

No. 377

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SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1989



ENROLLED
Committee Substitute for
SENATE BILL NO. 377

(By Senator *Tucker, Mr. President, et al*)



PASSED April 8, 1989
In Effect 90 days from Passage

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 377

(BY SENATORS TUCKER, MR. PRESIDENT, AND HARMAN,

BY REQUEST OF THE EXECUTIVE)

[Passed April 8, 1989; in effect ninety days from passage.]

AN ACT to amend and reenact section eight, article two, chapter forty-eight-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to guidelines for child support awards generally; establishing a rebuttable presumption that the amount of a child support award resulting from the application of such child support guidelines is correct; describing the circumstances under which such guidelines should not be followed, with specific provision made for support agreements; and requiring a review of child support guidelines at least once every four years.

Be it enacted by the Legislature of West Virginia:

That section eight, article two, chapter forty-eight-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WEST VIRGINIA CHILD ADVOCATE OFFICE.

§48A-2-8. Guidelines for child support awards.

1 (a) The director of the child advocate office shall, by
2 legislative rule, establish guidelines for child support
3 award amounts so as to insure greater uniformity by
4 those persons who make child support recommenda-
5 tions and enter child support orders, and to increase
6 predictability for parents, children and other persons
7 who are directly affected by child support orders.
8 There shall be a rebuttable presumption, in any
9 proceeding before a family law master or circuit court
10 judge for the award of child support, that the amount
11 of the award which would result from the application
12 of such guidelines is the correct amount of child
13 support to be awarded. A written finding or specific
14 finding on the record that the application of the
15 guidelines would be unjust or inappropriate in a
16 particular case shall be sufficient to rebut the pre-
17 sumption in that case. The guidelines shall not be
18 followed:

19 (1) When the child support award proposed to be
20 made pursuant to the guidelines has been disclosed to
21 the parties and each party has made a knowing and
22 intelligent waiver of said amount, and the support
23 obligors have entered into an agreement which pro-
24 vides for the custody and support of the child or
25 children of the parties; or

26 (2) When the child support award proposed to be
27 made pursuant to the guidelines would be contrary to
28 the best interests of the child or children, or contrary
29 to the best interests of the parties.

30 (b) The Legislature, by the enactment of this article,
31 recognizes that children have a right to share in their
32 natural parents' level of living. Accordingly, guidelines
33 promulgated under the provisions of this section shall
34 not be based upon any schedule of minimum costs for
35 rearing children based upon subsistence level amounts
36 set forth by various agencies of government. The
37 Legislature recognizes that expenditures in families
38 are not made in accordance with subsistence level

39 standards, but are rather made in proportion to
40 household income, and as parental incomes increase or
41 decrease, the actual dollar expenditures for children
42 also increase or decrease correspondingly. In order to
43 insure that children properly share in their parents'
44 resources, regardless of family structure, the guide-
45 lines shall be structured so as to provide that after a
46 consideration of respective parental incomes, that
47 child support will be related, to the extent practicable,
48 to the level of living which such children would enjoy
49 if they were living in a household with both parents
50 present.

51 (c) The guidelines promulgated under the provisions
52 of this section shall take into consideration the finan-
53 cial contributions of both parents. The Legislature
54 recognizes that expenditures in households are made
55 in aggregate form and that total family income is
56 pooled to determine the level at which the family can
57 live. The guidelines shall provide for examining the
58 financial contributions of both parents in relationship
59 to total income, so as to establish and equitably
60 apportion the child support obligation. Under the
61 guidelines, the child support obligation of each parent
62 will vary proportionately according to their individual
63 incomes.

64 (d) The guidelines shall be structured so as to take
65 into consideration any preexisting support orders
66 which impose additional duties of support upon an
67 obligor outside of the instant case, and shall provide
68 direction in cases involving split or shared custody.

69 (e) The guidelines shall have application to cases of
70 divorce, paternity, actions for support, and modifica-
71 tions thereof.

72 (f) In promulgating the legislative rule provided for
73 under the provisions of this section, the director shall
74 be directed by the following legislative findings:

75 (1) That amounts to be fixed as child support should
76 not include awards for alimony, notwithstanding the
77 fact that any amount fixed as child support will impact
78 upon the living conditions of custodial parents;

79 (2) That parental expenditures on children represent
80 a relatively constant percentage of family consumption
81 as family consumption increases, so that as family
82 income increases, the family's level of consumption
83 increases, and the children should share in and benefit
84 from this increase;

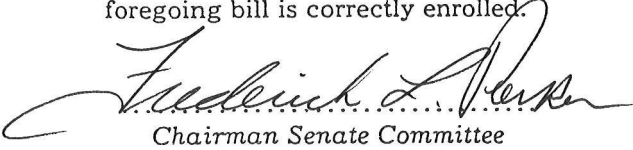
85 (3) That parental expenditures on children represent
86 a declining proportion of family income as the gross
87 income of the family increases, so that while total
88 dollar outlays for children have a positive relationship
89 to the family's gross income, the proportion of gross
90 family income allotted for the children has a negative
91 relationship to gross income;


92 (4) That expenditures on children vary according to
93 the number of children in the family, and as the
94 number of children in the family increase, the expen-
95 ditures for the children as a group increase, and the
96 expenditures on each individual child decrease; so that
97 due to increasing economies of scale and the increased
98 sharing of resources among family members, spending
99 will not increase in direct proportion to the number of
100 children;

101 (5) That as children grow older, expenditures on
102 children increase, particularly during the teenage
103 years.

104 (g) The director of the child advocate office shall
105 review the guidelines at least once every four years to
106 ensure that their application results in the determina-
107 tion of appropriate child support awards. Such four-
108 year period shall begin on the first day of July, one
109 thousand nine hundred eighty-nine.

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


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Chairman Senate Committee

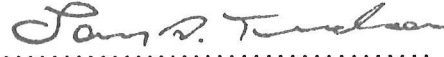

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Chairman House Committee

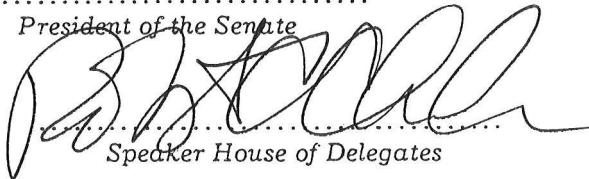
Originated in the Senate.

In effect ninety days from passage.


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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


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Speaker House of Delegates

The within is approved this the 27th
day of April 1989.


.....
Governor

PRESENTED TO THE
GOVERNOR

Date 4/20/89

Time 10:41