

No. 1694

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# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1984

— ● —

## ENROLLED

HOUSE BILL No. 1694

(By Mr. Del. Davis & Del. Crookshanks)

— ● —

Passed March 10, 1984

In Effect Ninety Days from Passage



**ENROLLED**

# **H. B. 1694**

**(By DELEGATE DAVIS and DELEGATE CROOKSHANKS)**

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[Passed March 10, 1984; in effect ninety days from passage.]

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AN ACT to amend and reenact sections one, two, thirteen, fifteen, sixteen, seventeen and twenty-two, article two, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article two by adding thereto five new sections, designated sections thirty-two, thirty-three, thirty-four, thirty-five and thirty-six; and to amend and reenact section ten, article three of said chapter forty-eight, relating to the awarding of alimony, child support and other relief and the distribution of marital property upon the ordering of a divorce or annulment or the granting of a decree of separate maintenance generally; defining certain terms; setting forth conditions under which marriages are voidable and shall be void; providing for the annulment or affirmation of marriage; describing the temporary relief which a court may grant during the pendency of an action for divorce, annulment or separate maintenance; establishing a procedure for ex parte relief without notice; describing the relief which a court may grant upon ordering a divorce or annulment or granting a decree of separate maintenance; empowering the court to order accounts to be taken as to all or any part of marital property or the separate estates of the parties; providing that in awarding or denying alimony the court may consider fault or misconduct of either or both parties; providing that an award of alimony may be barred when both parties prove grounds or when a party has committed adultery, been convicted of a felony, or has actually abandoned or deserted; directing the manner in which a court is to structure relief when the parties have executed a separa-

tion agreement; describing the matters which a court shall consider in determining the amount to be ordered as alimony, child support or separate maintenance; prohibiting the recordation of a judgment order in a case of divorce, annulment or separate maintenance and providing for the recordation of an abstract of such order and an affidavit so as to create a lien; requiring the commencement of a proceeding within sixty days in order to preserve any lien so created; describing the proceedings whereby a person may be found to be in criminal contempt or civil contempt and prescribing penalties for persons found to be in contempt; authorizing the court to enter judgment for arrearages in the payment of alimony, child support or separate maintenance, and to require security to ensure payment of future installments; allowing a court to attach forthwith the body of a person who refuses or fails to respond to the lawful process of the court or to comply with an order of the court; describing the manner in which a court is to divide the marital property of the parties to an action for divorce, annulment or separate maintenance; setting forth the matters which a court shall consider in distributing marital property between the parties; listing the alternatives available to the court for ascertaining and distributing the respective interests of the parties in marital property; requiring the court to set out findings of fact and conclusions of law and the reasons for dividing marital property; stating that neither the provisions of article two, chapter forty-eight of the code nor the doctrine of equitable distribution of marital property shall be construed to create community property nor any other interest or estate in property except those previously recognized in this state; describing the circumstances under which a husband or wife may alienate his or her separate property and describing the effect of transfers of property on third parties; providing for the full disclosure of all assets owned in full or in part by either party separately or by the parties jointly; requiring the use of a standard form for disclosure; establishing the time for filing the disclosure form; providing for the confidentiality of disclosures; describing the action to be taken upon a failure to disclose information, and providing that a deliberate failure to provide disclosure constitutes an offense of false swearing; authorizing an injunction against the distribution of property and allowing the court to

set aside certain encumbrances or dispositions of property to third persons; and authorizing the filing of a notice of lis pendens upon the commencement of an action for divorce, annulment or separate maintenance; providing for the retro-active effect of amendments made to article two, chapter forty-eight of said code; and stating that in actions which require the court to divide marital property, the presumption of gift between spouses shall not apply.

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

That sections one, two, thirteen, fifteen, sixteen, seventeen and twenty-two, article two, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article two be further amended by adding thereto five new sections, designated sections thirty-two, thirty-three, thirty-four, thirty-five, and thirty-six; and to amend and reenact section ten, article three of said chapter forty-eight, all to read as follows:

**ARTICLE 2. DIVORCE, ANNULMENT AND SEPARATE MAINTENANCE.**

**§48-2-1. Definitions.**

1 (a) "Alimony" means the allowance which a person pays  
2 to or in behalf of the support of his or her spouse or divorced  
3 spouse while they are separated or after they are divorced.  
4 The payment of alimony may be required by court order or  
5 by the terms of a separation agreement. Alimony may be paid  
6 in a lump sum or paid in installments as periodic alimony.  
7 Alimony includes temporary alimony as that term is used in  
8 section thirteen of this article, as well as alimony as that term  
9 is used in section fifteen of this article and elsewhere through-  
10 out this article.

11 (b) "Antenuptial agreement" or "prenuptial agreement"  
12 means an agreement between a man and woman before mar-  
13 riage, but in contemplation and generally in consideration of  
14 marriage, whereby the property rights and interests of the pro-  
15 spective husband and wife, or both of them, are determined, or  
16 where property is secured to either or both of them, to their  
17 separate estate, or to their children or other persons. An ante-

18 nuptial agreement may include provisions which define the re-  
19 spective property rights of the parties during the marriage or in  
20 the event of the death of either or both of the parties, and may  
21 provide for the disposition of marital property upon an annul-  
22 ment of the marriage or a divorce or separation of the parties.  
23 A prenuptial agreement is void if at the time it is made:

24 (1) Either of the parties is a minor, or

25 (2) The female party to the agreement is pregnant: *Pro-*  
26 *vided*, That such female shall be presumed for the purposes of  
27 this article to have been pregnant at the time the agreement was  
28 made if she gives birth to a child at any time within the nine  
29 month period next following the execution of the agreement.

30 (c) "Marital property" means:

31 (1) All property and earnings acquired by either spouse  
32 during a marriage, including every valuable right and interest,  
33 corporeal or incorporeal, tangible or intangible, real or per-  
34 sonal, regardless of the form of ownership, whether legal or  
35 beneficial, whether individually held, held in trust by a third  
36 party, or whether held by the parties to the marriage in some  
37 form of co-ownership such as joint tenancy or tenancy in com-  
38 mon, joint tenancy with the right of survivorship, or any other  
39 form of shared ownership recognized in other jurisdictions  
40 without this state, except that marital property shall not in-  
41 clude separate property as defined in subsection (d) of this  
42 section; and

43 (2) The amount of any increase in value in the separate  
44 property of either of the parties to a marriage, which increase  
45 results from (A) an expenditure of funds which are marital  
46 property, including an expenditure of such funds which reduces  
47 indebtedness against separate property, extinguishes liens, or  
48 otherwise increases the net value of separate property, or (B)  
49 work performed by either or both of the parties during the  
50 marriage.

51 (3) The definitions of "marital property" contained in this  
52 subsection and "separate property" contained in subsection (b)  
53 of this section shall have no application outside of the provi-  
54 sions of this article, and the common law as to the ownership

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55 of the respective property and earnings of a husband and wife,  
56 as altered by the provisions of article three of this chapter and  
57 other provisions of this code, are not abrogated by implication  
58 or otherwise, except as expressly provided for by the provisions  
59 of this article as such provisions are applied in actions brought  
60 under this article or for the enforcement of rights under this  
61 article.

62 (d) "Separate property" means:

63 (1) Property acquired by a person before marriage, or

64 (2) Property acquired by a person during marriage in ex-  
65 change for separate property which was acquired before the  
66 marriage, or

67 (3) Property acquired by a person during marriage, but  
68 excluded from treatment as marital property by a valid agree-  
69 ment of the parties entered into before or during the marriage;  
70 or

71 (4) Property acquired by a person during marriage by gift,  
72 bequest, devise, descent or distribution; or

73 (5) Property acquired by a party during a marriage but  
74 after the separation of the parties and before the granting of a  
75 divorce, annulment, or decree of separate maintenance; and

76 (6) Any increase in the value of separate property as de-  
77 fined in subdivisions (1), (2), (3), (4) or (5) of this subsec-  
78 tion which is due to inflation or to a change in market value  
79 resulting from conditions outside the control of the parties.

