WEST VIRGINIA CODE CHAPTER 48 ARTICLE 18

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§48-18-101. Continuation of the bureau for child support enforcement.

(a) The Bureau for Child Support Enforcement is continued in the Department of Human Services. The bureau is under the immediate supervision of the commissioner, who is responsible for the exercise of the duties and powers assigned to the bureau under the provisions of this chapter. The bureau is designated as the single and separate organizational unit within this state to administer the state plan for child and spousal support according to 42 U.S.C. §654(3).

(b) The department shall cooperate with the Bureau for Child Support Enforcement. At a minimum, such cooperation shall require that the department:

(1) Notify the Bureau for Child Support Enforcement when the department proposes to terminate or provide public assistance payable to any obligee;

(2) Receive support payments made on behalf of a former or current recipient to the extent permitted by Title IV-D, Part D of the Social Security Act; and

(3) Accept the assignment of the right, title or interest in support payments and forward a copy of the assignment to the Bureau for Child Support Enforcement.

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§48-18-102. Appointment of commissioner; duties; compensation.

(a) There is hereby created the position of commissioner. The commissioner shall:

(1) Be appointed by the secretary;

(2) Serve at the will and pleasure of the secretary;

(3) Serve on a full-time basis and shall not engage in any other profession or occupation, including the holding of a political office in the state either by election or appointment, while serving as commissioner;

(4) Be a lawyer licensed by, and in good standing with, the West Virginia State Bar; and

(5) Have responsible administrative experience, possess management skills and have knowledge of the law as it relates to domestic relations and the establishment and enforcement of support obligations.

Before entering upon the discharge of the duties as commissioner, the commissioner shall take and subscribe to the oath of office prescribed in section five, article IV of the Constitution of West Virginia.

(b) The duties of the commissioner shall include the following:

(1) To direct and administer the daily operations of the Bureau for Child Support Enforcement;

(2) To administer the Child Support Enforcement Fund created pursuant to section one hundred seven of this article;

(3) To chair the commission set forth in article seventeen of this chapter for the purpose of conducting the federally required review of the child support formula every four years and make a report to the Legislative Oversight Commission on Health and Human Resources Accountability of the commission's findings;

(4) To keep the records and papers of the commission, including a record of each proceeding; and

(5) To prepare, issue and submit reports of the commission.

(c) All payments to the commissioner as compensation shall be made from the Child Support Enforcement Fund. The commissioner is entitled to:

(1) A reasonable and competitive compensation package to be established by the secretary; and

(2) Reimbursement for expenses under the standard state travel regulations.

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§48-18-103. Organization and employees.

(a) The Commissioner shall organize the work of the Bureau in such offices or other organizational units as he or she may determine to be necessary for effective and efficient operation.

(b) The Commissioner shall employ a sufficient number of employees in the position of Bureau for Child Support Enforcement attorney so as to provide for the effective and efficient operation of the Bureau for Child Support Enforcement. The Bureau for Child Support Enforcement attorneys shall be distributed geographically as determined by the Commissioner.

(c) The Secretary may transfer employees and resources of the Department to the Bureau for Child Support Enforcement as may be necessary to fulfill the duties and responsibilities of the Bureau under this chapter: Provided, That the Secretary may not transfer employees of other divisions and agencies within the Department to the Bureau for Child Support Enforcement without a prior finding that the office or position held by the employee may be eliminated and until the office or position is, in fact, eliminated.

(d) The Commissioner, if he or she deems such action necessary, may hire legal counsel for the Division, notwithstanding the provisions of section two, article three, chapter five of this code or any other code provision to the contrary, or may request the Attorney General to appoint counsel who shall perform such duties as may be required by the Bureau. The Attorney General, in pursuance of such request, may select and appoint counsel to serve during the will and pleasure of the Attorney General, and shall be paid out of any funds allocated and appropriated to the Child Support Enforcement Fund.

(e) The Commissioner may employ such staff or employees as may be necessary to administer and enforce this chapter.

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§48-18-104. Supervisory responsibilities within the Bureau for Child Support enforcement.

The commissioner shall have control and supervision of the Bureau for Child Support enforcement and shall be responsible for the work of each of its organizational units. Each organizational unit shall be headed by an employee of the bureau appointed by the commissioner who shall be responsible to the commissioner for the work of his or her organizational unit.

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§48-18-105. General duties and powers of the Bureau for Child Support enforcement.

In carrying out the policies and procedures for enforcing the provisions of this chapter, the bureau shall have the following power and authority:

(1) To establish policies and procedures for obtaining and enforcing support orders and establishing paternity according to this chapter;

(2) To undertake directly, or by contract, activities to obtain and enforce support orders and establish paternity;

(3) To undertake directly, or by contract, activities to establish paternity for minors for whom paternity has not been acknowledged by the father or otherwise established by law;

(4) To undertake directly, or by contract, activities to collect and disburse support payments;

(5) To contract for professional services with any person, firm, partnership, professional corporation, association or other legal entity to provide representation for the bureau and the state in administrative or judicial proceedings brought to obtain and enforce support orders and establish paternity;

(6) To ensure that activities of a contractor under a contract for professional services are carried out in a manner consistent with attorneys' professional responsibilities as established in the rules of professional conduct as promulgated by the Supreme Court of Appeals;

(7) To contract for collection services with any person, firm, partnership, corporation, association or other legal entity to collect and disburse amounts payable as support;

(8) To ensure the compliance of contractors and their employees with the provisions of this chapter, and to terminate, after notice and hearing, the contractual relationship between the bureau and a contractor who fails to comply;

(9) To require a contractor to take appropriate remedial or disciplinary action against any employee who has violated or caused the contractor to violate the provisions of this chapter, in accordance with procedures prescribed in legislative rules promulgated by the commission;

(10) To locate parents who owe a duty to pay child support;

(11) To cooperate with other agencies of this state and other states to search their records to help locate parents;

(12) To cooperate with other states in establishing and enforcing support obligations;

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(13) To exercise such other powers as may be necessary to effectuate the provisions of this chapter;

(14) To establish and maintain procedures under which expedited processes, administrative or judicial are in effect for obtaining and enforcing support orders and establishing paternity according to this chapter;

(15) To promulgate all emergency and legislative rules pursuant to chapter twenty-nine-a [§§ 29A-1-1 et seq.] of this code as are required by this chapter: Provided, That all rules which are in effect at the time of the implementation of this section shall continue in full force and effect until the commissioner of the Bureau for Child Support enforcement promulgates a rule or rules regarding the same subject matter;

(16) To adopt standards for staffing, record-keeping, reporting, intergovernmental cooperation, training, physical structures and time frames for case processing;

(17) To review the state plan for child and spousal support to determine its conformance or nonconformance with the provisions of 42 U.S.C. §654;

(18) To cooperate with judicial organizations and the private bar to provide training to persons involved in the establishment and enforcement of child support orders; and

(19) To promulgate legislative rules pursuant to chapter twenty-nine-a [§§29A-1-1] of this code which may aid the Bureau for Child Support enforcement in the establishment and enforcement of child support orders. In addition to the specific designation of such rules that constitute emergency rules within the meaning of section fifteen [§29A-3-15], article three, chapter twenty-nine-a of this code, the commissioner may promulgate other rules as emergency rules when such rule is necessary to ensure that the state is awarded federal funds for the actions described in the rule or when the promulgation of such rule is necessary to prevent substantial harm to the public interest by ensuring that child support is timely collected and disbursed.

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§48-18-106. Notice to unemployed obligor.

Upon receipt of a report from an employer stating that a support obligor has been discharged or laid off or has resigned or voluntarily quit, the Bureau for Child Support enforcement shall send a notice to the obligor, informing the obligor of the availability of a modification of the support award and of the services that may be available to him or her from the bureau. The bureau shall also inform the obligor of his or her possible entitlement to a reduction in court-ordered support payments; that a failure to obtain a modification will result in the previously-ordered award remaining in effect; and that substantial arrearage might accumulate and remain as judgments against him or her.

