

# H. B. 3134

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(BY DELEGATES BROWN, FRAZIER, MOORE, MILEY,  
POORE AND FLEISCHAUER)

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[Introduced February 15, 2011; referred to the  
Committee on the Judiciary.]

A BILL to amend and reenact §48-1-204, §48-1-244 and §48-1-302 of the Code of West Virginia, 1931, as amended; to amend and reenact §48-14-408 and §48-14-410 of said code; and to amend and reenact §48-24-106 of said code, all relating to child support enforcement; lowering the accrued interest rate; requiring employers provide information to the Bureau for Child Support Enforcement; and making various technical corrections.

*Be it enacted by the Legislature of West Virginia:*

That §48-1-204, §48-1-244 and §48-1-302 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §48-14-408 and §48-14-410 of said code be amended and reenacted; and that §48-24-106 of said code be amended and reenacted, all to read as follows:

**ARTICLE 1. GENERAL PROVISIONS; DEFINITIONS.**

**§48-1-204. Arrearages or past due support defined.**

1           “Arrearages” or “past due support” means the total of any  
2   matured, unpaid installments of child support required to be  
3   paid by an order entered or modified by a court of competent  
4   jurisdiction, or by the order of a magistrate court of this state,  
5   and shall stand, by operation of law, as a decretal judgment  
6   against the obligor owing such support. The amount of  
7   unpaid support shall bear interest from the date it accrued, at  
8   a rate of ~~ten dollars upon one hundred dollars~~ five percent per  
9   annum, and proportionately for a greater or lesser sum, or for  
10   a longer or shorter time. Except as provided in rule 23 of  
11   rules of practice and procedure for family law and as  
12   provided in section 1-302, a child support order may not be

13 retroactively modified so as to cancel or alter accrued  
14 installments of support.

**§48-1-244. Support defined.**

1 “Support” means the payment of money, including  
2 interest:

3 (1) For a child or spouse, ordered by a court of competent  
4 jurisdiction, whether the payment is ordered in an  
5 emergency, temporary, permanent or modified order, the  
6 amount of unpaid support shall bear simple interest from the  
7 date it accrued, at a rate of ~~ten dollars upon one hundred~~  
8 ~~dollars~~ five percent per annum, and proportionately for a  
9 greater or lesser sum, or for a longer or shorter time;

10 (2) To third parties on behalf of a child or spouse,  
11 including, but not limited to, payments to medical, dental or  
12 educational providers, payments to insurers for health and  
13 hospitalization insurance, payments of residential rent or  
14 mortgage payments, payments on an automobile or payments  
15 for day care; or

16       (3) For a mother, ordered by a court of competent  
17 jurisdiction, for the necessary expenses incurred by or for the  
18 mother in connection with her confinement or of other  
19 expenses in connection with the pregnancy of the mother.

**§48-1-302. Calculation of interest.**

1       (a) Notwithstanding any other provisions of the code, if  
2 an obligation to pay interest arises under this chapter, the rate  
3 of interest is five percent per annum and proportionate  
4 thereto for a greater or lesser sum, or for a longer or shorter  
5 time. Interest awarded shall only be simple interest and  
6 nothing in this section may be construed to permit awarding  
7 of compound interest. Interest accrues only upon the  
8 outstanding principal of such obligation.

9       (b) Notwithstanding any other provision of law, no court  
10 may award or approve prejudgment interest in a domestic  
11 relations action against a party unless the court finds, in  
12 writing, that the party engaged in conduct that would violate  
13 subsection (b), Rule 11 of the West Virginia Rules of Civil  
14 Procedure. If prejudgment interest is awarded, the court shall

15 calculate prejudgment interest from the date the offending  
16 representation was presented to the court pursuant to  
17 subsection (a) of this section.

18 (c) Upon written agreement by both parties, an obligor  
19 may petition the court to enter an order conditionally  
20 suspending the collection of all or part of the interest that has  
21 accrued on past-due child support prior to the date of the  
22 agreement: *Provided*, That said agreement shall also establish  
23 a reasonable payment plan which is calculated to fully  
24 discharge all arrearages within twenty-four months but not to  
25 exceed sixty months. Upon successful completion of the  
26 payment plan, the court shall enter an order which  
27 permanently relieves the obligor of the obligation to pay the  
28 accrued interest. If the obligor fails to comply with the terms  
29 of the written agreement, then the court shall enter an order  
30 which reinstates the accrued interest.

31 (d) Amendments to this section enacted by the  
32 Legislature during the 2006 regular session shall become  
33 effective January 1, 2007.

**ARTICLE 14. REMEDIES FOR THE ENFORCEMENT OF  
SUPPORT OBLIGATIONS.****§48-14-408. Determination of amounts to be withheld.**

1           Notwithstanding any other provision of this code to the  
2           contrary which provides for a limitation upon the amount  
3           which may be withheld from earnings through legal process,  
4           the amount of an obligor's aggregate disposable earnings for  
5           any given workweek which may be withheld as support  
6           payments is to be determined in accordance with the  
7           provisions of this subsection, as follows:

8           (1) After ascertaining the status of the payment record of  
9           the obligor under the terms of the support order, the payment  
10          record shall be examined to determine whether any arrearage  
11          is due for amounts which should have been paid prior to a  
12          twelve-week period which ends with the workweek for which  
13          withholding is sought to be enforced.