80 (e) "Separation" or "separation of the parties" means the  
81 separation of the parties next preceding the filing of an action  
82 under the provisions of this article, which separation continues,  
83 without the parties cohabiting or otherwise living together as  
84 husband and wife, and without interruption.

85 (f) "Separation agreement" means a written agreement en-  
86 tered into by a husband and wife whereby they agree to live  
87 separate and apart from each other and, in connection there-  
88 with, agree to settle their property rights; or to provide for  
89 the custody and support of their minor child or children, if

90 any; or to provide for the payment or waiver of alimony by  
91 either party to the other; or to otherwise settle and compromise  
92 issues arising out of their marital rights and obligations. Insofar  
93 as an antenuptial agreement as defined in subsection (b) of  
94 this section affects the property rights of the parties or the dis-  
95 position of property upon an annulment of the marriage, or a  
96 divorce or separation of the parties, such antenuptial agree-  
97 ment shall be regarded as a separation agreement under the  
98 provisions of this article.

**§48-2-2. For what and when marriages void; affirmation or annulment of marriage.**

1 (a) The following marriages are voidable and shall be void  
2 from the time they are so declared by a judgment order of  
3 nullity:

4 (1) Marriages which are prohibited by law on account of  
5 either of the parties having a wife or husband of a prior mar-  
6 riage, when such prior marriage has not been terminated by  
7 divorce, annulment, or death;

8 (2) Marriages which are prohibited by law on account of  
9 consanguinity or affinity between the parties;

10 (3) Marriages solemnized when either of the parties:

11 (A) Was an insane person, idiot or imbecile;

12 (B) Was afflicted with a venereal disease;

13 (C) Was incapable, because of natural or incurable impo-  
14 tency of the body, of entering into the marriage state;

15 (D) Was under the age of consent; or

16 (E) Had been, prior to the marriage and without the know-  
17 ledge of the other party, convicted of an infamous offense;

18 (4) Marriages solemnized when, at the time of the marriage,  
19 the wife, without the knowledge of the husband:

20 (A) Was with child by some person other than the hus-  
21 band; or

22 (B) had been, prior to the marriage, notoriously a prosti-  
23 tute; or

24 (5) Marriages solemnized when, prior to the marriage, the  
25 husband, without the knowledge of the wife, had been notor-  
26 iously a licentious person.

27 (b) When a marriage is supposed to be void, or voidable,  
28 or any doubt exists as to its validity, for any of the causes  
29 set forth in subsection (a) of this section, or for any other  
30 cause recognized in law, either party may, except as provided  
31 in the next succeeding section, institute an action for annulling  
32 or affirming the same, and, upon hearing the proofs and alle-  
33 gations of the parties, the court shall enter a judgment order  
34 annulling or affirming the marriage, according to the right of  
35 the case. In every such case, and in every other case where  
36 the validity of a marriage is called into question, it shall be  
37 presumed that the marriage is valid, unless the contrary be  
38 clearly proven, and, if the marriage be adjudged to be valid it  
39 shall be conclusive upon all persons concerned.

**§48-2-13. Temporary relief during pendency of action for divorce,  
annulment or separate maintenance.**

1 (a) At the time of the filing of the complaint or at any  
2 time after the commencement of an action for divorce, annul-  
3 ment or separate maintenance under the provisions of this  
4 article, and upon motion for temporary relief, notice of hear-  
5 ing, and hearing, the court may order all or any portion of  
6 the following temporary relief, which order shall govern the  
7 marital rights and obligations of the parties during the pen-  
8 dency of the action:

9 (1) The court may require either party to pay temporary  
10 alimony in the form of periodic installments, or a lump sum,  
11 or both, for the maintenance of the other party.

12 (2) The court may provide for the custody of minor  
13 children of the parties subject to such rights of visitation,  
14 both in and out of the residence of the custodial parent or  
15 other person or persons having custody, as may be appro-  
16 priate under the circumstances.

17 (3) The court may require either party to pay tempo-  
18 rary child support in the form of periodic installments for the  
19 maintenance of the minor children of the parties.

20 (4) The court may compel either party to pay attorney's  
21 fees and court costs reasonably necessary to enable the  
22 other party to prosecute or defend the action in the trial court.  
23 The question of whether or not a party is entitled to temporary  
24 alimony shall not be decisive of that party's right to a reason-  
25 able allowance of attorney's fees and court costs. An order  
26 for temporary relief awarding attorney fees and court costs  
27 may be modified at any time during the pendency of the  
28 action, as the exigencies of the case or equity and justice may  
29 require, including, but not limited to, a modification which  
30 would require full or partial repayment of fees and costs by  
31 a party to the action to whom or on whose behalf payment  
32 of such fees and costs was previously ordered. If an appeal  
33 be taken or an intention to appeal be stated, the court may  
34 further order either party to pay attorney fees and costs on  
35 appeal.

36 (5) As an incident to requiring the payment of tempo-  
37 rary alimony or temporary child support, the court may order  
38 either party to continue in effect existing policies of insurance  
39 covering the costs of health care and hospitalization of the  
40 other party and the minor children of the parties. Payments  
41 made to an insurer pursuant to this subdivision, either directly  
42 or by a deduction from wages, shall be deemed to be tempo-  
43 rary alimony or temporary child support, in such proportion  
44 as the court shall direct: *Provided*, That if the court does not  
45 set forth in the order that a portion of such payments is to  
46 be deemed temporary child support, then all such payments  
47 made pursuant to this subdivision shall be deemed to be  
48 temporary alimony.

49 (6) As an incident to requiring the payment of temporary  
50 alimony or temporary child support, the court may grant the  
51 exclusive use and occupancy of the marital home to one of the  
52 parties during the pendency of the action, together with all  
53 or a portion of the household goods, furniture and furnishings,  
54 reasonably necessary for such use and occupancy. The court  
55 may require payments to third parties in the form of home loan  
56 installments, land contract payments, rent, payments for utility  
57 services, property taxes, insurance coverage, or other expenses  
58 or charges reasonably necessary for the use and occupancy of

59 the marital domicile. Payments made to a third party pursuant  
60 to this subdivision shall be deemed to be temporary alimony  
61 or temporary child support, in such proportion as the court  
62 shall direct: *Provided*, That if the court does not set forth  
63 in the order that a portion of such payments is to be deemed  
64 temporary child support, then all such payments made pur-  
65 suant to this subdivision shall be deemed to be temporary  
66 alimony: *Provided, however*, That the court may order such  
67 payments to be made without denominating them as either  
68 temporary alimony or temporary child support, reserving  
69 such decision until such time as the court determines the  
70 interests of the parties in marital property and equitably  
71 divides the same: *Provided further*, That at the time the court  
72 determines the interests of the parties in marital property and  
73 equitably divides the same, the court may consider the extent  
74 to which payments made to third parties under the provisions  
75 of this subdivision have affected the rights of the parties in  
76 marital property, and may treat such payments as a partial  
77 distribution of marital property notwithstanding the fact that  
78 such payments have been denominated temporary alimony  
79 or temporary child support or not so denominated under the  
80 provisions of this subdivision. Nothing contained in this  
81 subdivision shall abrogate an existing contract between either  
82 of the parties and a third party, or affect the rights and  
83 liabilities of either party or a third party under the terms  
84 of such contract.

85 (7) As an incident to requiring the payments of tempo-  
86 rary alimony, the court may grant the exclusive use and posses-  
87 sion of one or more motor vehicles to either of the parties  
88 during the pendency of the action. The court may require  
89 payments to third parties in the form of automobile loan  
90 installments or insurance coverage, and any such payments  
91 made pursuant to this subdivision shall be deemed to be  
92 temporary alimony: *Provided*, That the court may order such  
93 payments to be made without denominating them as tempo-  
94 rary alimony, reserving such decision until such time as the  
95 court determines the interests of the parties in marital property  
96 and equitably divides the same: *Provided, however*, That at  
97 the time the court determines the interests of the parties in  
98 marital property and equitably divides the same, the court

99 may consider the extent to which payments made to third  
100 parties under the provisions of this subdivision have affected  
101 the rights of the parties in marital property, and may treat  
102 such payments as a partial distribution of marital property  
103 notwithstanding the fact that such payments have been de-  
104 nominated temporary alimony or not so denominated under  
105 the provisions of this subdivision. Nothing contained in this  
106 subdivision shall abrogate an existing contract between either  
107 of the parties and a third party, or affect the rights and  
108 liabilities of either party or a third party under the terms  
109 of such contract.