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§48-18-107. Creation of child support enforcement fund; purpose; funding; disbursements.

(a) There is hereby created in the State Treasury a separate special revenue account, which shall be an interest bearing account, to be known as the "child support enforcement fund." The special revenue account shall consist of all incentive payments paid by the federal government pursuant to 42 U.S.C. §658 as a percentage of the total amount of support collected directly or by contract by the Bureau for Child Support enforcement, all amounts appropriated by the Legislature to maintain and operate the Bureau for Child Support enforcement according to this chapter, and all interest or other earnings from moneys in the fund. Any agency or entity receiving federal matching funds for services of the Bureau for Child Support enforcement shall enter into an agreement with the secretary whereby all federal matching funds paid to and received by that agency or entity for the activities of the Bureau for Child Support enforcement shall be paid into the child support enforcement fund. Said agreement shall provide for advance payments into the fund by such agencies, from available federal funds, pursuant to Title IV-D of the Social Security Act and in accordance with federal regulations. No expenses incurred under this section shall be a charge against the General Funds of the state.

(b) Moneys in the special revenue account shall be appropriated to the department and used exclusively, in accordance with appropriations by the Legislature, to pay costs, fees and expenses incurred, or to be incurred for the following purpose: The provision of child support services authorized pursuant to Title IV, Part D of the Social Security Act and any further duty as set forth in this chapter, including, but not limited to, the duties assigned to the bureau by virtue of its being designated as the single and separate organizational unit within this state to administer the state plan for child and spousal support.

(c) Any balance remaining in the special revenue account at the end of any state fiscal year shall not revert to the General Revenue Fund but shall remain in the special revenue account and shall be used solely in a manner consistent with this section: Provided, That for the three succeeding fiscal years after the effective date of this section, any appropriation made to the special revenue account from general revenue shall be repaid to the General Revenue Fund from moneys available in the special revenue account.

(d) Disbursements from the special revenue account shall be authorized by the commissioner.

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§48-18-108. Fees.

(a) When the Bureau for Child Support Enforcement provides child support collection services either to a public assistance recipient or to a party who does not receive public assistance, the Bureau for Child Support Enforcement shall, upon written notice to the obligor, charge a monthly collection fee equivalent to the full monthly cost of the services, in addition to the amount of child support which was ordered by the court. The fee shall be deposited in the Child Support Enforcement Fund. The service fee assessed may not exceed ten percent of the monthly court-ordered child support and may not be assessed against any obligor who is current in payment of the monthly court-ordered child support payments: Provided, That this fee may not be assessed when the obligor is also a recipient of public assistance.

(b) Except for those persons applying for services provided by the Bureau for Child Support Enforcement who are applying for or receiving public assistance from the Division of Human Services or persons for whom fees are waived pursuant to a legislative rule promulgated pursuant to this section, all applicants shall pay an application fee of $25.

(c) Fees imposed by state and federal tax agencies for collection of overdue support shall be imposed on the person for whom these services are provided. Upon written notice to the obligee, the Bureau for Child Support Enforcement shall assess a fee of $25 to any person not receiving public assistance for each successful federal tax interception. The fee shall be withheld prior to the assistance for each successful federal tax interception. The fee shall be withheld prior to the release of the funds received from each interception and deposited in the Child Support Enforcement Fund established pursuant to section 18-107.

(d) In any action brought by the Bureau for Child Support Enforcement, the court shall order that the obligor shall pay attorney fees for the services of the attorney representing the Bureau for Child Support Enforcement in an amount calculated at a rate similar to the rate paid to court-appointed attorneys paid pursuant to section thirteen-a, article twenty-one, chapter twenty-nine of this code and all court costs associated with the action: Provided, That no such award shall be made when the court finds that the award of attorney's fees would create a substantial financial hardship on the obligor or when the obligor is a recipient of public assistance. Further, the Bureau for Child Support Enforcement may not collect such fees until the obligor is current in the payment of child support. No court may order the Bureau for Child Support Enforcement to pay attorney's fees to any party in any action brought pursuant to this chapter.

(e) This section shall not apply to the extent it is inconsistent with the requirements of federal law for receiving funds for the program under Title IV-A and Title IV-D of the Social Security Act, United States Code, article three, Title 42, Sections 601 to 613 and United States Code, Title 42, Sections 651 to 662.

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§48-18-109.

Repealed.

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

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§48-18-110. Attorneys representing state.

(a) Attorneys employed by the Bureau for Child Support enforcement may represent this state or another state in an action brought under the authority of federal law of this chapter.

(b) An attorney employed by the Bureau for Child Support enforcement or employed by a person or agency or entity pursuant to a contract with the Bureau for Child Support enforcement represents the interest of the state or the bureau and not the interest of any other party. The Bureau for Child Support enforcement shall, at the time an application for child support services is made, inform the applicant that any attorney who provides services for the Bureau for Child Support enforcement is the attorney for the State of West Virginia and that the attorney providing those services does not provide legal representation to the applicant.

(c) An attorney employed by the Bureau for Child Support enforcement or pursuant to a contract with the Bureau for Child Support enforcement may not be appointed or act as a guardian ad litem or attorney ad litem for a child or another party.

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§48-18-111. Establishment of parent locator service.

(a) The Bureau for Child Support enforcement shall establish a parent locator service to locate individuals for the purposes of establishing parentage and of establishing, modifying or enforcing child support obligations utilizing all sources of information and available records and the parent locator service in the federal department of health and human services. For purposes of obtaining information from the parent locator service, any person, agency or entity providing services to the Bureau for Child Support enforcement pursuant to a contract that includes a provision to ensure that the confidentiality of information is maintained shall be deemed to be an agent of the Bureau for Child Support enforcement.

(b) Upon entering into an agreement with the secretary of the federal department of health and human services for the use of that department's parent locator service, the Bureau for Child Support enforcement shall accept and transmit to the secretary of the federal department of health and human services requests from authorized persons for information with regard to the whereabouts of a noncustodial obligor to be furnished by such federal parent locator service. For purposes of this subsection, "authorized persons" means: (1) An attorney or agent of the Bureau for Child Support enforcement; (2) a family or circuit court judge or any agent thereof; or (3) a resident parent, legal guardian, attorney or agent for a child. The Bureau for Child Support enforcement shall charge a reasonable fee sufficient to cover the costs to the state and to the federal department of health and human services incurred by reason of such requests and shall transfer to that department, from time to time, so much of the fees collected as are attributable to the costs incurred by that department.

(c) The information obtained by the Bureau for Child Support enforcement from the federal parent locator service shall be used for, but not limited to, the following purposes:

(1) Establishing parentage and establishing, setting the amount of, modifying or enforcing child support obligations;

(2) Obtaining and transmitting information to any family or circuit court or agent thereof or to an attorney or employee of the United States or of any state responsible for enforcing any federal or state law with respect to the unlawful taking or restraint of a child or making or enforcing a child custody or visitation determination.

(d) The Bureau for Child Support enforcement may request from the federal parent locator service information:

(1) About, or which will facilitate the discovery of information about, the location of any individual: (A) Who is under an obligation to pay child support; (B) against whom such an obligation is sought; or (C) to whom such an obligation is owed, including the individual's social security number, or numbers, most recent address and the name, address and employer identification number of the individual's employer;

(2) Concerning the individual's wages or other income from, and benefits of, employment,

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including rights to or enrollment in group health care coverage; and

(3) Concerning the type, status, location and amount of any assets of, or debts owed by or to, any such individual.

(e) The family court shall have jurisdiction to hear and determine, upon a petition by an authorized person as defined in subsection (b) of this section, whether the release of information from the federal parent locator service to that person could be harmful to the custodial parent or the child.

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§48-18-112. Cooperation with other states in the enforcement of child support.

