

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1991



ENROLLED

SENATE BILL NO. 631

(By Senator Holliday, et al)



PASSED March 9, 1991

In Effect 90 days from Passage

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Senate Bill No. 631

(BY SENATORS HOLLIDAY AND MACNAUGHTAN)

[Passed March 9, 1991; in effect ninety days from passage.]

AN ACT to amend article fifteen, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section fourteen; to amend article sixteen of said chapter by adding thereto a new section, designated section ten; to amend and reenact sections fifteen-a, fifteen-b and thirty-three, article two, chapter forty-eight of said code; to further amend said article by adding thereto a new section, designated section fifteen-c; to amend and reenact section three, article one, chapter forty-eight-a of said code; to amend and reenact sections twelve and fifteen, article two of said chapter; to further amend said article by adding thereto a new section, designated section twenty-three; to amend and reenact section three-a, article three of said chapter; to amend and reenact section one, article four of said chapter; to amend and reenact sections two and three, article five of said chapter; to amend and reenact section five, article six of said chapter; and to amend and reenact sections twelve and thirty-six, article seven of said chapter, all relating to the enforcement of family obligations generally; requiring insurers to provide coverage for children of insureds; requiring courts when establishing or modifying support orders to ascertain the ability of parties to provide medical care

for children; providing for the establishment and enforcement of medical support orders; providing for withholding from income of amounts payable as support; directing the supreme court of appeals to provide forms for petitions for modification of an order for support; requiring the disclosure of assets in an action for divorce or annulment; clarifying the meaning of the term "source of income"; changing the definition of "support" to include interest on unpaid support; providing for the distribution of amounts collected as support by the child advocate office; removing the specific requirements as to the contents of legislative rules relating to obtaining support from federal tax refunds; prescribing procedures for obtaining access to records in the possession of the children's advocate; providing that the children's advocate represents the state of West Virginia; increasing the statutory salary for secretary-clerks of the family law masters; restating that for hearings before a master, advance payment of additional fees beyond the initial fee charged shall be required; providing for interest on judgments for mature, unpaid installments of child support; directing an obligor who contests an affidavit for child support arrearages to obtain a date for hearing before the family law master; establishing the priority of writs of execution, suggestions or suggestee executions as to other legal process; providing for the amount to be withheld from the disposable income of an obligor pursuant to a suggestee execution; establishing when a notice of wage withholding is sent to an obligor; prescribing the contents of such notice; defining the misdemeanor offense of concealing the payment of income to an obligor with the intent to avoid income withholding and establishing a penalty therefor; requiring a source of income to provide income information to the children's advocate; and providing that the children's advocate represents the state of West Virginia.

Be it enacted by the Legislature of West Virginia:

That article fifteen, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section,

designated section fourteen; that article sixteen of said chapter be amended by adding thereto a new section, designated section ten; that sections fifteen-a, fifteen-b and thirty-three, article two, chapter forty-eight of said code be amended and reenacted; that said article be further amended by adding thereto a new section, designated section fifteen-c; that section three, article one, chapter forty-eight-a be amended and reenacted; that sections twelve and fifteen, article two of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section twenty-three; that section three-a, article three of said chapter be amended and reenacted; that section one, article four of said chapter be amended and reenacted; that sections two and three, article five of said chapter be amended and reenacted; that section five, article six of said chapter be amended and reenacted; and that sections twelve and thirty-six, article seven of said chapter be amended and reenacted, all to read as follows:

CHAPTER 33. INSURANCE.

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.

§33-15-14. Policies not to exclude insured's children from coverage.

1 An insurer issuing accident and sickness policies in
2 this state shall provide coverage for the child or
3 children of the insured without regard to the amount
4 of child support ordered to be paid or actually paid by
5 the insured, if any, and without regard to the fact that
6 the insured may not have legal custody of the child or
7 children or that the child or children may not be
8 residing in the home of the insured.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-10. Group policies not to exclude insured's children from coverage.

1 An insurer issuing group accident and sickness
2 policies in this state shall provide coverage for the
3 child or children of each employee or member of the
4 insured group without regard to the amount of child
5 support ordered to be paid or actually paid by such

6 employee or member, if any, and without regard to
7 the fact that the employee or member may not have
8 legal custody of the child or children or that the child
9 or children may not be residing in the home of the
10 employee or member.