110 (8) Where the pleadings include a specific request for  
111 specific property or raise issues concerning the equitable divi-  
112 sion of marital property, the court may enter such order as is  
113 reasonably necessary to preserve the estate of either or both  
114 of the parties, including the imposition of a constructive trust,  
115 so that such property be forthcoming to meet any order which  
116 may be made in the action, and may compel either party to  
117 give security to abide such order, or may require the property  
118 in question to be delivered into the temporary custody of a  
119 third party. The court may further order either or both of the  
120 parties to pay the costs and expenses of maintaining and  
121 preserving the property of the parties during the pendency  
122 of the action: *Provided*, That at the time the court deter-  
123 mines the interests of the parties in marital property and  
124 equitably divides the same, the court may consider the ex-  
125 tent to which payments made for the maintenance and preser-  
126 vation of property under the provisions of this subdivision  
127 have affected the rights of the parties in marital property,  
128 and may treat such payments as a partial distribution of  
129 marital property. When appropriate, the court may release  
130 all or any part of such protected property for sale and sub-  
131 stitute all or a portion of the proceeds of the sale for such  
132 property.

133 (9) Unless a contrary disposition be found appropriate  
134 and ordered pursuant to other provisions of this section, then  
135 upon the motion of either party, the court may compel the  
136 other party to deliver to the movant party any of his or  
137 her separate estate which may be in the possession or control

138 of the respondent party, and may make such further order  
139 as is necessary to prevent either party from interfering with  
140 the separate estate of the other.

141 (10) The court may enjoin either party from molesting  
142 or interfering with the other, or otherwise imposing any re-  
143 straint on the personal liberty of the other, or interfering with  
144 the custodial or visitation rights of the other.

145 (b) In ordering temporary relief under the provisions  
146 of this section, the court shall consider the financial needs of  
147 the parties, the present employment income and other recur-  
148 ring earnings of each party from any source, their income-  
149 earning abilities, and the respective legal obligations of each  
150 party to support himself or herself and to support any other  
151 persons. Except in extraordinary cases supported by specific  
152 findings set forth in the order granting relief, payments of  
153 temporary alimony and temporary child support are to be  
154 made from a party's employment income and other recurring  
155 earnings, and not from the corpus of a party's separate estate,  
156 and an award of such relief shall not be disproportionate to  
157 a party's ability to pay as disclosed by the evidence before  
158 the court.

159 (c) At any time after a party is abandoned or deserted  
160 or after the parties to a marriage have lived separate and  
161 apart in separate places of abode without any cohabitation,  
162 the party abandoned or either party living separate and  
163 apart may apply for relief pursuant to this section by insti-  
164 tuting an action for divorce as provided in section ten of  
165 this article, alleging that the plaintiff reasonably believes  
166 that the period of abandonment or of living separate and  
167 apart will continue for the period prescribed by the applicable  
168 provisions of section four of this article. If the period of  
169 abandonment or living separate and apart continues for the  
170 period prescribed by the applicable provisions of section  
171 four of this article, the divorce action may proceed to a  
172 hearing as provided in sections twenty-four and twenty-five  
173 of this article without a new complaint being filed: *Provided,*  
174 That the party desiring to proceed to a hearing shall give  
175 the opposing party at least twenty days' notice of the time,  
176 place and purpose of the hearing, unless the opposing party

177 shall have filed with the court a waiver of notice of further  
178 proceedings, signed by such opposing party. If such notice  
179 is required to be served, it shall be served in the same manner  
180 as a complaint, regardless of whether the opposing party  
181 has appeared or answered.

182 (d) To facilitate the resolution of issues arising at a  
183 hearing for temporary relief, the court may, or upon the  
184 motion of either party shall, order each of the parties to file  
185 with the court, and serve on the other party, a sworn state-  
186 ment of each party's assets, liabilities, and employment income  
187 and other earnings from any source. The statement shall be  
188 in such form and contain such detailed information as the  
189 court may prescribe by general order. In addition, the court  
190 may, or upon the motion of either party shall, order the  
191 parties to comply with the disclosure requirements set forth  
192 in section thirty-three of this article, and, if necessary, con-  
193 tinue the hearing for temporary relief from time to time to  
194 afford the parties an opportunity to obtain and provide such  
195 information.

196 (e) An ex parte order granting all or part of the relief  
197 provided for in this section may be granted without written  
198 or oral notice to the adverse party if:

199 (1) It appears from specific facts shown by affidavit or  
200 by the verified complaint that immediate and irreparable  
201 injury, loss, or damage will result to the applicant before the  
202 adverse party or such party's attorney can be heard in opposi-  
203 tion. Such potential injury, loss or damage may be antici-  
204 pated when the following conditions exist: *Provided*, That  
205 the following list of conditions shall not be exclusive:

206 (A) There is a real and present threat of physical injury  
207 to the applicant at the hands or direction of the adverse  
208 party;

209 (B) The adverse party is preparing to quit the state with  
210 a minor child or children of the parties, thus depriving the  
211 court of jurisdiction in the matter of child custody;

212 (C) The adverse party is preparing to remove property  
213 from the state, or is preparing to transfer, convey, alienate,

214 encumber, or otherwise deal with property which could other-  
215 wise be subject to the jurisdiction of the court and subject  
216 to judicial order under the provisions of this section or section  
217 fifteen of this article;

218 and

219 (2) The movant party or his or her attorney certifies  
220 in writing the efforts, if any, which have been made to give  
221 the notice, and the reasons supporting his claim that notice  
222 should not be required.

223 (e) Every ex parte order granted without notice shall  
224 be indorsed with the date and hour of issuance; shall be filed  
225 forthwith in the circuit clerk's office and entered of record;  
226 and shall set forth the finding of the court that unless the  
227 order is granted without notice there is probable cause to  
228 believe that existing conditions will result in immediate and  
229 irreparable injury, loss, or damage to the movant party before  
230 the adverse party or his or her attorney can be heard in op-  
231 position. The order granting ex parte relief shall fix a time  
232 for a hearing for temporary relief to be held within a reason-  
233 able time, not to exceed twenty days, unless before the time  
234 so fixed for hearing, such hearing is continued for good  
235 cause shown or with the consent of the party against whom  
236 the ex parte order is directed. The reasons for the continu-  
237 ance shall be entered of record. Within the time limits de-  
238 scribed herein, when an ex parte order is made, a motion  
239 for temporary relief shall be set down for hearing at the  
240 earliest possible time and shall take precedence of all matters  
241 except older matters of the same character. If the party  
242 who obtained the ex parte order fails to proceed with a  
243 motion for temporary relief, the court shall set aside the  
244 ex parte order. At any time after ex parte relief is granted,  
245 and on two days' notice to the party who obtained such  
246 relief or on such shorter notice as the court may direct, the  
247 adverse party may appear and move the court to set aside  
248 or modify the ex parte order on the grounds that the effects  
249 of such order are onerous or otherwise improper. In such  
250 event, the court shall proceed to hear and determine such  
251 motion as expeditiously as the ends of justice require.

**§48-2-15. Relief upon ordering divorce or annulment or granting decree of separate maintenance.**

1 (a) Upon ordering a divorce or granting a decree of separ-  
2 ate maintenance, the court may require either party to pay ali-  
3 mony in the form of periodic installments, or a lump sum, or  
4 both, for the maintenance of the other party. Payments of ali-  
5 mony and child support are to be ordinarily made from a par-  
6 ty's employment income and other recurring earnings, but in  
7 cases where the employment income and other recurring earn-  
8 ings are not sufficient to adequately provide for payments of  
9 alimony and child support, the court may, upon specific find-  
10 ings set forth in the order, order the party required to make  
11 such payments to make the same from the corpus of his or  
12 her separate estate. An award of such relief shall not be dis-  
13 proportionate to a party's ability to pay as disclosed by the  
14 evidence before the court.

