

FILED

2005 MAY -4 P 10: 09

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
Regular Session, 2005

ENROLLED

SENATE BILL NO. 584

(By Senator Kessler, et al)

PASSED APRIL 14, 2005

In Effect 90 days from Passage

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Senate Bill No. 584

(BY SENATORS KESSLER, DEMPSEY, FOSTER, HUNTER, JENKINS,
MINARD, OLIVERIO, WHITE, BARNES, CARUTH, DEEM, HARRISON,
LANHAM, MCKENZIE AND WEEKS)

[Passed April 16, 2005; in effect ninety days from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §48-11-106a; to amend said code by adding thereto a new section, designated §48-14-107; and to amend said code by adding thereto six new sections, designated §48-18-201, §48-18-202, §48-18-203, §48-18-204, §48-18-205 and §48-18-206, all relating to modification of child support orders; allowing the Bureau for Child Support Enforcement to assist a party seeking the recalculation of support and modification of a child support order due to a substantial change in circumstances; providing request for assistance; notice and filing procedures; granting subpoena powers; providing circumstances under which application may be refused; requiring certain information be provided; opportunity to meet with parties prior to filing of petition for a proposed order; providing for the submission and consideration of proposed modified child support orders to the family court; establishing filing, related notice and review procedures for petitions for modification; and providing that a party may file a request for modification if

Bureau of Child Support Enforcement rejects request for assistance.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §48-11-106a; that said code be amended by adding thereto a new section, designated §48-14-107; and that said code be amended by adding thereto six new sections, designated §48-18-201, §48-18-202, §48-18-203, §48-18-204, §48-18-205 and §48-18-206, all to read as follows:

ARTICLE 11. SUPPORT OF CHILDREN.

§48-11-106a. Modification of support order with the assistance of Bureau for Child Support Enforcement.

1 In addition to any other procedure which may exist by
2 law, any party seeking the recalculation of support and
3 modification under a child support order due to a substan-
4 tial change in circumstances pursuant to the provisions of
5 section one hundred six of this article may seek and obtain
6 the assistance of the Bureau for Child Support Enforce-
7 ment, pursuant to the procedures established under the
8 provisions of sections two hundred one through two
9 hundred six, inclusive, article eighteen of this chapter, in
10 the preparation, assessment and presentation of an
11 appropriate petition for modification of a support order,
12 including the identification and narrowing of issues
13 associated with a requested recalculation of support prior
14 to filing the petition and the preparation and presentation
15 of an appropriate petition and proposed order for modifi-
16 cation for consideration by the family court.

ARTICLE 14. REMEDIES FOR THE ENFORCEMENT OF SUPPORT OBLIGATIONS.

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

1 In addition to any other procedure which may exist by
2 law, any party seeking the recalculation of support and

3 modification under a child support order due to a substan-
4 tial change in circumstances pursuant to the provisions of
5 section one hundred six of this article may seek and obtain
6 the assistance of the Bureau for Child Support Enforce-
7 ment, pursuant to the procedures established under the
8 provisions of sections two hundred one through two
9 hundred six, inclusive, article eighteen of this chapter, in
10 the preparation, assessment and presentation of an
11 appropriate petition for modification of a support order,
12 including the identification and narrowing of issues
13 associated with a requested recalculation of support prior
14 to filing the petition and the preparation and presentation
15 of an appropriate petition and proposed order for modifi-
16 cation for consideration by the family court.

ARTICLE 18. BUREAU FOR CHILD SUPPORT ENFORCEMENT.

**§48-18-201. General provisions related to requests for assis-
tance, recalculation of support amounts, prepa-
ration of petition and proposed orders.**

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

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

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

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

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

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

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

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

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

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

8 (1) A copy of the order being modified or, in the discre-
9 tion of the Bureau, information sufficient to permit the
10 Bureau to retrieve or identify the order;

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

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

20 (4) A statement setting forth the relevant information
21 pertaining to the responding party's earnings and child
22 support that is known or believed to be true by the re-
23 questing party;

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

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

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

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

9 (b) As a part of the notification provided under subsec-
10 tion (a) of this section, notification provided by the Bureau
11 for Child Support Enforcement to the responding party
12 shall include the following:

13 (1) A blank information statement form and an explana-
14 tion of the form;

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

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

26 (4) A request that the responding party submit a state-
27 ment and supply a copy of any information or documenta-
28 tion which the responding party may have which would
29 challenge, contradict or supplement the information which
30 has been previously submitted by the requesting party to
31 allow the Bureau for Child Support Enforcement to more
32 accurately recalculate any modified child support obliga-
33 tions of the parties;

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

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

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

48 (c) The Bureau for Child Support Enforcement may issue
49 a subpoena or subpoena duces tecum, pursuant to the
50 provisions of section one hundred twenty-three of this
51 article, to require the responding party to produce and
52 permit inspection and copying of designated books,
53 papers, documents or tangible things which are relevant to
54 determine child support.

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

62 (e) The Bureau for Child Support Enforcement may use
63 other information and other communications or proce-
64 dures available to the Bureau for Child Support Enforce-
65 ment to gather information relevant to the determination
66 of child support.

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

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

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

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

1 (a) If the Bureau determines that no credible information
2 exists to establish finding of a substantial change in
3 circumstances as required by section one hundred five,
4 article eleven of this chapter or section one hundred six,
5 article fourteen of this chapter, the Bureau for Child
6 Support Enforcement shall notify the parties of that fact
7 and notify the parties that the Bureau for Child Support
8 Enforcement will not be preparing a petition or proposed
9 order seeking modification of the parties' child support
10 obligation. Under those circumstances, if the parties
11 disagree with the Bureau for Child Support Enforcement's
12 assessment and wish to independently file a petition for
13 modification, the parties may still seek modification of

14 child support by filing a petition for modification of an
15 order for support with the family court under the provi-
16 sions of section one hundred five or one hundred six,
17 article eleven of this chapter or under the provisions of
18 section one hundred six, article fourteen of this chapter.

19 (b) If the Bureau for Child Support Enforcement deter-
20 mines that there has been a substantial change of circum-
21 stances as required by section one hundred five, article
22 eleven of this chapter or by section one hundred six, article
23 fourteen of this chapter, then the Bureau for Child Sup-
24 port Enforcement shall prepare a petition and proposed
25 order modifying the child support order to be filed with
26 the clerk of the family court.

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

30 (1) A copy of the proposed order;

31 (2) A print-out of the child support guidelines calcula-
32 tions;

33 (3) A notice of the Bureau's action;

34 (4) The documents and statements relied upon;

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

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

41 (d) The Bureau for Child Support Enforcement's pro-
42 posed order shall be based on the child support guidelines;
43 *Provided*, That the Bureau may disregard the child
44 support guidelines or adjust the amount as allowed by
45 article thirteen, section seven hundred two of this chapter
46 in the following instances:

47 (1) When the previous child support order disregarded
48 the child support guidelines; the grounds for the disregard-
49 ing or adjusting the guidelines are stated in the worksheet
50 or previous order or are agreed upon by the parties or are
51 otherwise clear; and those grounds continue to exist and
52 can be applied to the current circumstances; or

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

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

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

10 (b) Within five days of the filing of a petition for modifi-
11 cation and proposed order, the circuit clerk shall notify the
12 family court.

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

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

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

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

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Signature]
.....
Clerk of the Senate

[Signature]
.....
Clerk of the House of Delegates

[Signature]
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *is approved* this the *10*

Day of *May*, 2005.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

APR 29 2005

Time

9:40 a.m.