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 2. DIVORCE, ANNULMENT AND SEPARATE MAINTENANCE.

§48-2-15a. Medical support enforcement.

1 (a) For the purposes of this section:

2 (1) "Custodian for the children" means a parent,
3 legal guardian, committee or other third party
4 appointed by court order as custodian of child or
5 children for whom child support is ordered.

6 (2) "Obligated parent" means a natural or adoptive
7 parent who is required by agreement or order to pay
8 for insurance coverage and medical care, or some
9 portion thereof, for his or her child.

10 (3) "Insurance coverage" means coverage for medi-
11 cal, dental, including orthodontic, optical, psychologi-
12 cal, psychiatric or other health care service.

13 (4) "Child" means a child to whom a duty of child
14 support is owed.

15 (5) "Medical care" means medical, dental, optical,
16 psychological, psychiatric or other health care service
17 for children in need of child support.

18 (6) "Insurer" means any company, trust or other
19 entity which provides insurance coverage.

20 (b) In every action to establish or modify an order
21 which requires the payment of child support, the court
22 shall ascertain the ability of each parent to provide
23 medical care for the children of the parties. The court
24 shall order one or more of the following:

25 (1) The court may order either parent or both
26 parents to provide insurance coverage for a child, if
27 such insurance coverage is available to that parent on

28 a group basis through an employer or through an
29 employee's union. If similar insurance coverage is
30 available to both parents, the court shall order the
31 child to be insured under the insurance coverage
32 which provides more comprehensive benefits. If such
33 insurance coverage is not available at the time of the
34 entry of the order, the order shall require that if such
35 coverage thereafter becomes available to either party,
36 that party shall promptly notify the other party of the
37 availability of insurance coverage for the child.

38 (2) If the court finds that insurance coverage is not
39 available to either parent on a group basis through an
40 employer, multi-employer trust or employees' union,
41 or that the group insurer is not accessible to the
42 parties, the court may order either parent or both
43 parents to obtain insurance coverage which is other-
44 wise available at a reasonable cost.

45 (3) Based upon the respective ability of the parents
46 to pay, the court may order either parent or both
47 parents to be liable for reasonable and necessary
48 medical care for a child. The court shall specify the
49 proportion of the medical care for which each party
50 shall be responsible.

51 (4) If insurance coverage is available, the court shall
52 also determine the amount of the annual deductible on
53 insurance coverage which is attributable to the chil-
54 dren and designate the proportion of the deductible
55 which each party shall pay.

56 (c) The cost of insurance coverage shall be consid-
57 ered by the court in applying the child support
58 guidelines provided for in section eight, article two,
59 chapter forty-eight-a of this code.

60 (d) Within thirty (30) days after the entry of an
61 order requiring the obligated parent to provide insur-
62 ance coverage for the children, that parent shall
63 submit to the custodian for the child written proof that
64 the insurance has been obtained or that an application
65 for insurance has been made. Such proof of insurance
66 coverage shall consist of, at a minimum:

67 (1) The name of the insurer;

68 (2) The policy number;

69 (3) An insurance card;

70 (4) The address to which all claims should be mailed;

71 (5) A description of any restrictions on usage, such as
72 prior-approval for hospital admission, and the manner
73 in which to obtain such approval;

74 (6) A description of all deductibles; and

75 (7) Five (5) copies of claim forms.

76 (e) The custodian for the child shall send the insurer
77 or the obligated parent's employer the children's
78 address and notice that the custodian will be submit-
79 ting claims on behalf of the children. Upon receipt of
80 such notice, or an order for insurance coverage under
81 this section, the obligated parent's employer, multi-
82 employer trust or union shall, upon the request of the
83 custodian for the child, release information on the
84 coverage for the children, including the name of the
85 insurer.

86 (f) A copy of the court order for insurance coverage
87 shall not be provided to the obligated parent's
88 employer or union or the insurer unless ordered by
89 the court, or unless:

90 (1) The obligated parent, within thirty (30) days of
91 receiving effective notice of the court order, fails to
92 provide to the custodian for the child written proof
93 that the insurance has been obtained or that an
94 application for insurance has been made;

95 (2) The custodian for the child serves written notice
96 by mail at the obligated parent's last known address of
97 intention to enforce the order requiring insurance
98 coverage for the child; and

99 (3) The obligated parent fails within fifteen (15) days
100 after the mailing of the notice to provide written proof
101 to the custodian for the child that the child has
102 insurance coverage.

