

No: 300

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OFFICE OF THE GOVERNOR

WEST VIRGINIA LEGISLATURE  
REGULAR SESSION, 1983



**ENROLLED**

*Committee Substitute for*  
SENATE BILL NO. 300

(By Ms. Chase)



PASSED March 12 1983

In Effect ninty days from Passage



# ENROLLED

COMMITTEE SUBSTITUTE

FOR

## Senate Bill No. 300

(Ms. CHACE, *original sponsor*)

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[Passed March 12, 1983; in effect ninety days from passage.]

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AN ACT to amend and reenact articles seven and eight, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section one, article two, chapter fifty of said code, all relating to civil procedures for determining the duty and amount of support of a child or spouse; venue; establishing duty of support; setting forth *pari materia* construction; establishing civil action for support; providing for forms; establishing civil action for the establishment of paternity; when blood tests required; admissibility of blood tests; costs; modification of support order; setting forth procedures for enforcement of support orders in magistrate or circuit court; forms to be supplied; penalties; appeals from orders of enforcement; when earnings may be assigned to the department of welfare; procedure for assignment; requiring department to promulgate rules and regulations; when state income tax setoff allowed department of welfare; procedures for income tax setoff; providing for confidentiality and establishing criminal penalties for violation thereof; and increasing the jurisdiction of magistrate courts.

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

That articles seven and eight, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section one, article two, chapter fifty of said code be amended and reenacted, all to read as follows:

**CHAPTER 48. DOMESTIC RELATIONS.**

**ARTICLE 7. INTRASTATE SUPPORT ACT.**

**§48-7-1. Duty of support.**

1 (a) Every parent in this state shall continue to have the  
2 duty to support his infant or unemancipated child whether  
3 such child is a resident of this state or elsewhere, and every  
4 infant and unemancipated child shall be entitled to the  
5 support of his parent, to the same extent and in the same  
6 manner as heretofore provided by law.

7 (b) Every married person shall continue to be entitled to  
8 the support of his spouse, and be obligated to support his  
9 spouse, to the same extent and in the same manner as  
10 heretofore provided by law.

11 (c) Other duties of support of a parent to a child or of a  
12 child to a parent shall not be altered or abrogated by the  
13 enactment of this article and may be enforced under its  
14 provisions when and only when the court shall specifically  
15 find sufficient circumstances under otherwise applicable  
16 law to require the enforcement thereof.

**§48-7-2. Pari materia construction.**

1 This article shall be construed in pari materia and applied  
2 whenever possible to aid in the enforcement of the  
3 provisions of article two of this chapter relating to pendente  
4 lite decrees in divorce or separate maintenance, final  
5 decrees and modification of any such decrees, and the  
6 provisions of article nine of this chapter, relating to  
7 reciprocal proceedings in other states: *Provided*, That the  
8 remedies established by this article shall be cumultaive to  
9 and not in lieu of other remedies provided by law, except as  
10 otherwise expressly set forth in this article.

**§48-7-3. Civil action for support of obligee.**

1 (a) Whenever any person is owed a duty of support from  
2 a spouse, such person or any public agency assigned the  
3 right to support, shall have a right to institute action for

4 support in the circuit court or magistrate court before a  
5 magistrate designated by the judge of the circuit court, or  
6 chief judge thereof, of the county wherein the plaintiff  
7 resides, the defendant resides, or, if the plaintiff and  
8 defendant are married, in which the divorce action between  
9 them could be brought. Whenever any infant or  
10 unemancipated child is owed a duty of support from any  
11 person, the parent or other person having legal custody, the  
12 legal guardian, the committee of the child, the child by his  
13 next friend, or any public agency assigned the right to  
14 support, shall have a right to institute a civil action for  
15 support in the circuit court or magistrate court before a  
16 magistrate designated by the judge of the circuit court, or  
17 chief judge thereof, of the county wherein the named child  
18 resides, in which the defendant resides, in which the  
19 defendant last lived with a named child or, if the plaintiff  
20 and defendant are married, in which a divorce action  
21 between them could be brought: *Provided*, That this  
22 subsection shall not limit the right of the department of  
23 welfare to pursue funds as set out in section four, article  
24 three, chapter nine of this code, and Title IV of the Federal  
25 Social Security Act of one thousand nine hundred sixty-  
26 five, as amended.