15 (b) Upon ordering the annulment of a marriage or a di-  
16 vorce or granting a decree of separate maintenance, the court  
17 may further order all or any part of the following relief:

18 (1) The court may provide for the custody of minor child-  
19 ren of the parties, subject to such rights of visitation, both in  
20 and out of the residence of the custodial parent or other per-  
21 son or persons having custody, as may be appropriate under  
22 the circumstances. In addition, the court may, in its discretion,  
23 make such further order as it shall deem expedient, concerning  
24 the grant of reasonable visitation rights to any grandparent or  
25 grandparents of the minor children upon application, if the  
26 grandparent or grandparents are related to such minor child  
27 through a party:

28 (A) Whose whereabouts are unknown, or

29 (B) Who did not answer or otherwise appear and defend  
30 the cause of action.

31 (2) The court may require either party to pay child support  
32 in the form of periodic installments for the maintenance of the  
33 minor children of the parties.

34 (3) As an incident to requiring the payment of alimony or  
35 child support, the court may order either party to continue in

36 effect existing policies of insurance covering the costs of health  
37 care and hospitalization of the other party and the minor child-  
38 ren of the parties: *Provided*, That if the other party is no long-  
39 er eligible to be covered by such insurance because of the  
40 granting of an annulment or divorce, the court may require a  
41 party to substitute such insurance with a new policy to cover  
42 the other party, or may consider the prospective cost of such  
43 insurance in awarding alimony to be paid in periodic install-  
44 ments. Payments made to an insurer pursuant to this subdivi-  
45 sion, either directly or by a deduction from wages, shall be  
46 deemed to be alimony, child support, or installment payments  
47 for the distribution of marital property, in such proportion as  
48 the court shall direct: *Provided*, That if the court does not set  
49 forth in the order that a portion of such payments is to be  
50 deemed child support or installment payments for the distri-  
51 bution of marital property, then all such payments made pur-  
52 suant to this subdivision shall be deemed to be alimony: *Pro-*  
53 *vided, however*, That the designation of insurance coverage as  
54 alimony under the provisions of this subdivision shall not, in  
55 and of itself, give rise to a subsequent modification of the order  
56 to provide for alimony other than insurance for covering the  
57 costs of health care and hospitalization.

58 (4) As an incident to requiring the payment of alimony or  
59 child support, the court may grant the exclusive use and occu-  
60 pancy of the marital home to one of the parties, together with  
61 all or a portion of the household goods, furniture and furnish-  
62 ings reasonably necessary for such use and occupancy. Such  
63 use and occupancy shall be for a definite period, ending at a  
64 specific time set forth in the order, subject to modification up-  
65 on the petition of either party. Except in extraordinary cases  
66 supported by specific findings set forth in the order granting  
67 relief, a grant of the exclusive use and occupancy of the marital  
68 home shall be limited to those situations where such use and  
69 occupancy is reasonably necessary to accomodate the rearing  
70 of minor children of the parties. The court may require pay-  
71 ments to third parties in the form of home loan installments,  
72 land contract payments, rent, payments for utility services,  
73 property taxes, insurance coverage, or other expenses or charg-  
74 es reasonably necessary for the use and occupancy of the mari-  
75 tal domicile. Payments made to a third party pursuant to this

76 subdivision for the benefit of the other party shall be deemed  
77 to be alimony, child support, or installment payments for the  
78 distribution of marital property, in such proportion as the court  
79 shall direct: *Provided*, That if the court does not set forth in  
80 the order that a portion of such payments is to be deemed child  
81 support or installment payments for the distribution of marital  
82 property, then all such payments made pursuant to this sub-  
83 division shall be deemed to be alimony. Nothing contained in  
84 this subdivision shall abrogate an existing contract between  
85 either of the parties and a third party, or affect the rights and  
86 liabilities of either party or a third party under the terms of  
87 such contract.

88 (5) As an incident to requiring the payment of alimony,  
89 the court may grant the exclusive use and possession of one or  
90 more motor vehicles to either of the parties. The court may  
91 require payments to third parties in the form of automobile  
92 loan installments or insurance coverage, and any such pay-  
93 ments made pursuant to this subdivision for the benefit of the  
94 other party shall be deemed to be alimony or installment pay-  
95 ments for the distribution of marital property, as the court may  
96 direct. Nothing contained in this subsection shall abrogate an  
97 existing contract between either of the parties and a third  
98 party, or affect the rights and liabilities of either party or a  
99 third party under the terms of such contract.

100 (6) Where the pleadings include a specific request for  
101 specific property or raise issues concerning the equitable divi-  
102 sion of marital property as defined in section one of this ar-  
103 ticle, the court shall order such relief as may be required to  
104 effect a just and equitable distribution of the property and to  
105 protect the equitable interests of the parties therein.

106 (7) Unless a contrary disposition be found appropriate and  
107 ordered pursuant to other provisions of this section, then upon  
108 the motion of either party, the court may compel the other  
109 party to deliver to the movant party any of his or her separate  
110 estate which may be in the possession or control of the respon-  
111 dent party, and may make such further order as is necessary to  
112 prevent either party from interfering with the separate estate  
113 of the other.

114 (8) The court may enjoin either party from the molesting or  
115 interfering with the other, or otherwise imposing any restraint  
116 on the personal liberty of the other, or interfering with the  
117 custodial or visitation rights of the other.

118 (9) The court may order either party to take necessary  
119 steps to transfer utility accounts and other accounts for re-  
120 curring expenses from the name of one party into the name of  
121 the other party or from the joint names of the parties into the  
122 name of one party. Nothing contained in this subdivision shall  
123 affect the liability of the parties for indebtedness on any such  
124 account incurred before the transfer of such account.

125 (c) In any case where an annulment or divorce is denied,  
126 the court shall retain jurisdiction of the case and may order all  
127 or any portion of the relief provided for in subsections (a) and  
128 (b) of this section which has been demanded or prayed for in  
129 the pleadings.

130 (d) In any case where a divorce or annulment is granted in  
131 this state upon constructive service of process, and personal  
132 jurisdiction is thereafter obtained of the defendant in such  
133 case, the court may order all or any portion of the relief pro-  
134 vided for in subsections (a) and (b) of this section which has  
135 been demanded or prayed for in the pleadings.

136 (e) At any time after the entry of an order pursuant to the  
137 provisions of this section, the court may, upon the verified  
138 petition of either of the parties, revise or alter such order  
139 concerning the maintenance of the parties, or either of them,  
140 and make a new order concerning the same, as the altered  
141 circumstances or needs of the parties may render necessary to  
142 meet the ends of justice; and the court may also from time to  
143 time afterward, on the verified petition of either of the parties  
144 or other proper person having actual or legal custody of the  
145 minor child or children of the parties, revise or alter such order  
146 concerning the custody and maintenance of the children, and  
147 make a new order concerning the same, as the circumstances  
148 of the parents or other proper person or persons and the bene-  
149 fit of the children may require. In granting such relief, the  
150 court may, where other means are not conveniently available,  
151 alter any prior order of the court with respect to the distribu-

152 tion of marital property, if such property is still held by the  
153 parties, and if necessary to give effect to a modification of ali-  
154 mony, child support, or child custody or necessary to avoid an  
155 inequitable or unjust result which would be caused by the  
156 manner in which the modification will affect the prior distri-  
157 bution of marital property.

158 (f) In every case where a separation agreement is the basis  
159 for an award of alimony, the court, in approving the agree-  
160 ment, shall examine the agreement to ascertain whether it  
161 clearly provides for alimony to continue beyond the death of  
162 the payor party or to cease in such event. Where alimony is to  
163 be paid pursuant to the terms of a separation agreement which  
164 does not state whether the payment of alimony is to continue  
165 beyond the death of the payor party or is to cease, or where  
166 the parties have not entered into a separation agreement and  
167 alimony is to be awarded, the court shall specifically state as  
168 a part of its order whether such payments of alimony are to be  
169 continued beyond the death of the payor party or cease.