14          (2) Prior to January 1, 2001, when none of the  
15          withholding is for amounts which came due prior to such  
16          twelve-week period, then:

17           (A) When the obligor is supporting another spouse or  
18 dependent child other than the spouse or child for whom the  
19 proposed withholding is being sought, the amount withheld  
20 may not exceed fifty percent of the obligor's disposable  
21 earnings for that week; and

22           (B) When the obligor is not supporting another spouse or  
23 dependent child as described in paragraph (A) of this  
24 subdivision, the amount withheld may not exceed sixty  
25 percent of the obligor's disposable earnings for that week.

26           (3) Prior to January 1, 2001, when a part of the  
27 withholding is for amounts which came due prior to such  
28 twelve-week period, then:

29           (A) Where the obligor is supporting another spouse or  
30 dependent child other than the spouse or child for whom the  
31 proposed withholding is being sought, the amount withheld  
32 may not exceed fifty-five percent of the obligor's disposable  
33 earnings for that week; and

34           (B) Where the obligor is not supporting another spouse  
35 or dependent child as described in paragraph (A) of this

36 subdivision, the amount withheld may not exceed sixty-five  
37 percent of the obligor's disposable earnings for that week.

38 (4) Beginning January 1, 2001, when none of the  
39 withholding is for amounts which came due prior to such  
40 twelve-week period, then:

41 (A) When the obligor is supporting another spouse or  
42 dependent child other than the spouse or child for whom the  
43 proposed withholding is being sought, the amount withheld  
44 may not exceed forty percent of the obligor's disposable  
45 earnings for that week; and

46 (B) When the obligor is not supporting another spouse or  
47 dependent child as described in paragraph (A) of this  
48 subdivision, the amount withheld may not exceed fifty  
49 percent of the obligor's disposable earnings for that week.

50 (5) Beginning January 1, 2001, when a part of the  
51 withholding is for amounts which came due prior to such  
52 twelve-week period, then:

53 (A) When the obligor is supporting another spouse or  
54 dependent child other than the spouse or child for whom the



55 proposed withholding is being sought, the amount withheld  
56 may not exceed forty-five percent of the obligor's disposable  
57 earnings for that week; and

58 (B) Where the obligor is not supporting another spouse  
59 or dependent child as described in paragraph (A) of this  
60 subdivision, the amount withheld may not exceed fifty-five  
61 percent of the obligor's disposable earnings for that week.

62 (6) In addition to the percentage limitations set forth in  
63 subdivisions (2) and (3) of this section, it shall be a further  
64 limitation that when the current month's obligation plus  
65 arrearages are being withheld from salaries or wages in no  
66 case shall the total amounts withheld for the current month's  
67 obligation plus arrearage exceed the amounts withheld for the  
68 current obligation by an amount greater than twenty-five  
69 percent of the current monthly support obligation.

70 (7) The provisions of this section shall apply directly to  
71 the withholding of disposable earnings of an obligor  
72 regardless of whether the obligor is paid on a weekly,  
73 biweekly, monthly or other basis.

74           (8) The Bureau for Child Support Enforcement has the  
75 authority to prorate the current support obligation in  
76 accordance with the pay cycle of the source of income. This  
77 prorated current support obligation shall be known as the  
78 “adjusted support obligation”. The current support  
79 obligation or the adjusted support obligation is the amount,  
80 if unpaid, on which interest will be charged.

81           (9) When an obligor acts so as to purposefully minimize  
82 his or her income and to thereby circumvent the provisions  
83 of part 4 of this article which provide for withholding from  
84 income of amounts payable as support, the amount to be  
85 withheld as support payments may be based upon the  
86 obligor’s potential earnings rather than his or her actual  
87 earnings, and such obligor may not rely upon the percentage  
88 limitations set forth in this subsection which limit the amount  
89 to be withheld from disposable earnings.

90           (10) Notwithstanding any other provision of this section,  
91 the Bureau for Child Support Enforcement may withhold not  
92 more than fifty percent of any earnings denominated as an

93 employment-related bonus to satisfy an outstanding child  
94 support arrearage.

95 (A) Two weeks prior to issuing any bonus equal to or in  
96 excess of \$100 to an employee or employees, an employer  
97 shall notify the Bureau for Child Support Enforcement, in a  
98 manner prescribed by the bureau, of the employee or  
99 employees' name, address, social security number, date of  
100 birth and amount of the bonus.

101 (B) If it is determined that an employee owes an  
102 arrearage, an income withholding notice shall be issued  
103 pursuant to chapter forty-eight, article fourteen, to the  
104 employer.

**§48-14-410. Sending amounts withheld to bureau; notice.**

1 After implementation in accordance with the provisions  
2 of section 14-409, a source of income shall send the amount  
3 to be withheld from the obligor's income to the Bureau for  
4 Child Support Enforcement and shall notify the Bureau for  
5 Child Support Enforcement of the date of withholding, the  
6 same date that the obligor is paid. If the source of income has

- 7 more than fifty employees, the source of income shall submit  
8 the support withheld via electronic means in a manner  
9 prescribed by the Bureau for Child Support enforcement.

## **ARTICLE 24. ESTABLISHMENT OF PATERNITY.**

### **§48-24-106. Establishing paternity by acknowledgment of natural father.**

- 1 A written, notarized acknowledgment executed pursuant  
2 to the provisions of section ~~twelve~~ ten, article five, chapter  
3 sixteen of this code legally establishes the man as the father  
4 of the child for all purposes and child support may be  
5 established in accordance with the support guidelines set  
6 forth in article 13-101, et seq.

NOTE: The purpose of this bill is to make technical corrections to the code, allow amnesty payment agreements to extend past two years, require employers to notify the Bureau for Child Support Enforcement prior to issuing a bonus to its employees and require a source of income electronically remit support payments via electronic means.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.