27 (b) An action for support shall be commenced by the  
28 filing of a verified complaint wherein the names of the  
29 parties and the basis of the alleged duty of support shall be  
30 specifically set forth. Such complaint shall be served on the  
31 defendant in the manner prescribed by law for the service of  
32 original process in a civil action.

33 (c) If the defendant, by verified responsive pleading,  
34 shall admit, or if he has previously admitted in writing that  
35 he owes a duty of support, or if after a trial on the merits, the  
36 court or jury shall find, by a preponderance of the evidence,  
37 that the defendant owes a duty of support, the court shall  
38 order the defendant to provide support in accordance with  
39 the provisions of subsection (d) of this section.

40 (d) In setting the amount of support in an order, the  
41 court shall consider the income, the assets, the earning  
42 ability and other obligations of the person owing the duty of  
43 support, and the needs, other income and any other  
44 circumstances relevant to the needs of the obligee. The  
45 court shall order any support for an infant or

46 unemancipated child be paid until such child reaches the  
47 age of eighteen, marries or is otherwise emancipated.

48 (e) The clerk of the supreme court of appeals shall  
49 prepare complaint forms which may be utilized by any  
50 eligible party desiring to file a complaint pursuant to the  
51 provisions of this section. The administrator of the supreme  
52 court of appeals shall distribute such forms to the clerk of  
53 the circuit court in each county of this state.

**§48-7-4. Civil action for establishment of paternity; when  
blood tests required; admissibility of tests; costs.**

1 (a) Any unmarried woman with custody of her child, or  
2 any person who has physical or legal custody of such child,  
3 the guardian or committee of such child, or such child by his  
4 next of friend, may institute a civil action to establish the  
5 paternity of the child and to seek support of such child:  
6 *Provided*, That if a married woman live separate and apart  
7 from her husband for a period of one year or more, and shall  
8 not at any time during such separation, cohabit with such  
9 husband, she may, if she be delivered of a child at any time  
10 after such one year, and while such separation continues,  
11 accuse any person, other than her husband, of being the  
12 father of such child, in a like manner, and the same  
13 proceedings shall thereupon be had, as if she were an  
14 unmarried woman. Such action shall be instituted in the  
15 circuit court of the county wherein the mother, the child or  
16 the defendant resides and shall be commenced, within ten  
17 years of the birth of the child, by a verified complaint  
18 alleging that the defendant is the father of the named child  
19 and therefore owes a duty to support the child.

20 (b) The court may, on its own motion, or upon the  
21 motion of any party, order the mother, her child and the  
22 defendant to submit to blood tests. If a blood test is ordered,  
23 the court shall direct that the inherited characteristics,  
24 including, but not limited to, blood types, be determined by  
25 appropriate testing procedures at a hospital, independent  
26 medical institution or independent medical laboratory,  
27 duly licensed under the laws of this state, or any other state,  
28 and shall appoint an expert qualified as an examiner of  
29 genetic markers to analyze and interpret the results and to  
30 report to the court. The court shall consider the results as  
31 follows:

32 (1) Blood test results which exclude the defendant as the  
33 father of the child are admissible and shall be clear and  
34 convincing evidence of nonpaternity and the court shall,  
35 upon considering such evidence dismiss the action.

36 (2) Blood tests results which show a statistical  
37 probability of paternity of more than seventy-five percent  
38 are admissible and shall be weighed along with other  
39 evidence of the defendant's paternity.

40 (3) If the results of the blood tests or the expert's  
41 analysis of inherited characteristics is disputed, the court  
42 upon reasonable request of a party, shall order that an  
43 additional test be made by the same laboratory or another  
44 laboratory at the expense of the party requesting additional  
45 testing.

46 Verified documentation of the chain of custody of the  
47 blood specimens is competent evidence to establish such  
48 chain of custody. A verified expert's report shall be  
49 admitted at trial unless a challenge to the testing  
50 procedures or a challenge to the results of blood analysis  
51 has been made before trial. The costs and expense of making  
52 such tests shall be paid by the parties in proportions and at  
53 times determined by the court.

54 (c) If the defendant, by verified responsive pleading  
55 shall admit that he owes a duty of support, or if after a trial  
56 on the merits, the court or jury shall find, by clear and  
57 convincing evidence that the defendant is the father of the  
58 child, the court shall order the defendant to provide support  
59 in accordance with the provisions of subsection (d), section  
60 three of this article.