(a) The Bureau for Child Support Enforcement shall cooperate with any other state in the following:

(1) In establishing paternity;

(2) In locating an obligor residing temporarily or permanently in this state, against whom any action is being taken for the establishment of paternity or the enforcement of child and spousal support;

(3) In securing compliance by an obligor residing temporarily or permanently in this state, with an order issued by a court of competent jurisdiction against such obligor for the support and maintenance of a child or children or the parent of such child or children; and

(4) In carrying out other functions necessary to a program of child and spousal support enforcement.

(b) The Commissioner shall, establish procedures necessary to extend the Bureau for Child Support Enforcements' system of withholding under article fourteen of this chapter, so that such system may include withholding from income derived within this state in cases where the applicable support orders were issued in other states, in order to assure that child support owed by obligors in this state or any other state will be collected without regard to the residence of the child for whom the support is payable or the residence of such child's custodial parent.

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§48-18-113. Disbursements of amounts collected as support.

(a) Amounts collected as child or spousal support by the Bureau for Child Support Enforcement shall be distributed within two business days after receipt from the employer or other source of periodic income. The amounts collected as child support shall be distributed by the Bureau for Child Support Enforcement in accordance with the provisions for distribution set forth in 42 U.S.C. §657. The Commissioner shall promulgate a legislative rule to establish the appropriate distribution as may be required by the federal law.

(b) Any payment required to be made under the provisions of this section to a family shall be made to the resident parent, legal guardian or caretaker relative having custody of or responsibility for the child or children.

(c) The Commissioner shall maintain methods of administration which are designed to assure that employees of the Bureau for Child Support Enforcement or any persons employed pursuant to a contract who are responsible for handling cash receipts do not participate in accounting or operating functions which would permit them to conceal in the accounting records the misuse of cash receipts: Provided, That the Commissioner may provide for exceptions to this requirement in the case of sparsely populated areas in this state where the hiring of unreasonable additional staff in the local office would otherwise be necessary.

(d) No penalty or fee may be collected by or distributed to a recipient of Bureau for Child Support Enforcement services from the state Treasury or from the Child Support Enforcement Fund when child support is not distributed to the recipient in accordance with the time frames established herein.

(e) For purposes of this section, "business day" means a day on which state offices are open for regular business.

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§48-18-114. Amounts collected as support to be disbursed to person having custody; procedure for redirecting disbursement of payments where physical custody transferred to a person other than the custodial parent.

(a) Where physical custody of the child has been transferred from the custodial parent to another person, the Bureau for Child Support enforcement may redirect disbursement of support payments to such other person, on behalf of the child, in the following circumstances:

(1) Where the noncustodial parent has physical custody of the child, excluding visitation, upon filing with the Bureau for Child Support enforcement:

(A) An affidavit attesting that the noncustodial parent has obtained physical custody of the child, describing the circumstances under which the transfer of physical custody took place and stating that he or she anticipates that his or her physical custody of the child will continue for the foreseeable future; and

(B) Documentary proof that the noncustodial parent has instituted proceedings in court for a modification of legal custody or a certified copy of the custodial parent's death certificate.

(2) Where a person other than the custodial or noncustodial parent has physical custody of the child, excluding visitation, filing with the Bureau for Child Support enforcement:

(A) An affidavit attesting that the person has obtained physical custody of the child, describing the circumstances under which the transfer of physical custody took place and stating that he or she anticipates that his or her physical custody of the child will continue for the foreseeable future; and

(B) Documentary proof that the person claiming physical custody is currently the person responsible for the child by producing at least one of the following:

(i) School records demonstrating that school authorities consider the person claiming physical custody the adult responsible for the child;

(ii) Medical records demonstrating that the person claiming physical custody is empowered to make medical decisions on behalf of the child;

(iii) Documents from another public assistance agency showing that the person claiming physical custody is currently receiving other public assistance on behalf of the child;

(iv) A notarized statement from the custodial parent attesting to the fact that he or she has transferred physical custody to the person;

(v) A verifiable order of a court of competent jurisdiction transferring physical or legal custody to the person;

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(vi) Documentation that the person claiming physical custody has filed a petition in court to be appointed the child's guardian;

(vii) Documentation that the child, if over the age of fourteen, has instituted proceedings in court to have the person claiming physical custody nominated as his or her guardian; or

(viii) Any other official documents of a federal, state or local agency or governing body demonstrating that the person currently has physical custody of the child and has taken action indicating that he or she anticipates such physical custody to continue in the foreseeable future.

(b) The Bureau for Child Support enforcement shall mail, by first-class mail, a copy of the affidavit and supporting documentary evidence required under subsection (a) of this section to the circuit court which issued the support order being enforced by and to the parties to the order, at their last known addresses, together with a written notice stating that any party has ten days to object to the redirection of support payments by filing an affidavit and evidence showing that the person seeking redirection of the payments does not have physical custody of the child. If no objection is received by the Bureau for Child Support enforcement by the end of the ten-day period, the bureau may order payments redirected to the person claiming physical custody for the benefit of the child. If a responsive affidavit and supporting evidence is filed within the ten-day period and, in the opinion of the Bureau for Child Support enforcement, either disproves the claim of the person seeking redirection of support payments or raises a genuine issue of fact as to whether the person has actual physical custody of the child, the Bureau for Child Support enforcement shall continue to forward support payments to the custodial parent. Any person who disagrees with the determination of the Bureau for Child Support enforcement may petition the court for modification of the child support order.

(c) Any person who files a false affidavit pursuant to this section shall be guilty of false swearing and, upon conviction thereof, shall be punished as provided by law for such offense.

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§48-18-115. Payment of support to the Bureau for Child Support enforcement.

All support payments owed to an obligee who is an applicant for or recipient of the services of the Bureau for Child Support enforcement shall be paid to the Bureau for Child Support enforcement. Any other obligee owed a duty of support under the terms of a support order entered by a court of competent jurisdiction may request that the support payments be made to the Bureau for Child Support enforcement. In such case, the Bureau for Child Support enforcement shall proceed to receive and disburse such support payments to or on behalf of the obligee as provided by law.

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§48-18-116. Authorization for data processing and retrieval system.

In accordance with an initial and annually updated advance data processing planning document approved by the secretary of the federal department of health and human services, the Bureau for Child Support enforcement may establish an automatic data processing and retrieval system designed effectively and efficiently to assist the commissioner in carrying out the provisions of this chapter.

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§48-18-117. Obtaining support from federal tax refunds.

The Commissioner shall, by legislative rule promulgated pursuant to chapter twenty-nine-a of this code, place in effect procedures necessary for the Bureau for Child Support Enforcement to obtain payment of past due support from federal tax refunds from overpayments made to the Secretary of the Treasury of the United States. The Bureau for Child Support Enforcement shall take all steps necessary to implement and utilize such procedures.

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§48-18-118. Obtaining support from state income tax refunds.

(a) The Tax Commissioner shall establish procedures necessary for the Bureau for Child Support Enforcement to obtain payment of past-due support from state income tax refunds from overpayment made to the Tax Commissioner pursuant to the provisions of article twenty-one, chapter eleven of this code.

(b) The Commissioner for the Bureau for Child Support Enforcement shall establish procedures necessary to enforce a support order through a notice to the Tax Commissioner which will cause any refund of state income tax which would otherwise be payable to an obligor to be reduced by the amount of overdue support owed by such obligor.

(1) The procedures shall, at a minimum, prescribe:

(A) The time or times at which the Bureau for Child Support Enforcement shall serve on the obligor or submit to the Tax Commissioner notices of past-due support;

(B) The manner in which such notices shall be served on the obligor or submitted to the Tax Commissioner;

(C) The necessary information which shall be contained in or accompany the notices;

(D) The amount of the fee to be paid to the Tax Commissioner for the full cost of applying the procedure whereby past-due support is obtained from state income tax refunds; and

(E) Circumstances when the Bureau for Child Support Enforcement may deduct a $25 fee from the obligor's state income tax refund. This procedure may not require a deduction from the state income tax refund of an applicant who is a recipient of assistance from the Bureau for Children and Families in the form of temporary assistance for needy families.