170 (g) In every case where a separation agreement is the basis  
171 for an award of alimony, the court, in approving the agree-  
172 ment, shall examine the agreement to ascertain whether it  
173 clearly provides for alimony to continue beyond the re-mar-  
174 riage of the payee party or to cease in such event. Where ali-  
175 mony is to be paid pursuant to the terms of a separation agree-  
176 ment which does not state whether the payment of alimony is  
177 to continue beyond the remarriage of the payee party or is to  
178 cease, or where the parties have not entered into a separation  
179 agreement and alimony is to be awarded, the court shall speci-  
180 fically state as a part of its order whether such payments of  
181 alimony are to be continued beyond the remarriage of the  
182 payee party or cease.

183 (h) In addition to the statement provided for in subsection  
184 (d), section thirteen of this article and in addition or in lieu  
185 of the disclosure requirements set forth in section thirty-three  
186 of this article, the court may order accounts to be taken as to  
187 all or any part of marital property or the separate estates of  
188 the parties, and may direct that the accounts be taken as of the  
189 date of the marriage, the date upon which the parties separated,

190 or any other time deemed to be appropriate in assisting the  
191 court in the determination and equitable division of property.

192 (i) In determining whether alimony is to be awarded, or in  
193 determining the amount of alimony, if any, to be awarded und-  
194 er the provisions of this section, the court shall consider and  
195 compare the fault or misconduct of either or both of the parties  
196 and the effect of such fault or misconduct as a contributing  
197 factor to the deterioration of the marital relationship. However,  
198 alimony shall not be awarded in any case where both parties  
199 prove grounds for divorce and are denied a divorce, nor shall  
200 an award of alimony under the provisions of this section be  
201 ordered which directs the payment of alimony to a party de-  
202 termined to be at fault, when, as a grounds granting the di-  
203 vorce, such party is determined by the court:

204 (1) To have committed adultery; or

205 (2) To have been convicted for the commission of a crime  
206 which is a felony, subsequent to the marriage. If such convic-  
207 tion has become final; or

208 (3) To have actually abandoned or deserted his or her  
209 spouse for six months.

210 (j) Whenever under the terms of this section or section  
211 thirteen of this article a court enters an order requiring the  
212 payment of alimony or child support, if the court anticipates  
213 the payment of such alimony or child support or any portion  
214 thereof to be paid out of "disposable retired or retainer pay"  
215 as that term is defined in 10 U.S.C. §1408, relating to mem-  
216 bers or former members of the uniformed services of the Unit-  
217 ed States, the court shall specifically provide for the payment  
218 of an amount, expressed in dollars or as a percentage of dis-  
219 posable retired or retainer pay, from the disposable retired or  
220 retainer pay of the payor party to the payee party.

**§48-2-16. Effect of separation agreement; what considered in  
awarding alimony, child support or separate main-  
tenance.**

1 (a) In cases where the parties to an action commenced  
2 under the provisions of this article have executed a separation  
3 agreement, if the court finds that the agreement is fair and

4 reasonable, and not obtained by fraud, duress, or other uncon-  
5 scionable conduct by one of the parties, and further finds that  
6 the parties, through the separation agreement, have expressed  
7 themselves in terms which, if incorporated into a judicial order,  
8 would be enforceable by a court in future proceedings, then the  
9 court shall conform the relief which it is authorized to order  
10 under the provisions of sections thirteen and fifteen of this  
11 article to the separation agreement of the parties. The separa-  
12 tion agreement may contractually fix the division of property  
13 between the parties and may determine whether alimony shall  
14 be awarded, whether a court shall have continuing jurisdiction  
15 over the amount of an alimony award so as to increase or de-  
16 crease the amount of alimony to be paid, whether alimony shall  
17 be awarded as a lump sum settlement in lieu of periodic pay-  
18 ments, whether alimony shall continue beyond the death of  
19 the payor party or the remarriage of the payee party,  
20 or whether the alimony award shall be enforceable by con-  
21 tempt proceedings or other judicial remedies aside from  
22 contractual remedies. Any award of periodic payments of  
23 alimony shall be deemed to be judicially decreed and subject  
24 to subsequent modification unless there is some explicit, well  
25 expressed, clear, plain and unambiguous provision to the  
26 contrary set forth in the court approved separation agreement  
27 or the order granting the divorce. Child support shall, under  
28 all circumstances, always be subject to continuing judicial  
29 modification.

30 (b) In cases where the parties to an action commenced  
31 under the provisions of this article have not executed a separa-  
32 tion agreement, or have executed an agreement which is  
33 incomplete or insufficient to resolve the outstanding issues be-  
34 tween the parties, or where the court finds the separation  
35 agreement of the parties not to be fair and reasonable or  
36 clear and unambiguous, the court shall proceed to resolve the  
37 issues outstanding between the parties. The court shall consider  
38 the following factors in determining the amount of alimony,  
39 child support, or separate maintenance, if any, to be ordered  
40 under the provisions of sections thirteen and fifteen of this  
41 article, as a supplement to or in lieu of the separation agree-  
42 ment:

- 43       (1) The length of time the parties were married;
- 44       (2) The period of time during the marriage when the  
45 parties actually lived together as husband and wife;
- 46       (3) The present employment income and other recurring  
47 earnings of each party from any source;
- 48       (4) The income-earning abilities of each of the par-  
49 ties, based upon such factors as educational background, train-  
50 ing, employment skills, work experience, length of absence  
51 from the job market, and custodial responsibilities for chil-  
52 dren;
- 53       (5) The distribution of marital property to be made  
54 under the terms of a separation agreement or by the court  
55 under the provisions of section thirty-two of this article,  
56 insofar as the distribution affects or will affect the earnings  
57 of the parties and their ability to pay or their need to receive  
58 alimony, child support, or separate maintenance;
- 59       (6) The ages and the physical, mental and emotional  
60 condition of each party;
- 61       (7) The educational qualifications of each party;
- 62       (8) The likelihood that the party seeking alimony, child  
63 support or separate maintenance can substantially increase  
64 his or her income-earning abilities within a reasonable time by  
65 acquiring additional education or training;
- 66       (9) The anticipated expense of obtaining the education  
67 and training described in subdivision (8) above.
- 68       (10) The costs of educating minor children;
- 69       (11) The costs of providing health care for each of the  
70 parties and their minor children;
- 71       (12) The tax consequences to each party;
- 72       (13) The extent to which it would be inappropriate for  
73 a party, because said party will be the custodian of a minor  
74 child or children, to seek employment outside the home;
- 75       (14) The financial need of each party;

76 (15) The legal obligations of each party to support him-  
77 self or herself and to support any other person; and

78 (16) Such other factors as the court deems necessary or  
79 appropriate to consider in order to arrive at a fair and equitable  
80 grant of alimony, child support, or separate maintenance.

**§48-2-17. Recordation of an abstract of an order for alimony,  
child support or separate maintenance.**

1 An order for alimony, child support, or separate main-  
2 tenance shall not give rise to a lien on any real estate of  
3 the person against whom the order is entered until the pro-  
4 cedures set forth in this section are complied with. An  
5 abstract of the order may be recorded in the office of the  
6 clerk of the county commission in the county wherein such  
7 real property is situate without constituting a lien against  
8 such real property, until the person entitled to receive such  
9 alimony, child support, or separate maintenance presents  
10 for recordation with the clerk an affidavit which sets forth  
11 allegations that the person required to pay such alimony,  
12 child support, or separate maintenance is in arrears in such  
13 payment for a period of not less than thirty days.

14 The abstract of the order and the affidavit shall be re-  
15 corded in the same manner as other abstracts of judgments  
16 are recorded, but shall not constitute a lien unless both the  
17 abstract and affidavit are recorded. The abstract of judgment  
18 shall contain the name of the parties to the action in which  
19 the order of alimony, child support, or separate maintenance  
20 was entered, the name of the party in whose favor such  
21 award was made, the date of the judgment and the court  
22 which rendered such judgment. In no event shall the judg-  
23 ment order, in its entirety, be recorded. Unless a proceeding  
24 for the enforcement of the order for support, maintenance  
25 or alimony or the collection thereof be commenced or brought  
26 within sixty days of the recordation of such affidavit, the  
27 lien created by such recorded affidavit shall be discharged  
28 and extinguished. If the proceeding be brought in a county  
29 other than the county wherein the original judgment was  
30 rendered or wherein the abstract or affidavit was recorded,  
31 then notice of the bringing of such proceeding shall be

32 recorded in the same county and in the same manner as the  
33 abstract and affidavit were recorded. The lien created by such  
34 recording shall be effective as to the amount of any judgment  
35 rendered in such proceeding regardless of whether such judg-  
36 ment be for less or more than prayed for.

