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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**

*Regular Session, 2005*

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**ENROLLED**

**SENATE BILL NO.** 584

**(By Senator** Kessler, et al **)**

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**PASSED** April 9, 2005

**In Effect** 90 days from **Passage**

## ENROLLED

### Senate Bill No. 584

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

[Passed April 9, 2005; in effect ninety days from passage.]

AN ACT to amend and reenact §48-11-106 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto four new sections, designated §48-11-106a, §48-11-106b, §48-11-106c and §48-11-106d, all relating to allowing the Bureau for Child Support Enforcement to enter administrative orders for modification of child support amounts; and providing for review of the administrative order by the family court.

*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, article eleven of this chapter may  
6 seek and obtain the assistance of the Bureau of Child  
7 Support Enforcement, pursuant to the procedures estab-  
8 lished under the provisions of sections two hundred one  
9 through two hundred six, inclusive, article eighteen of this  
10 chapter, in the preparation, assessment and presentation  
11 of an appropriate petition for modification of a support  
12 order, 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 OBLIGA-  
TIONS.**

**§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, article fourteen of this chapter  
6 may seek and obtain the assistance of the Bureau of Child  
7 Support Enforcement, pursuant to the procedures estab-  
8 lished under the provisions of sections two hundred one  
9 through two hundred six, inclusive, article eighteen of this  
10 chapter, in the preparation, assessment and presentation  
11 of an appropriate petition for modification of a support  
12 order, 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 assistance, recalculation of support amounts, preparation 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  
12 a request is made pursuant to this section shall be exer-  
13 cised by the employees and agents of the Bureau of 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 with which action taken on the request would  
40 create a conflict, or if it determines that the request was  
41 not in good faith based on the allegations made, a history  
42 of multiple such requests or other information. If the  
43 Bureau of Child Support Enforcement makes a determina-  
44 tion to refuse the request for assistance, it shall notify the  
45 party making the request for assistance and if the respond-  
46 ing party has already been notified of the request, the  
47 responding party.

48 (h) The Bureau for Child Support Enforcement shall  
49 prepare an explanation of the process and procedures it  
50 will use to process the request for assistance under this  
51 section. The explanation shall be made available generally  
52 to the public, given to every person who makes a request  
53 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 of 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 of 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 may have which would chal-  
29       lenge, contradict or supplement the information which has  
30       been previously submitted by the requesting party, to  
31       allow the Bureau of 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 with which action taken on the request would  
38       create a conflict;

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

43       (7) An explanation of the process to be followed by the  
44       Bureau of Child Support Enforcement in providing the  
45       requested assistance, recalculation of the parties' modified  
46       child support obligations, including the preparation of a

47 petition proposed order to modify the parties' existing  
48 child support obligations, when appropriate.

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

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

63 (e) The Bureau for Child Support Enforcement may use  
64 other information and other communications or proce-  
65 dures available to the Bureau for Child Support Enforce-  
66 ment to gather information relevant to the determination  
67 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 pertaining to the parties' child support obliga-  
11 tions. If either party asks for a meeting, the responding  
12 party shall be notified that a meeting has been requested.  
13 The parties shall not meet with the Bureau at the same



14 time except as allowed in the discretion of the Bureau. No  
15 party may be required to meet with the Bureau.

16 (b) A party may modify an information statement or  
17 provide additional documents at the meeting or at any  
18 time before the Bureau sends its proposed order to the  
19 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 of Child Support  
8 Enforcement will not be preparing a petition of proposed  
9 order seeking modification of the parties' child support  
10 obligation. Under those circumstances, if the parties  
11 disagree with the Bureau of 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.

*Chandy White*  
.....  
Chairman Senate Committee

*D. R. B. B.*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*Carroll Eldred*  
.....  
Clerk of the Senate

*Bugan M. B.*  
.....  
Clerk of the House of Delegates

*Carl B. Yankel*  
.....  
President of the Senate

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

The within *is disapproved* this the *Ken*  
Day of *April*, 2005.

*[Signature]*  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

APR 15 2005

Time 4:25