," "no such number/street," "insufficient address," or "forwarding order expired." If the certified mail is returned for any other reason without the return of the regular mail, the regular mail service shall constitute effective service. If the mail is addressed to the person at his or her place of business or employment, with postal instructions to deliver to addressee only, service will be deemed effective only if the signature on the return receipt appears to be that of the person. Acceptance of the certified mail notice signed by the person, the person's attorney, or a competent member of the person's household above the age of sixteen shall be deemed effective service.

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PART 2. ACTION AGAINST LICENSE.

§48-15-205. Form of notice of action against a license.

The notice shall be substantially in the following form:

Name and Address:	Date: Social Security No: Family Court of County, West Virginia	Case No:

Section 1.

• The Bureau for Child Support Enforcement has determined that you have failed to comply with an order to pay child support and that the amount you owe equals six months child support or more. The amount you owe is calculated to be $_____ as of the _____ day of _____, _____.

• The Bureau for Child Support Enforcement has determined that you have failed to comply with a medical support order for a period of six months. The amount you owe is calculated to be $_____ as of the _____ day of _____, _____.

• The Bureau for Child Support Enforcement has determined that you have failed to comply with a medical support order requiring you to obtain health insurance for your child or children.

• The Bureau for Child Support Enforcement has determined that you have failed to comply with a subpoena or warrant relating to a paternity or child support proceeding.

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Section 2.
Under West Virginia law, your failure to comply as described in Section 1 may result in an action against certain licenses issued to you by the State of West Virginia. Action may be taken against a driver's, a recreational license such as a hunting and fishing license and a professional or occupational license necessary for you to work. An application for a license may be denied. A renewal of a license may be refused. A license which you currently hold may be suspended or restricted in its use.
The Bureau for Child Support Enforcement has determined that you are a current license holder, have applied for or are likely to apply for the following license or licenses:

To avoid an action against your licenses, check which of the following actions you will take:
• I want to pay in full the overdue amount I owe as child support. I am enclosing a check or money order in the amount of $
• I want pay in full the amount I owe as medical support. I am enclosing a check or money order in the amount of $
• I am requesting a meeting with a representative of the Bureau for Child Support Enforcement to arrange a payment plan that will allow me to make my current payments as they become due and to pay on the arrearage I owe or to otherwise bring me into compliance with the current support orders.
• I am requesting a hearing before the family court judge to contest an action against my licenses. Please serve me with any petition filed, and provide me with notice of the time and place of the hearing.

Signed **X**_____Date:_____

Section 3.
You must check the appropriate box or boxes in Section 2, sign your name and mail this form to the Bureau for Child Support Enforcement before the _____ day of _____, _____. Otherwise, the Bureau for Child Support Enforcement may begin an action against your licenses in the Family Court without further notice to you. Mail this form to the following address:

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§48-15-206. Notice of consequences of failure to comply.

The notice shall advise the person that further failure to comply may result in an action against licenses held by the person, and that any pending application for a license may be denied, renewal of a license may be refused, or an existing license may be suspended or restricted unless, within thirty days of the date of the notice, the person pays the full amount of the child support arrearage or the medical support arrearage, makes a request for a meeting with a representative of the Bureau for Child Support enforcement to arrange a payment plan or to otherwise arrange compliance with existing support orders, or makes a request for a court hearing to the Bureau for Child Support enforcement. An action against a license shall be terminated if the person pays the full amount of the child support arrearage or medical support arrearage, or provides proof that health insurance for the child has been obtained as required by a medical support order or enters into a written plan with the Bureau for Child Support enforcement for the payment of current payments and payment on the arrearage.

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§48-15-207. Failure to act in response to notice; entry of order.

If the person fails to take one of the actions described in section 15-206 within thirty days of the date of the notice and there is proof that service on the person was effective, the Bureau for Child Support enforcement shall file a certification with the court setting forth the person's noncompliance with the support order or failure to comply with a subpoena or warrant and the person's failure to respond to the written notice of the potential action against his or her license. If the court is satisfied that service of the notice on the person was effective as set forth in this section, it shall, without need for further due process or hearing, enter an order suspending or restricting any licenses held by the person. Upon the entry of the order, the Bureau for Child Support enforcement shall forward a copy to the person and to any appropriate agencies responsible for the issuance of a license.

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§48-15-208. Request and petition for hearing.

If the person requests a hearing, the Bureau for Child Support enforcement shall file a petition for a hearing before the family court. The hearing shall occur within forty-two days of the receipt of the person's request. If, prior to the hearing, the person pays the full amount of the child support arrearage or medical support arrearage or provides health insurance as ordered, the action against a license shall be terminated. No action against a license shall be initiated if the Bureau for Child Support enforcement has received notice that the person has pending a motion to modify the child support order if that motion was filed prior to the date that the notice of the action against the license was sent by the Bureau for Child Support enforcement. The court shall consider the Bureau for Child Support enforcement's petition to deny, refuse to renew, suspend or restrict a license in accordance with section 15-209.

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§48-15-209. Hearing on denial, nonrenewal, suspension or restriction of license.

(a) The court shall order a licensing authority to deny, refuse to renew, suspend or restrict a license if it finds that:

(1) All appropriate enforcement methods have been exhausted or are not available;

(2) The person is the holder of a license or has an application pending for a license;

(3) The requisite amount of child support or medical support arrearage exists or health insurance for the child has not been provided as ordered, or the person has failed to comply with a subpoena or warrant relating to a paternity or child support proceeding;

(4) No motion to modify the child support order, filed prior to the date that the notice was sent by the Bureau for Child Support enforcement, is pending before the court; and

(5) There is no equitable reason, such as involuntary unemployment, disability, or compliance with a court-ordered plan for the periodic payment of the child support arrearage amount, for the person's noncompliance with the child support order.