(2) Withholding from state income tax refunds may not be pursued unless the Bureau for Child Support Enforcement has examined the obligor's pattern of payment of support and the obligee's likelihood of successfully pursuing other enforcement actions, and has determined that the amount of past-due support which will be owed, at the time the withholding is to be made, will be $100 or more. In determining whether the amount of past-due support will be $100 or more, the Bureau for Child Support Enforcement shall consider the amount of all unpaid past-due support, including that which may have accrued prior to the time that the Bureau for Child Support Enforcement first agreed to enforce the support order.

(c) The Commissioner of the Bureau for Child Support Enforcement shall enter into agreements with the Secretary of the Treasury and the Tax Commissioner, and other appropriate governmental agencies, to secure information relating to the Social Security number or numbers and the address or addresses of any obligor, and the name or names and address or addresses of any employer or employers, in order to provide notice between such agencies to aid the Bureau for Child Support Enforcement in requesting state income tax

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deductions and to aid the Tax Commissioner in enforcing such deductions. In each such case, the Tax Commissioner, in processing the state income tax deduction, shall notify the Bureau for Child Support Enforcement of the obligor's home address and Social Security number or numbers. The Bureau for Child Support Enforcement shall provide this information to any other state involved in processing the support order;

(d) For the purposes of this section, "past-due support" means the amount of unpaid past-due support owed under the terms of a support order to or on behalf of a child, or to or on behalf of a minor child and the parent with whom the child is living; regardless of whether the amount has been reduced to a judgment or not.

(e) The Bureau for Child Support Enforcement may, under the provisions of this section, enforce the collection of past-due support on behalf of a child who has reached the age of majority.

(f) The procedure shall, at a minimum, provide that prior to notifying the Tax Commissioner of past-due support, a notice to the obligor as prescribed under subsection (a) of this section shall:

(1) Notify the obligor that a withholding will be made from any refund otherwise payable to such obligor;

(2) Instruct the obligor of the steps which may be taken to contest the determination of the Bureau for Child Support Enforcement that past-due support is owed or the amount of the past-due support; and

(3) Provide information with respect to the procedures to be followed, in the case of a joint return, to protect the share of the refund which may be payable to another person.

(g) If the Bureau for Child Support Enforcement is notified by the Tax Commissioner that the refund from which withholding is proposed to be made is based upon a joint return, and if the past-due support which is involved has not been assigned to the Department of Human Services, the Bureau for Child Support Enforcement may delay distribution of the amount withheld until such time as the Tax Commissioner notifies the Bureau for Child Support Enforcement that the other person filing the joint return has received his or her proper share of the refund, but such delay shall not exceed six months.

(h) In any case in which an amount is withheld by the Tax Commissioner under the provisions of this section and paid to the Bureau for Child Support Enforcement, if the Bureau for Child Support Enforcement subsequently determines that the amount certified as past due was in excess of the amount actually owed at the time the amount withheld is to be distributed, the agency shall pay the excess amount withheld to the obligor thought to have owed the past due support or, in the case of amounts withheld on the basis of a joint return, jointly to the parties filing the return.

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(i) The amounts received by the Bureau for Child Support Enforcement shall be distributed in accordance with the provisions for distribution set forth in 42 U.S.C. §657.

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§48-18-118a. Obtaining refunds of overpaid support from state income tax refunds.

(a) Definitions.

(1) "Obligee" means the same as that term is defined in section two hundred thirty-four, article one of this chapter.

(2) "Obligor" means the same as that term is defined in section two hundred thirty-five, article one of this chapter.

(3) "Overpaid support" means the same as that term is defined in section two hundred thirty-five, article one of this chapter.

(b) The Tax Commissioner shall cooperate with the Commissioner of the Bureau for Child Support Enforcement in establishing and implementing procedures for the collection of overpaid child support from state income tax refunds that are payable to obligees. The Tax Commissioner shall collect the refunds and send the amounts to the Bureau for Child Support Enforcement for distribution to obligors who made the overpayment.

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§48-18-119. Obtaining support from unemployment compensation benefits.

(a) The Commissioner shall enter into a written agreement with the Bureau of Employment Programs for the purpose of withholding unemployment compensation from individuals with unmet support obligations being enforced by the Bureau for Child Support Enforcement. The Commissioner shall, through direct contact with the Bureau of Employment Programs, process cases through the Bureau of Employment Programs in this state, and shall process cases through support enforcement agencies in other states. The Commissioner shall receive all amounts withheld by the Bureau of Employment Programs in this state, forwarding any amounts withheld on behalf of support enforcement agencies in other states to those agencies.

(b) For the purposes of this section:

(1) "Legal process" means a writ, order, summons or other similar process in the nature of garnishment which is issued by a court of competent jurisdiction or by an authorized official pursuant to an order to such court or pursuant to state or local law.

(2) "Unemployment compensation" means any compensation under state unemployment compensation law (including amounts payable in accordance with agreements under any federal unemployment compensation law). It includes extended benefits, unemployment compensation for federal employees, unemployment compensation for ex-servicemen, trade readjustment allowances, disaster unemployment assistance, and payments under the Federal Redwood National Park Expansion Act.

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§48-18-120. Statements of account.

The Bureau for Child Support enforcement shall provide monthly statements of their account to each obligor and obligee without charge. The commissioner shall establish procedures whereby an obligor or obligee can contest or correct a statement of account.

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§48-18-121. Providing information to consumer reporting agencies; requesting consumer credit reports for child support purposes.

(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 Commissioner shall establish procedures whereby information regarding the amount of overdue support owed by an obligor will be reported periodically by the Bureau for Child Support Enforcement to any consumer reporting agency, after a request by the consumer reporting agency that it be provided with the periodic reports.

(1) The procedures shall provide that any information with respect to an obligor shall be made available only after notice has been sent to the obligor of the proposed action, and such obligor has been given a reasonable opportunity to contest the accuracy of the information.

(2) The procedures shall afford the obligor with procedural due process prior to making information available with respect to the obligor.

(c) The information made available to a consumer reporting agency regarding overdue support may only be made available to an entity that has furnished evidence satisfactory to the Bureau that the entity is a consumer reporting agency as defined in subsection (a) of this section.

(d) The Bureau for Child Support Enforcement may impose a fee for furnishing such information, not to exceed the actual cost thereof.

(e) The Commissioner of the Bureau for Child Support Enforcement, or her or his designee, may request a consumer reporting agency to prepare and furnish to the Bureau for Child Support Enforcement a consumer report for purposes relating to child support, by certifying to the consumer reporting agency that:

(1) The consumer report is needed for the purpose of establishing an individual's capacity to make child support payments or determining the appropriate level of payments in order to set an initial or modified child support award;

(2) The paternity of the child of the individual has been established or acknowledged by the individual in accordance with state law;

(3) The individual whose report is being requested has been given at least ten days' prior notice of the request by certified mail to his or her last known address that such report is being requested; and

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(4) The consumer report will be kept confidential, will be used solely for a purpose described in subdivision (1) of this subsection and will not be used in connection with any other civil, administrative or criminal proceeding or for any other purpose.

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§48-18-122. Central state case registry.

(a) The Bureau for Child Support enforcement shall establish and maintain a central state case registry of child support orders. All orders in cases when any party receives any service provided by the Bureau for Child Support enforcement shall be included in the registry. Any other support order entered or modified in this state on or after October 1, 1998, shall be included in the registry. The Bureau for Child Support enforcement, upon receipt of any information regarding a new hire provided pursuant to section 18-125 of this article shall compare information received to determine if the new hire's income is subject to wage withholding and notify the employer pursuant to that section.

