WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2005

ENROLLED

House Bill No. 3094
(By Delegates Staton, Mahan, Brown, Webster and Amores)

Passed April 9, 2005
In Effect Ninety Days from Passage
AN ACT to repeal §48-14-419 of the code of West Virginia, 1931, as amended; to repeal §48-16-308 of said code; to repeal §48-18-109 and §48-18-127 of said code; to amend and reenact §48-17-101 of said code; to amend and reenact §48-18-103, §48-18-108, §48-18-112, §48-18-113, §48-18-117, §48-18-118, §48-18-119, §48-18-121 of said code; and to amend and reenact §48-19-102 said code, all relating to child support enforcement; repealing authority of the West Virginia Support Enforcement Commission to promulgate rules; repealing certain duties of the commission; repealing authority of Bureau of Child Support Enforcement to contract for certain services; repealing authority of commission to adopt form to identify support payments; increasing the number of members on the Commission; altering the organization of certain Bureau employees; removing commission authority to promulgate fee rules; authorizing the Commissioner of the Bureau of Child Support Enforcement to cooperate with other states in the enforcement of child support; moving certain rulemaking authority from the Commission to the Commissioner; removing commission authority to require certain bonding requirements of
Be it enacted by the Legislature of West Virginia:

That §48-14-419 of the Code of West Virginia, 1931, as amended; to repeal §48-16-308 of said code; to repeal §48-18-109 and §48-18-127 of said code; to amend and reenact §48-17-101 of said code; to amend and reenact §48-18-103, §48-18-108, §48-18-112, §48-18-113, §48-18-117, §48-18-118, §48-18-119, §48-18-121 of said code; and to amend and reenact §48-19-102 said code, all to read as follows:

ARTICLE 17: WEST VIRGINIA SUPPORT ENFORCEMENT COMMISSION

§48-17-101. Creation of Support Enforcement Commission; number of members.

The West Virginia Support Enforcement Commission, consisting of eight members, is hereby created in the Department of Health and Human Resources and may use the administrative support and services of that department. The Commission is not subject to control, supervision or direction by the Department of Health and Human Resources, but is an independent, self-sustaining commission that shall have the powers and duties specified in this chapter.

The Commission is a part-time commission whose members perform such duties as specified in this chapter. The ministerial duties of the Commission shall be administered and carried out by the Commissioner of the Bureau for Child Support Enforcement, with the assistance of such staff of the Department of Health and Human Resources as the Secretary may assign.
Each member of the Commission shall devote the time necessary to carry out the duties and obligations of the office and the seven members appointed by the Governor may pursue and engage in another business, occupation or gainful employment that is not in conflict with the duties of the Commission.

While the Commission is self-sustaining and independent, it, its members, its employees and the Commissioner are subject to article nine-a of chapter six, chapter six-b, chapter twenty-nine-a and chapter twenty-nine-b of this code.

ARTICLE 18. BUREAU FOR CHILD SUPPORT ENFORCEMENT

§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.
Enr. H. B. 3094

(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.


(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 twenty-five dollars.

(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 twenty-five dollars 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.
§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.

§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.

§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.

§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 shall establish procedures necessary for the Bureau for Child Support Enforcement 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) Such legislative rule 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 twenty-five dollar 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 one hundred dollars or more. In determining whether the amount of past due support will be one hundred dollars 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, in order to provide notice between such agencies to aid the Bureau for Child Support Enforcement in requesting state income tax 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 Health and Human Resources, 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 distrib-
uted, 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.

(i) The amounts received by the Bureau for Child Support
Enforcement shall be distributed in accordance with the

§48-18-119. Obtaining support from unemployment compensa-
tion 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 Pro-
gams, 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:
15 (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.

20 (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.

§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
(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.

ARTICLE 19. BUREAU FOR CHILD SUPPORT ENFORCEMENT ATTORNEY

§48-19-102. Appointment of Bureau for Child Support Enforcement attorneys

(a) Each Bureau for Child Support Enforcement attorney shall be appointed by the Commissioner of the Bureau for Child Support Enforcement. The Bureau for Child Support Enforcement attorneys shall be duly qualified attorneys licensed to practice in the courts of this state. Bureau for Child Support Enforcement attorneys shall be exempted from the appointments in the indigent cases which would otherwise be required pursuant to article twenty-one, chapter twenty-nine of this code.

(b) Nothing contained herein shall prohibit the Commissioner from temporarily assigning, from time to time as caseload may dictate, a Bureau for Child Support Enforcement attorney from one geographical area to another geographical area.

(c) The Bureau for Child Support Enforcement attorney is an employee of the Bureau for Child Support Enforcement.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 4th day of May, 2005.

Governor
PRESENTED TO THE GOVERNOR

MAY 2 2005

Time 4:10 PM