103 (g) (1) Upon service of the order requiring insurance
104 coverage for the children the employer, multi-
105 employer trust or union shall enroll the child as a
106 beneficiary in the group insurance plan and withhold
107 any required premium from the obligated parent's
108 income or wages.

109 (2) If more than one plan is offered by the employer,
110 multi-employer trust or union, the child shall be
111 enrolled in the most comprehensive plan otherwise
112 available to the obligated parent at a reasonable cost.

113 (3) Insurance coverage for the child which is ordered
114 pursuant to the provisions of this section shall not be
115 terminated except as provided in subsection (i) of this
116 section.

117 (h) (1) The signature of the custodian for the child
118 shall constitute a valid authorization to the insurer for
119 the purposes of processing an insurance payment to
120 the provider of medical care for the child.

121 (2) No insurer, employer or multi-employer trust in
122 this state may refuse to honor a claim for a covered
123 service when the custodian for the child or the
124 obligated parent submits proof of payment for medical
125 bills for the child.

126 (3) The insurer shall reimburse the custodian for the
127 child or the obligated parent who submits copies of
128 medical bills for the child with proof of payment.

129 (4) All insurers in this state shall provide insurance
130 coverage for the child of a covered employee notwith-
131 standing the amount of support otherwise ordered by
132 the court and regardless of the fact that the child may
133 not be living in the home of the covered employee.

134 (i) When an order for insurance coverage for a child
135 pursuant to this section is in effect and the obligated
136 parent's employment is terminated, or the insurance
137 coverage for the child is denied, modified or termi-
138 nated, the insurer shall, within ten (10) days after the
139 notice of change in coverage is sent to the covered
140 employee, notify the custodian for the child and
141 provide an explanation of any conversion privileges

142 available from the insurer.

143 (j) A child of an obligated parent shall remain
144 eligible for insurance coverage until the child is
145 emancipated or until the insurer under the terms of
146 the applicable insurance policy terminates said child
147 from coverage, whichever is later in time, or until
148 further order of the court.

149 (k) If the obligated parent fails to comply with the
150 order to provide insurance coverage for the child, the
151 court shall:

152 (1) Hold the obligated parent in contempt for failing
153 or refusing to provide the insurance coverage, or for
154 failing or refusing to provide the information required
155 in subsection (d) of this section;

156 (2) Enter an order for a sum certain against the
157 obligated parent for the cost of medical care for the
158 child, and any insurance premiums paid or provided
159 for the child during any period in which the obligated
160 parent failed to provide the required coverage; and

161 (3) In the alternative, other enforcement remedies
162 available under section two and three, article five,
163 chapter forty-eight-a of this code, or otherwise avail-
164 able under law, may be used to recover from the
165 obligated parent the cost of medical care or insurance
166 coverage for the child.

167 (l) Proof of failure to maintain court ordered insur-
168 ance coverage for the child constitutes a showing of
169 substantial change in circumstances or increased need
170 pursuant to section fifteen of this article, and provides
171 a basis for modification of the child support order.

**§48-2-15b. Withholding from income on and after November
1, 1990.**

1 (a) On and after the first day of November, one
2 thousand nine hundred ninety, every order entered or
3 modified under the provisions of this article which
4 requires the payment of child support or spousal
5 support shall include a provision for automatic with-
6 holding from income of the obligor, in order to

7 facilitate income withholding as a means of collecting
8 support.