(b) Each party to a child support proceeding shall, upon entry of an order awarding or modifying child support, complete and file with the clerk of the circuit court issuing the order a form, to be promulgated by the administrative office of the Supreme Court of Appeals, listing information concerning the location and identity of a party including, but not limited to: The party's social security number, residential and mailing address, telephone number and driver's license number; the child's name, birth date and social security number; and the party's employer's name, address and telephone number. The clerk shall promptly forward all such information to the state case registry. The parties are required to notify the state case registry of any change in the information contained on the form, and every order for support shall so state. All information provided to the state case registry shall be subject to the privacy and confidentiality safeguards contained in section 18-131.

(c) In any subsequent child support enforcement action between the parties, there shall be a presumption that the requirements for notice and service of process have been met upon a showing that the Bureau for Child Support enforcement has made a diligent effort to ascertain the location of a party by delivery of written notice by certified mail, return receipt requested, to the most recent employer or residential mailing address filed with the state case registry pursuant to subsection (b) of this section.

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§48-18-123. Subpoenas.

In order to obtain financial and medical insurance or other information pursuant to the establishment, enforcement and modification provisions set forth in this chapter, the Bureau for Child Support enforcement or any out-of-state agency administering a program under Title IV-D of the Social Security Act may serve, by certified mail or personal service, an administrative subpoena on any person, corporation, partnership, financial institution, labor organization or state agency for an appearance or for production of financial or medical insurance or other information. In case of disobedience to the subpoena, the Bureau for Child Support enforcement may invoke the aid of any family court in requiring the appearance or production of records and financial documents. The Bureau for Child Support enforcement may assess a civil penalty of no more than $100 for the failure of any person, corporation, financial institution, labor organization or state agency to comply with requirements of this section.

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§48-18-124. Liability for financial institutions providing financial records to the Bureau for Child Support enforcement; agreements for data match system; encumbrance or surrender of assets.

(a) Notwithstanding any other provision of this code, a financial institution shall not be liable under the law of this state to any person for:

(1) Disclosing any financial record of an individual to the Bureau for Child Support enforcement in response to a subpoena issued by the bureau pursuant to section 18-123 of this article;

(2) Disclosing any financial record of an individual to the Bureau for Child Support enforcement pursuant to the terms of an agreement with such financial institution pursuant to subsection (f) of this section;

(3) Encumbering or surrendering assets held by such financial institution in response to a notice of lien or levy issued by the Bureau for Child Support enforcement as provided in subsection (g) of this section; or

(4) For any other action taken in good faith to comply with the requirements of this section.

(b) The Bureau for Child Support enforcement, after obtaining a financial record of an individual from a financial institution, may disclose such financial record only for the purpose of, and to the extent necessary in, establishing, modifying or enforcing a child support obligation of such individual.

(c) The civil liability of a person who knowingly, or by reason of negligence, discloses a financial record of an individual in violation of subsection (b) of this section is governed by the provisions of federal law as set forth in 42 U.S.C. §669A.

(d) For purposes of this section, the term "financial institution" means:

(1) Any bank or savings association;

(2) A person who is an institution-affiliated party, as that term is defined in the Federal Deposit Insurance Act, 12 U.S.C. §1813(u);

(3) Any federal credit union or state-chartered credit union, including an institution-affiliated party of a credit union; and

(4) Any benefit association, insurance company, safe deposit company, money-market mutual fund, or similar entity authorized to do business in this state.

(e) For purposes of this section, the term "financial record" means an original of, a copy of, or information known to have been derived from, any record held by a financial institution pertaining to a customer's relationship with the financial institution.

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(f) Notwithstanding any provision of this code to the contrary, the Bureau for Child Support enforcement shall enter into agreements with financial institutions doing business in the state to develop and operate, in coordination with such financial institutions, a data match system, using automated data exchanges, to the maximum extent feasible, in which each financial institution is required to provide for each calendar quarter the name, record address, social security number or other taxpayer identification number, and other identifying information for each obligor, as defined in section 1-235 of this chapter, who maintains an account at such institution and who owes past due support. The Bureau for Child Support enforcement will identify to the financial institution an obligor who owes past due support by his or her name and social security number or other taxpayer identification number. The Bureau for Child Support enforcement, upon written request and proof of actual costs incurred, shall pay a reasonable fee to a financial institution for conducting the data matching services not to exceed the actual costs incurred by such financial institution or $100 per institution per quarter, whichever is less.

(g) The financial institution, in response to a notice of a lien or levy, shall encumber or surrender, as the case may be, assets held by such institution on behalf of any noncustodial parent who is subject to a lien for child support.

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§48-18-125. Employment and income reporting.

(a) For purposes of this section:

(1) "Employee" means an individual who is an "employee" for purposes of federal income tax withholding, as defined in 26 U.S.C. §3401;

(2) "Employer" means the person or entity for whom an individual performs or performed any service of whatever nature and who has control of the payment of the individual's wages for performance of the service or services, as defined in 26 U.S.C. §3401;

(3) "Independent Contractor" means an individual who is not an employee of the employer and who receives compensation or executes a contract for services performed for that employer. Independent contractor does not include a direct seller as defined in 26 U. S. C. §3508(b)(2).

(4) An individual is considered a "new hire" on the first day in which that individual performs services for remuneration and on which an employer begins to withhold amounts for income tax purposes.

(b) Except as provided in subsections (c) and (d) of this section, all employers doing business in the state shall report to the Bureau for Child Support enforcement:

(1) The hiring of any person who resides or works in this state to whom the employer anticipates paying earnings;

(2) The rehiring or return to work of any employee or independent contractor who resides or works in this state; and

(3) The contracting for services in the state with an independent contractor when payment for the services is $2500 or more. Payment for the services shall be reported within fourteen days of the earlier of first making payments that in the aggregate equal or exceed $2500 in any year or contracts with an independent contractor providing for payments that in the aggregate equal or exceed $2500 in any year.

(c) Employers are not required to report the hiring, rehiring or return to work of any person who is an employee or independent contractor of a federal or state agency performing intelligence or counterintelligence functions if the head of the agency has determined that reporting could endanger the safety of the employee or independent contractor or compromise an ongoing investigation or intelligence mission.

(d) An employer that has employees or independent contractors in states other than this state and that transmits reports magnetically or electronically is not required to report to the Bureau for Child Support enforcement the hiring, rehiring or return to work of any employee or independent contractor if the employer has filed with the secretary of the federal department of health and human services, as required by 42 U.S.C. §653A, a written

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designation of another state in which it has employees or independent contractors as the reporting state.

(e) Employers shall report by mailing the required information to the Bureau for Child Support enforcement or may transmit the information through another means if approved in writing by the Bureau for Child Support enforcement prior to the transmittal. The report shall include the employee's or independent contractor's name, address and social security number, start date, the employer's name and address, any different address of the payroll office and the employer's federal tax identification number. The employer may report other information, such as date of birth or income information, if desired.

(f) Employers shall submit a report within fourteen days of the date of the hiring, rehiring or return to work of the employee or independent contractor. However, if the employer transmits the reports magnetically or electronically by two monthly submissions, the reports shall be submitted not less than twelve days nor more than sixteen days apart.

(g) An employer shall provide to the Bureau for Child Support enforcement, upon its written request, information regarding an obligor's employment, wages or salary, medical insurance, start date and location of employment.

(h) Any employer who fails to report in accordance with the provisions of this section shall be assessed a civil penalty of no more than $25 per failure. If the failure to report is the result of a conspiracy between the employer and the employee or independent contractor not to supply the required report or to supply a false or incomplete report, the employer shall be assessed a civil penalty of no more than $500.

(i) Employers required to report under this section may assess each employee or independent contractor reported $1 for the administrative costs of reporting.

(j) Uses for the new hire information include, but are not limited to, the following:

(1) The state directory of new hires shall furnish the information to the national directory of new hires;

(2) The Bureau for Child Support enforcement shall use information received pursuant to this section to locate individuals for purposes of establishing paternity and of establishing, modifying and enforcing child support obligations and may disclose the information to any agent of the agency that is under contract with the bureau to carry out those purposes;

(3) State agencies responsible for administering a program specified in 42 U.S.C. §1320b-7(b) shall have access to information reported by employers for purposes of verifying eligibility for the program; and

(4) The Bureau of Employment Programs and the Workers' Compensation Commission shall have access to information reported by employers for purposes of administering employment security and Workers' Compensation Programs.