37 The provisions of this section restricting the right of recorda-  
38 tion of judgment orders shall not be deemed to limit the  
39 right of any person to record a judgment for a sum certain for  
40 past-due alimony, child support, or separate maintenance.

**§48-2-22. Proceedings in contempt.**

1 (a) Upon a verified petition for contempt, notice of hear-  
2 ing and hearing, if the petition alleges criminal contempt  
3 or the court informs the parties that the matter will be treated  
4 and tried as a criminal contempt, the matter shall be tried  
5 before a jury, unless the party charged with contempt shall  
6 knowingly and intelligently waive the right to a jury trial with  
7 the consent of the court and the other party. If the jury, or  
8 the court sitting without a jury, shall find the defendant in  
9 contempt for willfully failing to comply with an order of the  
10 court made pursuant to the provisions of this article, as charged  
11 in the petition, the court may find the person to be in criminal  
12 contempt and may commit such person to the county jail for  
13 a determinate period not to exceed six months.

14 (b) If trial is had under the provisions of subsection (a)  
15 of this section and the court elects to treat a finding of  
16 criminal contempt as a civil contempt, or if the petition alleges  
17 civil contempt and the matter is not tried before a jury and the  
18 court finds the defendant in contempt for willfully failing to  
19 comply with an order of the court made pursuant to the pro-  
20 visions of this article, and if the court further finds the per-  
21 son has the ability to purge himself of contempt, the court  
22 shall afford the contemnор a reasonable time and method  
23 whereby he may purge himself of contempt. If the contemnор  
24 fails or refuses to purge himself of contempt, the court may  
25 confine the contemnор to the county jail for an indeterminate  
26 period not to exceed six months or until such time as the  
27 contemnор has purged himself, whichever shall first occur.

28 (c) In the case of a charge of contempt based upon the

29 failure of the defendant to pay alimony, child support, or sep-  
30 arate maintenance, if the court or jury finds that the defendant  
31 did not pay because he was financially unable to pay, the  
32 defendant may not be imprisoned on charges of contempt of  
33 court.

34 (d) Regardless of whether the court or jury finds the  
35 defendant to be in contempt, if the court shall find that a  
36 party is in arrears in the payment of alimony, child support,  
37 or separate maintenance ordered to be paid under the pro-  
38 visions of this article, the court shall enter judgment for such  
39 arrearage and award interest on such arrearage from the due  
40 date of each unpaid installment. Following any hearing  
41 wherein the court finds that a party is in arrears in the payment  
42 of alimony, child support, or separate maintenance, the court  
43 may, if sufficient assets exist, require security to ensure the  
44 timely payment of future installments.

45 (e) At any time during a contempt proceeding, the court  
46 may enter an order to attach forthwith the body of, and take  
47 into custody, any person who refuses or fails to respond  
48 to the lawful process of the court or to comply with an order  
49 of the court. Such order of attachment shall require the per-  
50 son to be brought forthwith before the court or the judge  
51 thereof in any county in which the court may then be sitting.

**§48-2-32. Marital property disposition.**

1 (a) Except as otherwise provided in this section, upon  
2 every judgment of annulment, divorce or separation, the court  
3 shall divide the marital property of the parties equally be-  
4 tween the parties.

5 (b) In cases where the parties to an action commenced  
6 under the provisions of this article have executed a sepa-  
7 ration agreement, then the court shall divide the marital  
8 property in accordance with the terms of the agreement, un-  
9 less the court finds:

10 (1) That the agreement was obtained by fraud, duress,  
11 or other unconscionable conduct by one of the parties, or

12 (2) That the parties, in the separation agreement, have  
13 not expressed themselves in terms which, if incorporated into

14 a judicial order, would be enforceable by a court in future  
15 proceedings, or

16 (3) That the agreement, viewed in the context of the actual  
17 contributions of the respective parties to the net value of the  
18 marital property of the parties, is so inequitable as to defeat  
19 the purposes of this section, and such agreement was inequit-  
20 able at the time the same was executed.

21 (c) In the absence of a valid agreement, the court shall  
22 presume that all marital property is to be divided  
23 equally between the parties, but may alter this distribution,  
24 without regard to any attribution of fault to either party  
25 which may be alleged or proved in the course of the action,  
26 after a consideration of the following:

27 (1) The extent to which each party has contributed to the  
28 acquisition, preservation and maintenance, or increase in  
29 value of marital property by monetary contributions, in-  
30 cluding, but not limited to:

31 (A) Employment income and other earnings; and

32 (B) Funds which are separate property.

33 (2) The extent to which each party has contributed to  
34 the acquisition, preservation and maintenance, or increase  
35 in value of marital property by non-monetary contributions,  
36 including, but not limited to:

37 (A) Homemaker services;

38 (B) Child care services;

39 (C) Labor performed without compensation, or for less  
40 than adequate compensation, in a family business or other  
41 business entity in which one or both of the parties has an  
42 interest;

43 (D) Labor performed in the actual maintenance or im-  
44 provement of tangible marital property; and

45 (E) Labor performed in the management or investment of  
46 assets which are marital property.

47 (3) The extent to which each party expended his or her

48 efforts during the marriage in a manner which limited or  
49 decreased such party's income-earning ability or increased  
50 the income-earning ability of the other party, including, but  
51 not limited to:

52 (A) Direct or indirect contributions by either party to the  
53 education or training of the other party which has increased  
54 the income-earning ability of such other party; and

55 (B) Foregoing by either party of employment or other  
56 income-earning activity through an understanding of the par-  
57 ties or at the insistence of the other party.

58 (4) The extent to which each party, during the marriage,  
59 may have conducted himself or herself so as to dissipate or  
60 depreciate the value of the marital property of the parties:  
61 *Provided*, That except for a consideration of the economic  
62 consequences of conduct as provided for in this subdivision,  
63 fault or marital misconduct shall not be considered by the  
64 court in determining the proper distribution of marital property.

65 (d) After considering the factors set forth in subsection  
66 (c) of this section, the court shall:

67 (1) Determine the net value of all marital property of  
68 the parties as of the date of the commencement of the action  
69 or as of such later date determined by the court to be more  
70 appropriate for attaining an equitable result;

71 (2) Designate the property which constitutes marital prop-  
72 erty, and define the interest therein to which each party is  
73 entitled and the value of their respective interest therein. In  
74 the case of an action wherein there is no agreement between  
75 the parties and the relief demanded requires the court to  
76 consider such factors as are described in subdivisions one,  
77 two, three, and four, subsection (c) of this section, if a con-  
78 sideration of factors only under said subdivisions one and  
79 two would result in an unequal division of marital property,  
80 and if an examination of the factors described in said sub-  
81 divisions three and four produce a finding that a party (A)  
82 expended his or her efforts during the marriage in a manner  
83 which limited or decreased such party's income-earning ability  
84 or increased the income-earning ability of the other party, or

85 (B) conducted himself or herself so as to dissipate or depre-  
86 ciate the value of the marital property of the parties, then  
87 the court may, in the absence of a fair and just alimony  
88 award under the provisions of section fifteen of this article  
89 which adequately takes into account the facts which under-  
90 lie the factors described in said subdivisions three and  
91 four, equitably adjust the definition of the parties' interest  
92 in marital property, increasing the interest in marital property  
93 of a party adversely affected by the factors considered under  
94 said subdivisions three and four who would otherwise be  
95 awarded less than one-half of the marital property, to an  
96 interest not to exceed one-half of the marital property.

97 (3) Designate the property which constitute separate prop-  
98 erty of the respective parties or the separate property of their  
99 children.