9 (b) Every such order as described in subsection (a)
10 of this section shall contain language authorizing
11 income withholding to commence without further
12 court action, as follows:

13 (1) The order shall provide that income withholding
14 will begin immediately, without regard to whether
15 there is an arrearage: (A) When a child for whom
16 support is ordered is included or becomes included in
17 a grant of assistance from the division of human
18 services or a similar agency of a sister state for aid to
19 families with dependent children benefits, medical
20 assistance only benefits, or foster care benefits; or (B)
21 when the support obligee has applied for services from
22 the child advocate office or the support enforcement
23 agency of another state or is otherwise receiving
24 services from the child advocate office as provided for
25 in chapter forty-eight-a of this code. In any case where
26 one of the parties demonstrates, and the court finds,
27 that there is good cause not to require immediate
28 income withholding, or in any case where there is
29 filed with the court a written agreement between the
30 parties which provides for an alternative arrangement,
31 such order shall not provide for income withholding to
32 begin immediately.

33 (2) The order shall also provide that income with-
34 holding will begin immediately upon the occurrence of
35 any of the following:

36 (A) When the payments which the obligor has failed
37 to make under the order are at least equal to the
38 support payable for one month, if the order requires
39 support to be paid in monthly installments;

40 (B) When the payments which the obligor has failed
41 to make under the order are at least equal to the
42 support payable for four weeks, if the order requires
43 support to be paid in weekly or biweekly installments;

44 (C) When the obligor requests the child advocate
45 office to commence income withholding; or

46 (D) When the obligee requests that such withholding
47 begin, if the request is approved by the court in
48 accordance with procedures and standards established
49 by rules and regulations promulgated by the director
50 of the child advocate office.

51 (c) For the purposes of this section, the number of
52 days support payments are in arrears shall be consid-
53 ered to be the total cumulative number of days during
54 which payments required by a court order have been
55 delinquent, whether or not such days are consecutive.

56 (d) The supreme court of appeals shall make avail-
57 able to the circuit courts standard language to be
58 included in all such orders, so as to conform such
59 orders to the applicable requirements of state and
60 federal law regarding the withholding from income of
61 amounts payable as support.

62 (e) Every support order entered by a circuit court of
63 this state prior to the first day of November, one
64 thousand nine hundred ninety, shall be considered to
65 provide for an order of income withholding, by
66 operation of law, which complies with the provisions
67 of this section, notwithstanding the fact that such
68 support order does not in fact provide for such order
69 of withholding.

§48-2-15c. Modification forms.

1 The supreme court of appeals shall make available
2 to the circuit courts a standard form for a petition for
3 modification of an order for support, which form will
4 allege that the existing order should be altered or
5 revised because of a loss or change of employment or
6 other substantial change affecting income, or that the
7 amount of support required to be paid is not within
8 fifteen percent of the child support guidelines. The
9 clerk of the circuit court shall make such forms
10 available to persons desiring to petition the court pro
11 se for a modification of the support award.

§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

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

29 (b) Disclosure forms required under this section
30 shall be filed within forty days after the service of
31 summons or at such other time as ordered by the
32 court. Information contained on such forms shall be
33 updated on the record to the date of hearing.

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

43 (d) Upon the failure by either party timely to file a

44 complete disclosure statement as may be required by
45 this section, the court may accept the statement of the
46 other party as accurate.

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

62 (f) Any assets with a fair market value of five
63 hundred dollars or more which would be considered
64 part of the estate of either or both of the parties if
65 owned by either or both of them at the time of the
66 action, but which was transferred for inadequate
67 consideration, wasted, given away or otherwise unac-
68 counted for by one of the parties, within five years
69 prior to the filing of the petition or length of the
70 marriage, whichever is shorter, shall be presumed to
71 be part of the estate and shall be subject to the
72 disclosure requirement contained in this section. With
73 respect to such transfers the spouse shall have the
74 same right and remedies as a creditor whose debt was
75 contracted at the time the transfer was made under
76 article one-a, chapter forty of this code. Transfers
77 which resulted in an exchange of assets of substan-
78 tially equivalent value need not be specifically dis-
79 closed where such assets are otherwise identified in
80 the statement of net worth.

81 (g) A person who knowingly provides incorrect
82 information pursuant to the provisions of this section
83 is guilty of false swearing.

CHAPTER 48A. ENFORCEMENT OF FAMILY OBLIGATIONS.

ARTICLE 1. GENERAL PROVISIONS.

§48A-1-3. Definitions.