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§48-18-126. Review and adjustment of child support orders.

(a) Either parent or, if there has been an assignment of support to the Bureau for Child Support enforcement shall have the right to request an administrative review of the child support award in the following circumstances:

(1) Where the request for review is received thirty-six months or more after the date of the entry of the order or from the completion of the previous administrative review, whichever is later, the Bureau for Child Support enforcement shall conduct a review to determine whether the amount of the child support award in such order varies from the amount of child support that would be awarded at the time of the review pursuant to the guidelines for child support awards contained in article 13-101, *et seq*. If the amount of the child support award under the existing order differs by ten percent or more from the amount that would be awarded in accordance with the child support guidelines, the Bureau for Child Support enforcement shall file with the family court a motion for modification of the child support order. If the amount of the child support award under the existing order differs by less than ten percent from the amount that would be awarded in accordance with the child support guidelines, the Bureau for Child Support enforcement may, if it determines that such action is in the best interest of the child or otherwise appropriate, file with the family court a motion for modification of the child support order.

(2) Where the request for review of a child support award is received less than thirty-six months after the date of the entry of the order or from the completion of the previous administrative review, the Bureau for Child Support enforcement shall undertake a review of the case only where it is alleged that there has been a substantial change in circumstances. If the Bureau for Child Support enforcement determines that there has been a substantial change in circumstances and if it is in the best interests of the child, the bureau shall file with the family court a motion for modification of the child support order in accordance with the guidelines for child support awards contained in article 13-101, *et seq*., of this chapter.

(b) The Bureau for Child Support enforcement shall notify both parents at least once every three years of their right to request a review of a child support order. The notice may be included in any order granting or modifying a child support award. The Bureau for Child Support enforcement shall give each parent at least thirty days' notice before commencing any review and shall further notify each parent, upon completion of a review, of the results of the review, whether of a proposal to move for modification or of a proposal that there should be no change.

(c) When the result of the review is a proposal to move for modification of the child support order, each parent shall be given thirty days' notice of the hearing on the motion, the notice to be directed to the last known address of each party by first-class mail. When the result of the review is a proposal that there be no change, any parent disagreeing with that proposal may, within thirty days of the notice of the results of the review, file with the court a motion for modification setting forth in full the grounds therefor.

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(d) For the purposes of this section, a "substantial change in circumstances" includes, but is not limited to, a changed financial condition, a temporary or permanent change in physical custody of the child which the court has not ordered, increased need of the child or other financial conditions. "Changed financial conditions" means increases or decreases in the resources available to either party from any source. Changed financial conditions includes, but is not limited to, the application for or receipt of any form of public assistance payments, unemployment compensation and workers' compensation or a fifteen percent or more variance from the amount of the existing order and the amount of child support that would be awarded according to the child support guidelines.

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§48-18-127.

Repealed.

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

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§48-18-128. Billing for fees and costs.

(a) When any filing, copying or other service is provided to the Bureau for Child Support enforcement, the state or county official or the clerk of any court providing such fee for a charge, shall bill the Bureau for Child Support enforcement monthly.

(b) When any filing, copying or other service is provided to a person, agency or entity who is providing services for the Bureau for Child Support enforcement pursuant to a contract, the state or county official or the clerk of any court providing such fee for a charge, shall bill the entity, agency, person or Bureau for Child Support enforcement monthly, in accord with the terms of the contract. The Bureau for Child Support enforcement shall provide the relevant terms of such agreement to those officials upon implementation of any agreement.

(c) A state or county official and the clerk of any court who charges a deposit, library fee, filing fee for filing and copying documents or their service, if the filing, copying or services is for the Bureau for Child Support enforcement or for a person, entity or agency providing services pursuant to a contract as described in this article, shall bill the Bureau for Child Support enforcement monthly or the person, entity or agency providing such services monthly, in accord with the terms of any contract.

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§48-18-129. Acceptance of federal purposes; compliance with federal requirements and standards.

(a) The state assents to the purposes of the federal laws regarding child support and establishment of paternity and agrees to accept federal appropriations and other forms of assistance made under or pursuant thereto, and authorizes the receipt of such appropriations into the State Treasury and the receipt of other forms of assistance by the Bureau for Child Support enforcement for expenditure, disbursement and distribution by the bureau in accordance with the provisions of this chapter and the conditions imposed by applicable federal laws, rules and regulations.

(b) Insofar as such actions are consistent with the laws of this state granting authority to the bureau and the commissioner, the bureau shall comply with such requirements and standards as the secretary of the federal department of health and human services may have determined, as of the effective date of this section, to be necessary for the establishment of an effective program for locating obligors, establishing paternity, obtaining support orders and collecting support payments.

(c) The commissioner shall propose for promulgation a legislative rule in accordance with the provisions of chapter twenty-nine-a of this code, to establish time-keeping requirements to assure the maximum funding of incentive payments, grants and other funding sources available to the state for the processing of cases filed for the location of absent parents, the establishment of paternity, and the establishment, modification or enforcement of orders of child support.

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§48-18-130. Publicizing child support enforcement services.

The Bureau for Child Support enforcement shall regularly and frequently publicize, through public service announcements, the availability of child support enforcement services under the provisions of this chapter and otherwise, including information as to any application fees for such services and a toll-free telephone number and a postal address at which further information may be obtained.

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§48-18-131. Access to records, confidentiality.

(a) All records in the possession of the Bureau for Child Support enforcement, including records concerning an individual case of child or spousal support, are confidential and shall not be released except as follows:

(1) Records shall be disclosed or withheld as required by federal law or regulations promulgated thereunder notwithstanding other provisions of this section.

(2) Information as to the whereabouts of a party or the child shall not be released to a person against whom a protective order has been entered with respect to that party or child or where the state has reason to believe that the release of the information to the person making the request may result in physical or emotional harm to the party or the child.

(3) The phone number, address, employer and other information regarding the location of the obligor, the obligee and the child shall only be disclosed: (A) Upon his or her written consent, to the person whom the consent designates; or (B) notwithstanding subdivision (4) of this subsection, to the obligee, the obligor, the child or the caretaker or representative of the child, upon order of a court if the court finds that the disclosure is for a bona fide purpose, is not contrary to the best interest of a child and does not compromise the safety of any party: Provided, That the identity and location of the employer may be disclosed on the letters, notices and pleadings of the bureau as necessary and convenient for the determination of support amounts and the establishment, investigation, modification, enforcement, collection and distribution of support.

(4) Information and records other than the phone number, address, employer and information regarding the location of the obligor, the obligee and the child shall be disclosed to the obligor, the obligee, the child or the caretaker of the child or his or her duly authorized representative, upon his or her written request: Provided, That when the obligor requests records other than collection and distribution records, financial records relevant to the determination of the amount of support pursuant to the guidelines, or records the obligor has supplied, the bureau shall mail a notice by first-class mail to the last known address of the obligee notifying him or her of the request. The notice shall advise the obligee of his or her right to object to the release of records on the grounds that the records are not relevant to the determination of the amount of support or the establishment, modification, enforcement, collection or distribution of support. The notice shall also advise the obligee of his or her right to disclosure of records provided in this section in order to determine what records the Bureau for Child Support enforcement may have. In the event of any objection, the bureau shall determine whether or not the information shall be released.

(5) Information in specific cases may be released as necessary to determine the identity, location, employment, income and assets of an obligor.

(6) Information and records may be disclosed to the bureau of vital statistics, Bureau of Employment Programs, the workers' compensation commission, State Tax Department and

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the internal revenue service, or other state or federal agencies or departments that are necessary or desirable in obtaining any address, employment, wage or benefit information for the purpose of determining the amount of support or establishing, enforcing, collecting and distributing support.