100 (4) Determine the extent to which marital property is  
101 susceptible to division in accordance with the findings of the  
102 court as to the respective interests of the parties therein;

103 (5) In the case of any property which is not susceptible  
104 to division, ascertain the projected results of a sale of such  
105 property;

106 (6) Ascertain the projected effect of a division or trans-  
107 fer of ownership of income-producing property, in terms of  
108 the possible pecuniary loss to the parties or other persons  
109 which may result from an impairment of the property's capa-  
110 city to generate earnings; and

111 (7) Transfer title to such component parts of the marital  
112 property as may be necessary to achieve an equitable distribu-  
113 tion of the marital property. To make such equitable distribu-  
114 tion, the court may:

115 (A) Direct either party to transfer their interest in specific  
116 property to the other party;

117 (B) Permit either party to purchase from the other party  
118 their interest in specific property;

119 (C) Direct either party to pay a sum of money to the  
120 other party in lieu of transferring specific property or an in-

121 terest therein, if necessary to adjust the equities and rights of  
122 the parties, which sum may be paid in installments or other-  
123 wise, as the court may direct;

124 (D) Direct a party to transfer his or her property to the  
125 other party in substitution for property of the other party of  
126 equal value which the transferor is permitted to retain and  
127 assume ownership of;

128 (E) Order a sale of specific property and an appropriate  
129 division of the net proceeds of such sale: *Provided*, That such  
130 sale may be by private sale, or through an agent, or by judicial  
131 sale, whichever would facilitate a sale within a reasonable  
132 time at a fair price.

133 (e) In order to achieve the equitable distribution of marital  
134 property, the court shall, unless the parties otherwise agree,  
135 order, when necessary, the transfer of legal title to any prop-  
136 erty of the parties, giving preference to effecting equitable  
137 distribution through periodic or lump sum payments: *Provid-*  
138 *ed*, That the court may order the transfer of legal title to motor  
139 vehicles, household goods and the former marital domicile  
140 without regard to such preference where the court determines  
141 it to be necessary or convenient. In any case involving the  
142 equitable distribution of (1) property acquired by bequest,  
143 devise, descent, distribution, or gift, or (2) ownership interests  
144 in a business entity, the court shall, unless the parties other-  
145 wise agree, give preference to the retention of the ownership  
146 interests in such property. In the case of such business inter-  
147 ests, the court shall give preference to the party having the  
148 closer involvement, larger ownership interest or greater depen-  
149 dency upon the business entity for income or other resources  
150 required to meet responsibilities imposed under this article,  
151 and shall also consider the effects of transfer or retention in  
152 terms of which alternative will best serve to preserve the value  
153 of the business entity or protect the business entity from undue  
154 hardship or from interference caused by one of the parties or  
155 by the divorce, annulment or decree of separate maintenance:  
156 *Provided*, That the court may, unless the parties otherwise  
157 agree, sever the business relationship of the parties and order  
158 the transfer of legal title to ownership interests in the business  
159 entity from one party to the other, without regard to the limi-

160 tations on the transfer of title to such property otherwise pro-  
161 vided in this subsection, if such transfer is required to achieve  
162 the other purposes of this article: *Provided, however,* That in  
163 all such cases the court shall order or the agreement of the  
164 parties shall provide for equitable payment or transfer of legal  
165 title to other property, of fair value in money or money's  
166 worth, in lieu of any ownership interests in a business entity  
167 which are ordered to be transferred under this subsection:  
168 *Provided further,* That the court may order the transfer of  
169 such business interests to a third party (such as the business  
170 entity itself or another principal in the business entity) where  
171 the interests of the parties under this article can be protected  
172 and at least one party consents thereto.

173 (f) In any order which divides or transfers the title to any  
174 property, determines the ownership or value of any property,  
175 designates the specific property to which any party is entitled,  
176 or grants any monetary award, the court shall set out in detail  
177 its findings of fact and conclusions of law, and the reasons for  
178 dividing the property in the manner adopted.

179 (g) If an order entered in accordance with the provisions  
180 of this article requires the transfer of title to property and a  
181 party fails or refuses to execute a deed or other instrument  
182 necessary to convey title to such property, the deed or other  
183 instrument shall be executed by a special commissioner ap-  
184 pointed by the court for the purpose of effecting such transfer  
185 of title pursuant to section seven, article twelve, chapter fifty-  
186 five of this code.

187 (h) As to any third party, the doctrine of equitable distri-  
188 bution of marital property and the provisions of this article  
189 shall be construed as creating no interest or title in property  
190 until and unless an order is entered under this article judicially  
191 defining such interest or approving a separation agreement  
192 which defines such interest. Neither this article nor the doc-  
193 trine of equitable distribution of marital property shall be  
194 construed to create community property nor any other interest  
195 or estate in property except those previously recognized in this  
196 state. A husband or wife may alienate property at any time  
197 prior to the entry of an order under the provisions of this ar-

198 title or prior to the recordation of a notice of lis pendens in ac-  
199 cordance with the provisions of section thirty-five of this  
200 article, and at anytime and in any manner not otherwise pro-  
201 hibited by an order under this article, in like manner and with  
202 like effect as if this article and the doctrine of equitable distri-  
203 bution had not been adopted: *Provided*, That as to any trans-  
204 fer prior to the entry of an order under the provisions of this  
205 article, a transfer other than to a bona fide purchaser for value  
206 shall be voidable if the court finds such transfer to have been  
207 effected to avoid the application of the provisions of this article  
208 or to otherwise be a fraudulent conveyance. Upon the entry of  
209 any order under this article or the admission to record of any  
210 notice with respect to an action under this article, restraining  
211 the alienation of property of a party, a bona fide purchaser  
212 for value shall take such title or interest as he or she might  
213 have taken prior to the effective date of this section and no  
214 purchaser for value need see to the application of the proceeds  
215 of such purchase except to the extent he or she would have  
216 been required so to do prior to the effective date of this sec-  
217 tion: *Provided*, That as to third parties nothing in this section  
218 shall be construed to limit or otherwise defeat the interests or  
219 rights to property which any husband or wife would have had  
220 in property prior to the enactment of this section or prior to  
221 the adoption of the doctrine of equitable distribution by the  
222 supreme court of appeals on the twenty-fifth day of May, one  
223 thousand nine hundred eighty-three: *Provided, however*, That  
224 no order entered under this article shall be construed to defeat  
225 the title of a third party transferee thereof except to the extent  
226 that the power to effect such a transfer of title or interest in  
227 such property is secured by a valid and duly perfected lien  
228 and, as to any personal property, secured by a duly perfected  
229 security interest.

230 (i) Notwithstanding the provisions of chapter eleven of  
231 this code, no transfer of interest in or title to property under  
232 this section shall be taxable as a transfer of property without  
233 consideration nor, except as to alimony, create liability for  
234 sales, use, inheritance and transfer, or income taxes due the  
235 state or any political subdivision nor require the payment of the  
236 excise tax imposed under article twenty-two of said chapter  
237 eleven.

238 (j) Whenever under the terms of this article a court enters  
239 an order requiring a division of property, if the court anticipates the division of property will be effected by requiring sums  
240 to be paid out of "disposable retired or retainer pay" as that  
241 term is defined in 10 U.S.C. §1408, relating to members or  
242 former members of the uniformed services of the United States,  
243 the court shall specifically provide for the payment of an  
244 amount, expressed in dollars or as a percentage of disposable  
245 retired or retainer pay, from the disposable retired or retainer  
246 pay of the payor party to the payee party.