1 As used in this chapter:

2 (1) “Automatic data processing and retrieval sys-
3 tem” means a computerized data processing system
4 designed to do the following:

5 (A) To control, account for and monitor all of the
6 factors in the support enforcement collection and
7 paternity determination process, including, but not
8 limited to:

9 (i) Identifiable correlation factors (such as social
10 security numbers, names, dates of birth, home
11 addresses and mailing addresses of any individual with
12 respect to whom support obligations are sought to be
13 established or enforced and with respect to any person
14 to whom such support obligations are owing) to assure
15 sufficient compatibility among the systems of different
16 jurisdictions to permit periodic screenings to deter-
17 mine whether such individual is paying or is obligated
18 to pay support in more than one jurisdiction;

19 (ii) Checking of records of such individuals on a
20 periodic basis with federal, interstate, intrastate and
21 local agencies;

22 (iii) Maintaining the data necessary to meet applica-
23 ble federal reporting requirements on a timely basis;
24 and

25 (iv) Delinquency and enforcement activities;

26 (B) To control, account for and monitor the collec-
27 tion and distribution of support payments (both
28 interstate and intrastate), the determination, collection
29 and distribution of incentive payments (both interstate
30 and intrastate), and the maintenance of accounts
31 receivable on all amounts owed, collected and
32 distributed;

33 (C) To control, account for and monitor the costs of

34 all services rendered, either directly or by exchanging
35 information with state agencies responsible for main-
36 taining financial management and expenditure
37 information;

38 (D) To provide access to the records of the depart-
39 ment of health and human resources or aid to families
40 with dependent children in order to determine if a
41 collection of a support payment causes a change
42 affecting eligibility for or the amount of aid under
43 such program;

44 (E) To provide for security against unauthorized
45 access to, or use of, the data in such system;

46 (F) To facilitate the development and improvement
47 of the income withholding and other procedures
48 designed to improve the effectiveness of support
49 enforcement through the monitoring of support pay-
50 ments, the maintenance of accurate records regarding
51 the payment of support, and the prompt provision of
52 notice to appropriate officials with respect to any
53 arrearages in support payments which may occur; and

54 (G) To provide management information on all cases
55 from initial referral or application through collection
56 and enforcement.

57 (2) "Chief judge" means the following:

58 (A) The circuit judge in a judicial circuit having
59 only one circuit judge, except for the twenty-third and
60 thirty-first judicial circuits;

61 (B) In the twenty-third and thirty-first judicial
62 circuits, a chief judge designated by the judges thereof
63 from among themselves by general order, to act as
64 chief judge for both circuits for the purposes of this
65 chapter: *Provided*, That if the judges cannot agree as
66 to who shall act as chief judge, then a chief judge shall
67 be designated for the purposes of this chapter by the
68 supreme court of appeals; or

69 (C) The chief judge of the circuit court in a judicial
70 circuit having two or more circuit judges.

71 (3) "Child advocate office" means the office within

72 the department of health and human resources
73 created under the provisions of article two of this
74 chapter, intended by the Legislature to be the single
75 and separate organizational unit of state government
76 administering programs of child and spousal support
77 enforcement and meeting the staffing and organiza-
78 tional requirements of the secretary of the federal
79 department of health and health and human resources.

80 (4) "Childrens' advocate" or "advocate" means a
81 person appointed to such position under the provisions
82 of section two, article three of this chapter.

83 (5) "Court" means a circuit court of this state, unless
84 the context in which such term is used clearly indi-
85 cates that reference to some other court is intended.
86 For the purposes of this chapter, the circuit courts of
87 the twenty-third and thirty-first judicial circuits shall
88 be considered as being in a single judicial circuit.

89 (6) "Court of competent jurisdiction" means a
90 circuit court within this state, or a court or adminis-
91 trative agency of another state having jurisdiction and
92 due legal authority to deal with the subject matter of
93 the establishment and enforcement of support obliga-
94 tions. Whenever in this chapter reference is made to
95 an order of a court of competent jurisdiction, or
96 similar wording, such language shall be interpreted so
97 as to include orders of an administrative agency
98 entered in a state where enforceable orders may by
99 law be properly made and entered by such administra-
100 tive agency.

101 (7) "Custodial parent" or "custodial parent of a
102 child" means a parent who has been granted custody
103 of a child by a court of competent jurisdiction. "Non-
104 custodial parent" means a parent of a child with
105 respect to whom custody has been adjudicated with
106 the result that such parent has not been granted
107 custody of the child.