(b) If the court is satisfied that the conditions described in subsection (a) of this section exist, it shall first consider suspending or restricting a driver's license prior to professional license. If the person fails to appear at the hearing after being properly served with notice, the court shall order the suspension of all licenses held by the person.

(c) If the court finds that a license suspension will result in a significant hardship to the person, to the person's legal dependents under eighteen years of age living in the person's household, to the person's employees, or to persons, businesses or entities to whom the person provides goods or services, the court may allow the person to pay a percentage of the past-due child support amount as an initial payment, and establish a payment schedule to satisfy the remainder of the arrearage within one year, and require that the person comply with any current child support obligation. If the person agrees to this arrangement, no suspension or restriction of any licenses shall be ordered. Compliance with the payment agreement shall be monitored by the Bureau for Child Support enforcement.

(d) If a person has good cause for not complying with the payment agreement within the time permitted, the person shall immediately file a motion with the court and the Bureau for Child Support enforcement requesting an extension of the payment plan. The court may extend the payment plan if it is satisfied that the person has made a good faith effort to comply with the plan and is unable to satisfy the full amount of past-due support within the time permitted due to circumstances beyond the person's control. If the person fails to comply with the court-ordered payment schedule, the court shall, upon receipt of a certification of noncompliance from the Bureau for Child Support enforcement, and without further hearing, order the immediate suspension or restriction of all licenses held by the person.

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PART 3. ENFORCEMENT OF ORDER

BY LICENSING AUTHORITY.

§48-15-301. Copy of order provided to licensing authority.

(a) The Bureau for Child Support enforcement shall provide the licensing authority with a copy of the order requiring the denial, nonrenewal, suspension or restriction of a license.

(b) Upon receipt of an order requiring the suspension or restriction of a license for nonpayment of child support, the licensing authority shall immediately notify the applicant or licensee of the effective date of the denial, nonrenewal, suspension or limitation, which shall be twenty days after the date of the notice, direct any licensee to refrain from engaging in the activity associated with the license, surrender any license as required by law, and inform the applicant or licensee that the license shall not be approved, renewed or reinstated until the court or Bureau for Child Support enforcement certifies compliance with court orders for the payment of current child support and arrearage.

(c) The Bureau for Child Support enforcement, in association with the affected licensing authorities, may develop electronic or magnetic tape data transfers to notify licensing authorities of denials, nonrenewals, suspensions and reinstatements.

(d) No liability shall be imposed on a licensing authority for suspending or restricting a license if the action is in response to a court order issued in accordance with this article.

(e) Licensing authorities shall not have jurisdiction to modify, remand, reverse, vacate or stay a court order to deny, not renew, suspend or restrict a license for nonpayment of child support.

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§48-15-302. Denial, nonrenewal, suspension or restriction continues until further order or issuance of certificate of compliance.

The denial, nonrenewal, suspension or restriction of a license ordered by the court shall continue until the Bureau for Child Support enforcement files with the licensing authority either a court order restoring the license or a Bureau for Child Support enforcement certification attesting to compliance with court orders for the payment of current child support and arrearage.

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§48-15-303. License applicant to certify information regarding child support obligation.

(a) Each licensing authority shall require license applicants to certify on the license application form, under penalty of false swearing, that the applicant does not have a child support obligation, the applicant does have such an obligation but any arrearage amount does not equal or exceed the amount of child support payable for six months, or the applicant is not the subject of a child-support related subpoena or warrant. The application form shall state that making a false statement may subject the license holder to disciplinary action including, but not limited to, immediate revocation or suspension of the license.

(b) A license shall not be granted to any person who applies for a license if there is an arrearage equal to or exceeding the amount of child support payable for six months or if it is determined that the applicant has failed to comply with a warrant or subpoena in a paternity or child support proceeding.

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§48-15-304. Procedure where license to practice law may be subject to denial, suspension or restriction.

If a person who has been admitted to the practice of law in this state by order of the Supreme Court of Appeals is determined to be in default under a support order or has failed to comply with a subpoena or warrant in a paternity or child support proceeding, such that his or her other licenses are subject to suspension or restriction under this article, the Bureau for Child Support enforcement may send a notice listing the name and social security number or other identification number to the lawyer disciplinary board established by the Supreme Court of Appeals. The Legislature hereby requests the Supreme Court of Appeals to promptly adopt rules pursuant to its Constitutional authority to govern the practice of law that would include as attorney misconduct for which an attorney may be disciplined, situations in which a person licensed to practice law in West Virginia has been determined to be in default under a support order or has failed to comply with a subpoena or warrant in a paternity or child support proceeding.

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PART 4. MISCELLANEOUS PROVISIONS.

§48-15-401. Application of article.

The provisions of this article apply to all orders issued before or after the enactment of this article. All child support, medical support and health insurance provisions in existence on or before the effective date of this article shall be included in determining whether a case is eligible for enforcement. This article applies to all child support obligations ordered by any state, territory or district of the United States that are being enforced by the Bureau for Child Support enforcement, that are payable directly to the obligee, or have been registered in this state in accordance with the uniform interstate family support act.

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§48-15-402. Effect of determination as to authority of federal government to require denials, suspensions or restrictions of licenses.

The provisions of this article have been enacted to conform to the mandates of the federal "Personal Responsibility and Work Opportunity Reconciliation Act of 1996." If a court of competent jurisdiction should determine, or if it is otherwise determined that the federal government lacked authority to mandate the license denials, nonrenewals, suspensions or restrictions contemplated by this article, then the provisions of this article shall be null and void and of no force and effect.

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