61 The prosecutor of the county where the action under this  
62 section is brought shall represent the plaintiff. The  
63 defendant shall be advised of his right to counsel. In the  
64 event he files an affidavit that he is a poor person within the  
65 meaning of section one of article two, chapter fifty-nine of  
66 this code, counsel shall be appointed to represent him. The  
67 service and expenses of counsel shall be paid in accordance  
68 with the provisions of article twenty-one, chapter twenty-  
69 nine of this code: *Provided*, That the court shall make a  
70 finding of eligibility for appointed counsel in accordance  
71 with the requirements of said article and, if the person  
72 qualifies, any blood tests ordered to be taken shall be paid  
73 as part of the costs of the proceeding.

**§48-7-5. Modification of support order.**

1 Any person ordered to pay support in accordance with the  
2 provisions of this article or its predecessors, any obligee of  
3 such support, or any persons eligible to be a party under the  
4 provisions of section three and four of this article, may  
5 apply to the circuit court or magistrate court wherein such  
6 order was entered for a modification of such order. Such  
7 action shall be commenced by verified petition wherein the  
8 specific reasons for the modification sought shall be set  
9 forth. If the court, upon hearing, finds that there has been a  
10 material change in any circumstances relevant to the  
11 support or amount of support, then the court shall make  
12 specific findings and order a modification of the prior  
13 order.

14 The clerk of the supreme court of appeals shall prepare  
15 motion forms which may be utilized by any eligible party  
16 desiring to file a motion pursuant to the provisions of this  
17 section. The administrator of the supreme court of appeals  
18 shall distribute such forms to the clerks of the circuit court  
19 and magistrate court in each county of this state.

**ARTICLE 8. ENFORCEMENT OF SUPPORT OBLIGATIONS.**

**§48-8-1. Proceedings to enforce order of support; penalties.**

1 (a) If at any time a party is in arrears in the payment of  
2 support ordered under the provisions of article seven of this  
3 chapter, any person to whom such support is due and owing,  
4 or any persons eligible to be a party under the provisions of  
5 sections three and four of this article, shall be entitled to  
6 seek enforcement of the order of support by filing a verified  
7 petition in the magistrate court or circuit court of the  
8 county wherein the original proceedings were had.

9 (b) The clerk of the supreme court of appeals shall  
10 prepare complaint forms which may be utilized by any  
11 eligible party desiring to file a complaint pursuant to the  
12 provisions of subsection (a) of this section. The  
13 administrator of the supreme court of appeals shall  
14 distribute such forms to the clerks of every magistrate court  
15 and circuit court in this state.

16 (c) After a hearing on the allegations raised in the  
17 petition the magistrate court or circuit court shall, in order  
18 to affect payment of arrearage:

19 (1) Enter judgment for such arrearage; and

20 (2) Award interest on such arrearage from the due date  
21 of each unpaid installment.

22 (d) The court may, in addition to the remedies provided  
23 in subsection (c) of this section:

24 (1) Require security to ensure the timely payment of  
25 future installments;

26 (2) Upon finding a person in contempt for willfully  
27 failing to comply with its order, and upon finding that the  
28 person has the ability to purge himself but refuses so to do,  
29 then the court may confine the defendant to the county jail  
30 for a term not to exceed six months or until such time as the  
31 defendant has purged himself, whichever shall first occur;  
32 or

33 (3) Enter an order to attach forthwith any person who  
34 refuses or fails to respond to the lawful process of court or to  
35 the court's order.

36 (e) Any party who shall without good cause quit  
37 employment or cause himself to be terminated from  
38 employment, refuse to seek employment, or transfer or  
39 otherwise dispose of assets or income for the purpose of  
40 avoiding his duty to pay support or for the purpose of  
41 avoiding the present ability to pay support, or who  
42 knowingly and intentionally fails to provide support when  
43 he has the ability to do so, shall be guilty of a misdemeanor,  
44 and upon conviction thereof, shall be confined in the county  
45 jail for not less than forty-eight hours nor more than thirty  
46 days.

**§48-8-2. Appeals from order of enforcement; procedure.**

1 (a) Any party seeking an appeal from the entry of an  
2 order of a circuit court entered pursuant to the provisions of  
3 section one of this article shall seek such appeal in  
4 accordance with the general law relating to civil appeals.

5 (b) Any party seeking an appeal from the entry of an  
6 order of a magistrate court entered pursuant to the  
7 provisions of section one of this article shall proceed in  
8 accordance with the provisions of section thirteen, article  
9 five, chapter fifty of this code.