(b) Any person who willfully violates this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 nor more than $1,000, or confined in the county or regional jail not more than six months, or both fined and confined.

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§48-18-132. Access to information.

(a) All state, county and municipal agencies' offices and employers, including profit, nonprofit and governmental employers, receiving a request for information and assistance from the Bureau for Child Support Enforcement or any out-of-state agency administering a program under Title IV-D of the Social Security Act shall cooperate with the bureau or with the out-of-state agency in the location of parents who have abandoned and deserted children and shall provide the bureau or the out-of-state agency with all available pertinent information concerning the location, income and property of those parents.

(b) Notwithstanding any other provision of law to the contrary, any entity conducting business in this state or incorporated under the laws of this state shall, upon certification by the bureau or any out-of-state agency administering a program under Title IV-D of the Social Security Act that the information is needed to locate a parent for the purpose of collecting or distributing child support, provide the bureau or the out-of-state agency with the following information about the parent: Full name, Social Security number, date of birth, home address, wages and number of dependents listed for income tax purposes: Provided, That no entity may provide any information obtained in the course of providing legal services, medical treatment or medical services.

(c) (1) The Bureau for Child Support Enforcement shall have access, subject to safeguards on privacy and information security, and to the nonliability of entities that afford such access under this subdivision, to information contained in the following records, including automated access, in the case of records maintained in automated databases:

(A) Records of other state and local government agencies, including, but not limited to:

(i) Vital statistics, including records of marriage, birth and divorce;

(ii) State and local tax and revenue records, including information on residence address, employer, income and assets;

(iii) Records concerning real and titled personal property;

(iv) Records of occupational and professional licenses and records concerning the ownership and control of corporations, partnerships and other business entities;

(v) Employment security records;

(vi) Records of agencies administering public assistance programs;

(vii) Records of the Division of Motor Vehicles; and

(viii) Corrections records.

(B) Certain records held by private entities with respect to individuals who owe or are owed

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support or certain individuals against, or with respect to, whom a support obligation is sought, consisting of:

(i) The names and addresses of such individuals and the names and addresses of the employers of such individuals, as appearing in the customer records of public utilities, cable television companies, telephone companies and cellular telephone companies, pursuant to an administrative subpoena authorized by section one hundred twenty-three, article eighteen of this chapter; and

(ii) Information, including information on assets and liabilities, on such individuals held by financial institutions.

(2) Out-of-state agencies administering programs under Title IV-D of the Social Security Act shall, without the need for any court order, have the authority to access records in this state by making a request through the Bureau for Child Support Enforcement.

(d) All federal and state agencies conducting activities under Title IV-D of the Social Security Act shall have access to any system used by this state to locate an individual for purposes relating to motor vehicles or law enforcement.

(e) Out-of-state agencies administering programs under Title IV-D of the Social Security Act shall have the authority and right to access and use, for the purpose of establishing or enforcing a support order, the state law-enforcement and motor vehicle databases.

(f) The Bureau for Child Support Enforcement and out-of-state agencies administering programs under Title IV-D of the Social Security Act shall have the authority and right to access and use, for the purpose of establishing or enforcing a support order, interstate networks that state law-enforcement agencies and motor vehicle agencies subscribe to or participate in, such as the National Law-Enforcement Telecommunications System (NLETS) and the American Association of Motor Vehicle Administrators (AAMVA) networks.

(g) No state, county or municipal agency or licensing board required to release information pursuant to the provisions of this section to the Bureau for Child Support Enforcement or to any out-of-state agency administering programs under Title IV-D of the Social Security Act may require the Bureau for Child Support Enforcement or any out-of-state agency to obtain a court order prior to the release of the information.

(h) Any information received pursuant to the provisions of this section is subject to the confidentiality provisions set forth in section 18-131 of this chapter.

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§48-18-133. Recording of social security numbers in certain family matters.

(a) The social security number, if any, of any applicant for a professional license, driver's license, occupational license, recreational license, or marriage license must be recorded on the application for such license.

(b) The social security number of any individual who is subject to a divorce decree, support order, or paternity determination or acknowledgment must be placed in the records relating to the matter.

(c) For the purposes of subsection (a) of this section, if the licensing authority allows the use of a number other than the social security number on the face of the document while the social security number is kept on file at the agency, the applicant shall be so advised by such authority.

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§48-18-134.

Repealed.

Acts, 2010 Reg. Sess., Ch. 32.

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§48-18-201. General Provisions related to requests for assistance, recalculation of support amounts, preparation of petition and proposed orders.

(a) An obligor or an obligee under a child support order may seek and obtain the assistance of the Bureau for Child Support Enforcement to perform a recalculation of the support amount and prepare and present a petition seeking modification of a child support order and the presentation of a proposed order modifying support to the family court.

(b) A request for services authorized by this section shall constitute an application for services from the Bureau for Child Support Enforcement.

(c) The duties and actions directed or authorized when a request is made pursuant to this section shall be exercised by the employees and agents of the Bureau for Child Support Enforcement under the supervision and direction of Bureau for Child Support Enforcement attorneys as part of, and in addition to, their duties as set out in section one hundred three, article nineteen of this chapter.

(d) In performing its duties under this section, the Bureau for Child Support Enforcement is authorized to issue subpoenas and subpoenas duces tecum, pursuant to the provisions of section one hundred twenty-three of this article, to require an obligor or obligee to produce and permit inspection and copying of designated books, papers, documents or tangible things pursuant to Rule 45 of the Rules of Civil Procedure or section one hundred twenty-three of this article.

(e) When the Bureau for Child Support Enforcement is authorized or required by this section to notify or give notice to a party, the notice shall be given in the same manner as required for service of a petition for modification of support filed with the family court.

(f) The procedures and forms used shall provide that one party may request that their residential address and the address and identity of the employer not be revealed to another party.

(g) The Bureau for Child Support Enforcement may refuse to accept a request or take action on a request for assistance if it determines there are existing ongoing proceedings which would create a conflict, or if it determines that the request was not in good faith based on the allegations made, a history of multiple such requests or other information. If the Bureau for Child Support Enforcement makes a determination to refuse the request for assistance, it shall notify the party making the request for assistance and if the responding party has already been notified of the request, the responding party.

(h) The Bureau for Child Support Enforcement shall prepare an explanation of the process and procedures it will use to process the request for assistance under this section. The explanation shall be made available generally to the public, given to every person who makes a request and included with the notice to the responding party.

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§48-18-202. Request for assistance by party.

(a) To make a request for assistance under this article, a party shall submit the request in writing to the Bureau for Child Support Enforcement on a form provided by the bureau. The written request form shall include all of the requesting party's information known to the party that is relevant to determine the child support amount. The request shall be accompanied by:

(1) A copy of the order being modified or, in the discretion of the bureau, information sufficient to permit the bureau to retrieve or identify the order;

(2) A form containing a statement of all of the requesting party's information known to the party that is relevant to determining the amount of child support, including a general statement or argument advancing the reason the request is being made;

(3) Copies of documentation reasonably available to the requesting party setting forth all of the requesting party's information that is relevant to determine the amount of child support;

(4) A statement setting forth the relevant information pertaining to the responding party's earnings and child support that is known or believed to be true by the requesting party;

(5) Copies of any relevant documentation which the requesting party may have in its possession which would be relevant to determining the responding party's child support obligations; and

(6) A statement of all other known proceedings, pending court proceedings or other pending requests for assistance involving the parties or related to the child or children whose support is being reevaluated.

(b) Upon receipt of notification that an obligor is incarcerated in a regional jail or a state or federal correctional facility, the Bureau for Child Support Enforcement shall determine whether the expected incarceration will exceed six months. If the incarceration will exceed six months, the bureau shall file a petition to modify child support.

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§48-18-203. Bureau processing of request for assistance or recalculation.