108 (8) "Domestic relations matter" means any circuit
109 court proceeding involving child custody, child visita-
110 tion, child support or alimony.

111 (9) "Earnings" means compensation paid or payable
112 for personal services, whether denominated as wages,
113 salary, commission, bonus, or otherwise, and includes
114 periodic payments pursuant to a pension or retirement
115 program. "Disposable earnings" means that part of the
116 earnings of any individual remaining after the deduc-
117 tion from those earnings of any amounts required by
118 law to be withheld.

119 (10) "Employer" means any individual, sole proprie-
120 torship, partnership, association, public or private
121 corporation, the United States or any federal agency,
122 this state or any political subdivision of this state, any
123 other state or a political subdivision of another state,
124 and any other legal entity which hires and pays an
125 individual for his services.

126 (11) "Guardian of the property of a child" means a
127 person lawfully invested with the power, and charged
128 with the duty, of managing and controlling the estate
129 of a child.

130 (12) "Income" means any of the following:

131 (A) Commissions, earnings, salaries, wages and other
132 income due or to be due in the future to an obligor
133 from his employer and successor employers;

134 (B) Any payment due or to be due in the future to
135 an obligor from a profit-sharing plan, a pension plan,
136 an insurance contract, an annuity, social security,
137 unemployment compensation, supplemental employ-
138 ment benefits and workers' compensation;

139 (C) Any amount of money which is owing to the
140 obligor as a debt from an individual, partnership,
141 association, public or private corporation, the United
142 States or any federal agency, this state or any political
143 subdivision of this state, any other state or a political
144 subdivision of another state, or any other legal entity
145 which is indebted to the obligor.

146 (13) "Individual entitled to support enforcement
147 services under the provisions of this chapter" means:

148 (A) An individual who has applied for or is receiving

149 services from the child advocate office and who is the
150 custodial parent of a child, or the primary caretaker of
151 a child, or the guardian of the property of a child
152 when:

153 (i) Such child has a parent and child relationship
154 with an obligor who is not such custodial parent,
155 primary caretaker or guardian; and

156 (ii) The obligor with whom the child has a parent
157 and child relationship is not meeting an obligation to
158 support the child, or has not met such obligation in the
159 past; or

160 (B) An individual who has applied for or is receiving
161 services from the child advocate office and who is an
162 adult or an emancipated minor whose spouse or
163 former spouse has been ordered by a court of compe-
164 tent jurisdiction to pay spousal support to the individ-
165 ual, whether such support is denominated alimony or
166 separate maintenance, or is identified by some other
167 terminology, thus establishing a support obligation
168 with respect to such spouse, when the obligor required
169 to pay such spousal support is not meeting the obliga-
170 tion, or has not met such obligation in the past.

171 (14) "Master" or "family law master" means a
172 person appointed to such position under the provisions
173 of section one, article four of this chapter.

174 (15) "Obligee" means an individual to whom a duty
175 of support is owed, or the state of West Virginia or the
176 department of health and human resources, if support
177 has been assigned to the state or department.

178 (16) "Obligor" means a person who owes a legal duty
179 to support another person.

180 (17) "Office of the childrens' advocate" means the
181 office created in section two, article three of this
182 chapter.

183 (18) "Primary caretaker of a child" means a parent
184 or other person having actual physical custody of a
185 child without a court order granting such custody, and
186 who has been primarily responsible for exercising

187 parental rights and responsibilities with regard to such
188 child.

189 (19) "Source of income" means an employer or
190 successor employer or any other person who owes or
191 will owe income to an obligor.

192 (20) "Support" means the payment of money:

193 (A) For a child or spouse, ordered by a court of
194 competent jurisdiction, whether the payment is
195 ordered in an emergency, temporary, permanent or
196 modified order, decree or judgment of such court, and
197 the amount of unpaid support shall bear interest from
198 the date it accrued, at a rate of ten dollars upon one
199 hundred dollars per annum, and proportionately for a
200 greater or lesser sum, or for a longer or shorter time;

201 (B) To third parties on behalf of a child or spouse,
202 including, but not limited to, payments to medical,
203 dental or educational providers, payments to insurers
204 for health and hospitalization insurance, payments of
205 residential rent or mortgage payments, payments on
206 an automobile, or payments for day care; and/or

207 (C) For a mother, ordered by a court of competent
208 jurisdiction, for the necessary expenses incurred by or
209 for the mother in connection with her confinement or
210 of other expenses in connection with the pregnancy of
211 the mother.