**§48-8-3. Child support arrearage; when earnings may be  
assigned to the department of welfare; procedure  
of assignment.**

1 (a) Any person, firm, corporation, political subdivision  
2 or agency of the state employing a person with an obligation

3 of support for a child, and the rights to such support have  
4 been assigned to the department of welfare in accordance  
5 with the provisions of section four, article three, chapter  
6 nine of this code and Title IV of the Federal Social Security  
7 Act of one thousand nine hundred sixty-five, as amended,  
8 shall honor, according to its terms, an assignment of  
9 earnings executed by the responsible parent and presented  
10 by the department of welfare as a plan to satisfy or retire an  
11 obligation for support of a child. This requirement to honor  
12 the assignment of earnings and the assignment document  
13 itself, shall be applicable where the earnings are to be paid  
14 presently or in the future and shall continue in force and  
15 effect until released in writing by the department:  
16 *Provided*, That any such assignment shall be subject to the  
17 limitations on the amount which may be paid to the  
18 assignee as provided in section three, article five-a, chapter  
19 thirty-eight of this code. Payment of moneys pursuant to an  
20 assignment of earnings presented by the department shall  
21 serve as full acquittance of the employer's obligation under  
22 any contract of employment, and the state warrants and  
23 represents that it shall defend and hold harmless such  
24 action taken pursuant to said assignment of earnings. The  
25 department shall be released from liability for improper  
26 receipt of moneys under an assignment of earnings, upon  
27 return of any moneys so received. Any person who fails to  
28 honor a duly executed assignment of earnings is liable to the  
29 department in an amount equal to one hundred percent of  
30 the amount of the assignment of earnings, plus costs,  
31 interest and reasonable attorney fees.

32 (b) Any such assignment of earnings shall be in addition  
33 to, and not in lieu of, any and all existing remedies allowed  
34 the department to enforce child support obligations.

35 (c) An employer shall not discharge or otherwise  
36 discipline an employee as a direct or indirect result of an  
37 assignment of earnings authorized by this section.

38 (d) The person, firm, corporation, political subdivision  
39 or agency of the state required to honor an assignment of  
40 earnings pursuant to this section shall be entitled to receive  
41 from the debtor a fee of two dollars for each answer or  
42 remittance on account of such debtor.

43 (e) The assignment of earnings provided for in this  
44 section shall be on a form prescribed by the supreme court  
45 of appeals and supplied to the department of welfare.

46 (f) The assignment of earnings may only be executed  
47 and made available for such purpose to the person owing  
48 the duty of support when the department notifies such  
49 person that he is in arrearage of support payments for at  
50 least two months. The notice shall further provide that the  
51 department has been assigned the right to receive such  
52 payments, the date of such assignment and the amount paid  
53 to date by the department for the support of the obligee's  
54 child. The notice shall provide that the obligee may pay to  
55 the department such moneys that the department is  
56 entitled, by law, to receive and shall further provide that,  
57 alternatively, the obligee may execute the attached  
58 assignment of earnings and return the same to the  
59 department. The notice shall also specify that the  
60 assignment of earnings, upon receipt by the department,  
61 shall entitle the department to offer the same to the  
62 obligee's employer so that the department may receive a  
63 portion of the wages, as may be allowed by law. The obligee  
64 shall also be informed that his employer, upon receipt of the  
65 executed assignment from the department shall have no  
66 right to discharge or otherwise discipline him as a direct or  
67 indirect result of such assignment.

68 (g) The department shall promulgate rules and  
69 regulations to administer the provisions of this article.

**§48-8-4. Child support arrearage; income tax setoff allowed  
department of welfare; procedure therefor;  
penalties.**

1 (a) Whenever any person owes an obligation of support  
2 for a child and the rights to such support have been assigned  
3 to the department of welfare in accordance with the  
4 provisions of section four, article three, chapter nine of this  
5 code and Title IV of the Federal Social Security Act of one  
6 thousand nine hundred sixty-five, as amended, the state tax  
7 department shall upon request by the commissioner of  
8 welfare, assist in the collection of the obligation of support:  
9 *Provided*, That the commissioner of welfare shall only be  
10 entitled to make such request whenever the obligation of  
11 support is in arrearage in an amount exceeding one hundred  
12 fifty dollars.