**§48-2-33. Disclosure of assets required.**

1 (a) In addition to any discovery ordered by the court  
2 pursuant to rule eighty-one of the rules of civil procedure, the  
3 court may, or upon pleadings or motion of either party the  
4 court shall, require each party to furnish, on such standard  
5 forms as the court may require, full disclosure of all  
6 assets owned in full or in part by either party separately  
7 or by the parties jointly. Such disclosure may be made  
8 by each party individually or by the parties jointly.  
9 Assets required to be disclosed shall include, but shall not  
10 be limited to, real property, savings accounts, stocks  
11 and bonds, mortgages and notes, life insurance, interest in  
12 a partnership or corporation, tangible personal property,  
13 income from employment, future interests whether vested  
14 or nonvested, and any other financial interest or source.  
15 The court may also require each party to furnish, on  
16 the same standard form, information pertaining to all debts  
17 and liabilities of the parties. The form used shall contain a  
18 statement in conspicuous print that complete disclosure of  
19 assets and debts is required by law and deliberate failure to  
20 provide complete disclosure as ordered by the court constitutes  
21 false swearing. The court may on its own initiative and shall  
22 at the request of either party require the parties to furnish  
23 copies of all state and federal income tax returns filed by them  
24 for the past two years, and may require copies of such re-  
25 turns for prior years.

26 (b) Disclosure forms required under this section shall  
27 be filed within sixty days after the service of summons or at

28 such other time as ordered by the court. Information con-  
29 tained on such forms shall be updated on the record to the  
30 date of hearing.

31 (c) Information disclosed under this section shall be con-  
32 fidential and may not be made available to any person for any  
33 purpose other than the adjudication, appeal, modification or  
34 enforcement of judgment of an action affecting the family of the  
35 disclosing parties. The court shall include in any order  
36 compelling disclosure of assets, such provisions as the court  
37 considers necessary to preserve the confidentiality of the  
38 information ordered disclosed.

39 (d) Upon the failure by either party timely to file  
40 a complete disclosure statement as may be required by this  
41 section, the court may accept the statement of the other party  
42 as accurate.

43 (e) If any party deliberately or negligently fails to dis-  
44 close information which may be required by this section and in  
45 consequence thereof any asset or assets with a fair market value  
46 of five hundred dollars or more is omitted from the final  
47 distribution of property, the party aggrieved by such non-  
48 disclosure may at any time petition a court of competent  
49 jurisdiction to declare the creation of a constructive trust as  
50 to all undisclosed assets, for the benefit of the parties and  
51 their minor or dependent children, if any, with the party in  
52 whose name the assets are held declared the constructive  
53 trustee, such trust to include such terms and conditions as the  
54 court may determine. The court shall impose the trust upon  
55 a finding of a failure to disclose such assets as required under  
56 this section.

57 (f) Any assets with a fair market value of five hundred  
58 dollars or more which would be considered part of the  
59 estate of either or both of the parties if owned by either or  
60 both of them at the time of the action, but which was trans-  
61 ferred for inadequate consideration, wasted, given away or  
62 otherwise unaccounted for by one of the parties, within five  
63 years prior to the filing of the petition or length of the mar-  
64 riage, whichever is shorter, shall be presumed to be part of  
65 the estate and shall be subject to the disclosure requirement

66 contained in this section. With respect to such transfers the  
67 spouse shall have the same right and remedies as a creditor  
68 whose debt was contracted at the time the transfer was made  
69 under section three, article one, chapter forty of this code.  
70 Transfers which resulted in an exchange of assets of sub-  
71 stantially equivalent value need not be specifically disclosed  
72 where such assets are otherwise identified in the statement  
73 of net worth.

74 (g) Deliberate failure to provide the disclosure required  
75 by the court pursuant to the provisions of this section is false  
76 swearing.

**§48-2-34. Injunction against disposition of property pending suit  
and decree rendering fraudulent transfers null and  
void.**

1 (a) Where it appears to the court that a party is about  
2 to remove himself or herself or his or her property from  
3 the jurisdiction of the court or is about to dispose of, alienate  
4 or encumber property in order to defeat a fair distribution of  
5 marital property, or the payment of alimony, child support, or  
6 separate maintenance, an injunction may issue to prevent such  
7 removal or disposition and such property may be attached as  
8 provided by this code. The court may issue such injunction  
9 or attachment, without bond.

10 (b) Any such injunction may be granted upon proper  
11 hearing after notice. For good cause shown, a temporary  
12 injunction may be issued after an ex parte proceeding with  
13 notice and proper hearing for a permanent injunction to be  
14 held forthwith thereafter.

15 (c) The procedures of this section are not intended to  
16 apply to the sale of goods in the ordinary course of operating  
17 a business but shall apply to the disposition of the major  
18 assets of a business.

19 (d) Any encumbrance or disposition of property to third  
20 persons, except to bona fide purchasers without notice for  
21 full and adequate consideration, may be set aside by the court.

**§48-2-35. Lis Pendens.**

1 Upon the commencement of an action under the provisions

2 of this article, any party claiming an interest in real property  
3 in which the other party has an interest, may cause a notice  
4 of lis pendens to be recorded in the office of the clerk of the  
5 county commission of the county wherein the property is  
6 located.

7 The notice shall contain the names of the parties, the  
8 nature of the complaint, the court having jurisdiction, the  
9 date the complaint was filed, and a description of the real  
10 property. Such notice shall, from the time of the recording  
11 only, be notice to any person thereafter acquiring any interest  
12 in such property of the pendency of the complaint. Each  
13 person whose conveyance or encumbrance is subsequently  
14 executed or subsequently recorded or whose interest is there-  
15 after acquired by descent, or otherwise, shall be deemed to  
16 be a subsequent purchaser or encumbrancer, and shall be  
17 bound by all proceedings taken after the recording of such  
18 notice, to the same extent as if he were made a party to the  
19 complaint. A notice of lis pendens recorded in accordance  
20 with this section may be discharged by the court upon sub-  
21 stitution of a bond with surety in an amount established by  
22 the court, if the court finds that the claim against the property  
23 subject to the notice of lis pendens can be satisfied by a mone-  
24 tary award. In cases in which the sale of property is already  
25 in process when the notice of lis pendens is filed, and upon  
26 application, proper notice and hearing, the court may substi-  
27 tute a lien on the net proceeds of the sale.

**§48-2-36. Retroactive effect of amendments.**

1 Amendments made to the provisions of this article during  
2 the regular session of the Legislature in the year one thousand  
3 nine hundred eighty-four shall be of retroactive effect to the  
4 extent that such amended provisions shall apply to the distri-  
5 bution of marital property, but not an award of alimony, in  
6 all actions filed under the provisions of this article after the  
7 twenty-fifth day of May, one thousand nine hundred eighty-  
8 three or actions pending on that date in which a claim for  
9 equitable distribution of marital property had been pleaded:  
10 *Provided*, That such amendments to the provisions of this  
11 article shall not, in any case, be applicable to actions filed un-  
12 der the provisions of this article in which, prior to the effec-

13 tive date of the act of the Legislature enacting such amend-  
14 ments, (1) there has been a final decree entered under the  
15 provisions of section fifteen of this article, or (2) the taking of  
16 evidence has been completed and the case has been submitted  
17 for decision.

**ARTICLE 3. PROPERTY, RIGHTS AND LIABILITIES OF MARRIED  
WOMEN; HUSBAND AND WIFE.**

**§48-3-10. Presumption of gift in certain transactions between hus-  
band and wife.**

1 Where one spouse purchases real or personal property and  
2 pays for the same, but takes title in the name of the other  
3 spouse, such transaction shall, in the absence of evidence of a  
4 contrary intention, be presumed to be a gift by the spouse so  
5 purchasing to the spouse in whose name the title is taken:  
6 *Provided*, That in the case of an action under the provisions of  
7 article two of this chapter wherein the court is required to  
8 determine what property of the parties constitutes marital  
9 property and equitably divide the same, the presumption  
10 created by this section shall not apply, and a gift between  
11 spouses must be affirmatively proved.

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



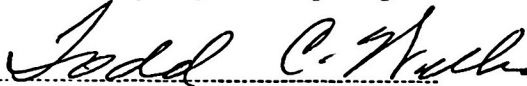
~~Chairman~~ Senate Committee



Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.



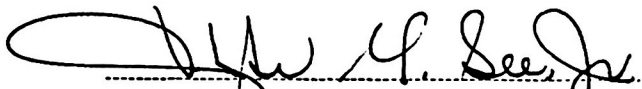
Clerk of the Senate



Clerk of the House of Delegates




President of the Senate



Speaker House of Delegates

The within is approved this the 30  
day of March, 1984.



Governor

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