212 (21) "Support order" means any order of a court of
213 competent jurisdiction for the payment of support,
214 whether or not for a sum certain.

ARTICLE 2. WEST VIRGINIA CHILD ADVOCATE OFFICE.

§48A-2-12. Disbursements of amounts collected as support.

1 (a) Amounts collected as child or spousal support by
2 the office shall be distributed within ten days of
3 receipt, except as otherwise specifically provided in
4 this chapter. Such amounts shall, except as otherwise
5 provided under the provisions of subsection (c) of this
6 section, be distributed as follows:

7 (1) The first fifty dollars of such amounts as are

8 collected periodically which represent monthly sup-
9 port payments shall be paid to the obligee without
10 affecting the eligibility of such person's family for
11 assistance from the department of health and human
12 resources or decreasing any amount otherwise payable
13 as assistance to such family during such month;

14 (2) Such amounts as are collected periodically which
15 are in excess of any amount paid to the family under
16 subdivision (1) of this subsection and which represent
17 monthly support payments shall be paid by the office
18 to the appropriate administrative unit of the depart-
19 ment of health and human resources to reimburse it
20 for assistance payments to the family during such
21 period (with appropriate reimbursement of the federal
22 government to the extent of its participation in the
23 financing);

24 (3) Such amounts as are in excess of amounts
25 required to reimburse the department of health and
26 human resources under subdivision (2) of this subsec-
27 tion and are not in excess of the amount required to
28 be paid during such period to the family by a court
29 order shall be paid to the obligee; and

30 (4) Such amounts as are in excess of amounts
31 required to be distributed under subdivisions (1), (2)
32 and (3) of this subsection shall be: (A) Paid by the
33 office to the appropriate administrative unit of the
34 department of health and human resources (with
35 appropriate reimbursement of the federal government
36 to the extent of its participation in the financing) as
37 reimbursement for any past assistance payments made
38 to the family for which the department has not been
39 reimbursed; or (B) if no assistance payments have
40 been made by the department which have not been
41 repaid, such amounts shall be paid to the obligee.

42 (b) (1) Whenever a family for whom support pay-
43 ments have been collected and distributed under the
44 provisions of this chapter ceases to receive assistance
45 from the department of health and human resources,
46 the office shall provide notice to the family of their
47 rights with regard to a continuation of services. Unless

48 notified by the family that services are no longer
49 desired, the office shall continue to collect amounts of
50 support payments which represent monthly support
51 payments from the obligor and pay any amount so
52 collected, which represents monthly support pay-
53 ments, to the family (without requiring any formal
54 reapplication and without the imposition of any
55 application fee) on the same basis as in the case of
56 other obligees who are not receiving assistance from
57 the department of health and human resources.

58 (2) So much of any amounts of support so collected
59 as are in excess of the payments required to be made
60 in subdivision (1) of this subsection shall be paid, first,
61 to the obligee until all past due support owed to the
62 family by the obligor has been paid. After all arrear-
63 ages owing to the family have been paid, any amounts
64 of support collected which are in excess of the
65 required support payments shall be distributed in the
66 manner provided by paragraphs (A) and (B), subdivi-
67 sion (4), subsection (a) of this section with respect to
68 excess amounts described in subsection (a) of this
69 section.