13 (b) The tax department shall assist by setting off any  
14 amount of the debtor's tax refund sufficient to satisfy the  
15 debt certified by the commissioner of welfare. If the refund

16 is insufficient to satisfy the debt, the entire amount may be  
17 applied to the debt.

18 (c) The tax department and the department of welfare  
19 shall promulgate rules and regulations to implement the  
20 provisions of this section. Such rules and regulations shall  
21 provide for the confidentiality of records reviewed for  
22 purposes of this section. Adequate notice and right to a  
23 hearing shall be afforded the debtor as well as the right to  
24 an administrative and judicial appeal. Any person who fails  
25 to comply with the confidentiality requirements prescribed  
26 by such rules and regulations shall be guilty of a  
27 misdemeanor and, upon conviction thereof, shall be fined  
28 not more than one thousand dollars or confined in the  
29 county jail for not more than six months, or both fined and  
30 imprisoned.

**§48-8-5. Civil judgments; enforcement; procedures.**

1 In any proceeding under article seven or eight of this  
2 chapter, where a court has ordered that a person shall make  
3 payments of child support, any person or agency authorized  
4 to bring an action under this article may file an affidavit  
5 with the clerk of the circuit court in the county in which the  
6 order was entered stating the terms and date of the original  
7 order and the amount of money which has not been paid by  
8 the person owing a duty of support and which is due and  
9 owing. Upon receipt of such affidavit, the clerk shall issue a  
10 writ of execution, suggestion or suggestee execution. The  
11 clerk of the circuit court shall prepare a form affidavit to be  
12 used under this section.

**CHAPTER 50. MAGISTRATE COURTS.**

**ARTICLE 2. JURISDICTION AND AUTHORITY.**

**§50-2-1. Civil jurisdiction.**

1 Except as limited herein and in addition to jurisdiction  
2 granted elsewhere to magistrate courts or justices of the  
3 peace, magistrate courts shall have jurisdiction of all civil  
4 actions wherein the value or amount in controversy or the  
5 value of property sought, exclusive of interest and cost, is  
6 not more than two thousand dollars. Notwithstanding the  
7 provisions of section eleven, article five of this chapter, or  
8 any other limitations to the contrary, magistrate courts  
9 shall have jurisdiction to enter an order for support and to  
10 enforce said orders as provided in articles seven and eight,

11 chapter forty-eight of this code. Magistrate courts shall  
12 have jurisdiction of matters involving unlawful entry or  
13 detainer of real estate so long as the title to such real estate  
14 is not in dispute. Except as the same may be in conflict with  
15 the provisions of this chapter, the provisions of article  
16 three, chapter fifty-five of this code, regarding unlawful  
17 entry and detainer, shall apply to such actions in magistrate  
18 court. Magistrate courts shall have jurisdiction of actions  
19 on bonds given pursuant to the provisions of this chapter.  
20 Magistrate courts shall have continuing jurisdiction to  
21 entertain motions in regard to post-judgment process  
22 issued from magistrate court and decisions thereon may be  
23 appealed in the same manner as judgments.

24 Magistrate courts shall not have jurisdiction of actions in  
25 equity, of matters in eminent domain, of matters in which  
26 the title to real estate is in issue, of proceedings seeking  
27 satisfaction of liens through the sale of real estate, of  
28 actions for false imprisonment, of actions for malicious  
29 prosecution or of actions for slander or libel or of any of the  
30 extraordinary remedies set forth in chapter fifty-three of  
31 this code.

32 Magistrates, magistrate court clerks, magistrate court  
33 deputy clerks, and magistrate assistants shall have the  
34 authority to administer any oath or affirmation, to take any  
35 affidavit or deposition, unless otherwise expressly provided  
36 by law, and to take, under such regulations as are  
37 prescribed by law, the acknowledgement of deeds and other  
38 writings.

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

*Harrell E. Edburn*  
.....  
Chairman Senate Committee

*Donald Anello*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*Judd C. Welch*  
.....  
Clerk of the Senate

*Donald L. Kopp*  
.....  
Clerk of the House of Delegates

*Waverly P. McFaw*  
.....  
President of the Senate

*Walter M. See, Jr.*  
.....  
Speaker House of Delegates

The within... *is approved* ... this the *29* .....  
day of... *March* ....., 1983.

.....  
*John A. Relyea*  
.....  
Governor



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SECY. OF STATE