(a) Upon receipt of a request from a party pursuant to section two hundred two of this article, the Bureau for Child Support Enforcement shall notify the responding party that a request for assistance in the recalculation of the support amount and the related preparation and presentation of a petition or proposed order to modify an existing child support order has been submitted to the Bureau for Child Support Enforcement.

(b) As a part of the notification provided under subsection (a) of this section, notification provided by the Bureau for Child Support Enforcement to the responding party shall include the following:

(1) A blank information statement form, and an explanation of the form;

(2) A statement advising the responding party that if the responding party does not fill out and return the information statement with accompanying documentation, that the information contained on the requesting party's information statement and any attached documentation may be used to prepare a petition and proposed order to modify the parties' existing child support obligations and filed with the family court, if the submitted information shows a substantial change in the parties' circumstances;

(3) A copy of the information statement supplied by the requesting party in support of its request;

(4) A request that the responding party submit a statement and supply a copy of any information or documentation which the responding party may have which would challenge, contradict or supplement the information which has been previously submitted by the requesting party, to allow the Bureau for Child Support Enforcement to more accurately recalculate any modified child support obligations of the parties;

(5) An explanation that the Bureau for Child Support Enforcement may refuse to accept a request or take action on a request if it determines there are existing ongoing proceedings which would create a conflict;

(6) A request that the responding party provide a list of all other known proceedings pending court proceedings or other requests for recalculation or modification of the parties' respective child support obligations; and

(7) An explanation of the process to be followed by the Bureau for Child Support Enforcement in providing the requested assistance, recalculation of the parties' modified child support obligations, including the preparation of a petition, and proposed order to modify the parties' existing child support obligations, when appropriate.

(c) The Bureau for Child Support Enforcement may issue a subpoena or subpoena duces tecum, pursuant to the provisions of section one hundred twenty-three of this article, to require the responding party to produce and permit inspection and copying of designated

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books, papers, documents or tangible things which are relevant to determine child support.

(d) The Bureau for Child Support Enforcement may issue a subpoena, pursuant to the provisions of section one hundred twenty-three of this article, to produce and permit inspection and copying of designated books, papers, documents or tangible things, relevant to the determination of child support to persons other than the parties to the support order.

(e) The Bureau for Child Support Enforcement may use other information and other communications or procedures available to the Bureau for Child Support Enforcement to gather information relevant to the determination of child support.

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§48-18-204. Request for meeting with the Bureau.

(a) Either party may ask for an in-person meeting with the Bureau, prior to the preparation or presentation of any petition to seek a modification of a child support order or any proposed modification order to the family court. As a part of the initial contact and notice to the parties after its receipt of an assistance request under this article, the Bureau for Child Support Enforcement shall inform the parties of their right to meet with the Bureau for Child Support Enforcement to discuss the circumstances and any relevant factors pertaining to the parties' child support obligations. If either party asks for a meeting, the responding party shall be notified that a meeting has been requested. The parties shall not meet with the Bureau at the same time except as allowed in the discretion of the Bureau. No party may be required to meet with the Bureau.

(b) A party may modify an information statement or provide additional documents at the meeting or at any time before the Bureau sends its proposed order to the family court.

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§48-18-205. Bureau action on request of recalculation and presentation of proposed order.

(a) If the bureau determines that no credible information exists to establish finding of a substantial change in circumstances as required by section one hundred five, article eleven of this chapter or section one hundred six, article fourteen of this chapter, the Bureau for Child Support Enforcement shall notify the parties of that fact and notify the parties that the Bureau for Child Support Enforcement will not be preparing a petition of proposed order seeking modification of the parties' child support obligation. Under those circumstances, if the parties disagree with the Bureau for Child Support Enforcement's assessment and wish to independently file a petition for modification, the parties may still seek modification of child support by filing a petition for modification of an order for support with the family court under the provisions of section one hundred five or one hundred six, article eleven of this chapter or under the provisions of section one hundred six, article fourteen of this chapter.

(b) If the Bureau for Child Support Enforcement determines that there has been a substantial change of circumstances as required by section one hundred five, article eleven of this chapter or by section one hundred six, article fourteen of this chapter, then the Bureau for Child Support Enforcement shall prepare a petition and proposed order modifying the child support order to be filed with the clerk of the family court.

(c) Any such petition filed by the Bureau for Child Support Enforcement filed pursuant to this article shall include the following:

(1) A copy of the proposed order;

(2) A print-out of the child support guidelines calculations;

(3) A notice of the bureau's action;

(4) The documents and statements relied upon;

(5) Any statement of findings or justification the bureau is required or determines to include; and

(6) A form and instructions for filing an objection to the proposed order, should a party wish to do so, which form shall require a statement of the ground or grounds for filing the objection.

(d) The Bureau for Child Support Enforcement's proposed order shall be based on the child support guidelines: Provided, That the bureau may disregard the child support guidelines or adjust the amount as allowed by section seven hundred two, article thirteen of this chapter in the following instances:

(1) When the previous child support order disregarded the child support guidelines, the

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grounds for the disregarding or adjusting the guidelines are stated in the worksheet or previous order or are agreed upon by the parties, or are otherwise clear, and those grounds continue to exist and can be applied to the current circumstances; or

(2) If new grounds for the disregard or adjustment are fully explained in the proposed order.

(e) Within six months of the time that a child support obligation becomes $1,000 in arrears the Bureau for Child Support Enforcement shall notify the obligor that he or she may be in violation of section twenty-nine, article five, chapter sixty-one of this code, felony nonsupport, should the arrearage increase to $8,000. The notice shall also advise the obligor of the availability of child support modification, the amnesty program established in section three hundred two, article one of this chapter and the possibility of establishing a payment plan with the bureau: Provided, That where the monthly child support obligation is greater than $1,000, the notice shall be sent when the arrearage equals to or greater than three months child support obligation.

(1) If the obligor fails to respond within thirty days, the Bureau for Child Support Enforcement shall file a petition for contempt pursuant to section five hundred three, article fourteen of this chapter.

(2) If the obligor responds within thirty days, the Bureau for Child Support Enforcement shall review the response and file appropriate pleadings which may include a motion for modification of child support.

(3) The Bureau for Child Support Enforcement will have one year from the amendment and reenactment of this section during the two thousand eight legislative session to notify obligors who currently owe $1,000 or more in child support arrearages or, where the monthly child support obligation is greater than $1,000, the arrearage is equal to or greater than three months child support obligation, of the child support modification options available to them.

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§48-18-206. Family court action on petition and proposed order prepared by Bureau for Child Support Enforcement.

(a) Upon receipt of petition for modification and proposed order prepared by the Bureau for Child Support Enforcement in accordance with the provisions of this article, the circuit clerk shall serve a copy of the petition and the proposed order upon all parties to the proceeding by personal service or by United States certified mail, return receipt requested, and direct the parties to file any objections to the proposed modified child support order within twenty days of the date of receiving such notice.

(b) Within five days of the filing of a petition for modification and proposed order, the circuit clerk shall notify the family court.

(c) If no party files timely objection to the proposed order or timely requests a hearing on the petition after receiving such notice, then the family court shall proceed to review the petition and proposed order sua sponte, and shall issue the proposed order. If the family court receives no objection, but the family court concludes that the proposed order should not be entered or should be changed, it shall set the matter for hearing.

(d) If the family court receives an objection to the petition or proposed order, the family court shall set a date and time for hearing.

(e) At any hearing on the proposed order, the family court shall treat the proposed order as a motion for modification made by the party requesting the bureau to initiate the modification. The actions of the family court at a hearing shall be de novo and shall not be an appeal from the bureau's recommended order. The family court shall notify the parties of the hearing and of the parties' rights and the procedures to be followed.

(f) The fees to be assessed for filing and service of the petition and the disbursement of the fee for petitions filed pursuant to this section shall be the same as the fee charged by the clerk for petitioning for an expedited modification of a child support order, as set forth in section eleven, article one, chapter fifty-nine of this code.

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