70 (c) (1) Notwithstanding the preceding provisions of
71 this section, amounts collected by the office as child
72 support for months in any period on behalf of a child
73 for whom the department of health and human
74 resources is making foster care maintenance payments
75 shall:

76 (A) Be paid by the office to the appropriate admin-
77 istrative unit of the department of health and human
78 resources to the extent necessary to reimburse the
79 department for foster care maintenance payments
80 made with respect to the child during such period
81 (with appropriate reimbursement of the federal gov-
82 ernment to the extent of its participation in financing);

83 (B) Be paid to the appropriate administrative unit of
84 the department of health and human resources to the
85 extent that the amounts collected exceed the foster
86 care maintenance payments made with respect to the
87 child during such period but do not exceed the

88 amounts required by a court order to be paid as
89 support on behalf of the child during such period; and
90 the department of health and human resources may
91 use the payments in the manner it determines will
92 serve the best interests of the child, including setting
93 such payments aside for the child's future needs or
94 making all or a part thereof available to the person
95 responsible for meeting the child's day-to-day needs;
96 and

97 (C) Be paid to the appropriate administrative unit of
98 the department of health and human resources if any
99 portion of the amounts collected remains after making
100 the payments required under paragraphs (A) and (B)
101 of this subdivision, to the extent that such portion is
102 necessary to reimburse the department of health and
103 human resources, (with appropriate reimbursement to
104 the federal government to the extent of its participa-
105 tion in the financing) for any past foster care mainte-
106 nance payments, or payments of aid to families with
107 dependent children which were made with respect to
108 the child, (and with respect to which past collections
109 have not previously been retained);

110 (2) Any balance of the amounts required to be paid
111 under the provisions of subdivision (1) shall be paid to
112 the appropriate administrative unit of the department
113 of health and human resources, for use by the depart-
114 ment in accordance with paragraph (B) of this
115 subdivision.

116 (d) Any payment required to be made under the
117 provisions of this section to a family shall be made to
118 the resident parent, legal guardian or caretaker
119 relative having custody of or responsibility for the
120 child or children.

121 (e) The director shall establish bonding require-
122 ments for employees of the office who receive, dis-
123 burse, handle, or have access to cash.

124 (f) The director shall maintain methods of adminis-
125 tration which are designed to assure that employees of
126 the office responsible for handling cash receipts shall
127 not participate in accounting or operating functions

128 which would permit them to conceal in the accounting
129 records the misuse of cash receipts: *Provided*, That the
130 director may provide for exceptions to this require-
131 ment in the case of sparsely populated areas in this
132 state where the hiring of unreasonable additional staff
133 in the local office would otherwise be necessary.

§48A-2-15. Obtaining support from federal tax refunds.

1 The director shall, by legislative rule, place in effect
2 procedures necessary for the office to obtain payment
3 of past due support from federal tax refunds from
4 overpayments made to the secretary of the treasury of
5 the United States, and shall take all steps necessary to
6 implement and utilize such procedures.

§48A-2-23. Access to records, confidentiality.

1 (a) All records in the possession of the child advocate
2 office, including records in the possession of the
3 children's advocate concerning an individual case of
4 child or spousal support, shall be kept confidential and
5 shall not be released except as provided below:

6 (1) Records shall be disclosed or withheld as
7 required by federal law or regulations promulgated
8 thereunder notwithstanding other provisions of this
9 section.

10 (2) The phone number, address, employer and other
11 information regarding the location of the obligor, the
12 obligee and the child shall only be disclosed: (A) Upon
13 his or her written consent, to the person whom the
14 consent designates; or (B) notwithstanding subdivision
15 (3), to the obligee, the obligor, the child or the
16 caretaker or representative of the child, upon order of
17 a court if the court finds that the disclosure is for a
18 bona fide purpose, is not contrary to the best interest
19 of a child and does not compromise the safety of any
20 party: *Provided*, That the identity and location of the
21 employer may be disclosed on the letters, notices and
22 pleadings of the child advocate office as necessary and
23 convenient for the determination of support amounts
24 and the establishment, investigation, modification,
25 enforcement, collection and distribution of support.

26 (3) Information and records other than the phone
27 number, address, employer and information regarding
28 the location of the obligor, the obligee and the child
29 shall be disclosed to the obligor, the obligee, the child
30 or the caretaker of the child or his or her duly
31 authorized representative, upon his or her written
32 request: *Provided*, That when the obligor requests
33 records other than collection and distribution records,
34 financial records relevant to the determination of the
35 amount of support pursuant to the guidelines, or
36 records the obligor has supplied, the child advocate
37 office shall mail a notice by first class mail to the last
38 known address of the obligee notifying him or her of
39 the request. The notice shall advise the obligee of his
40 or her right to object to the release of records on the
41 grounds that the records are not relevant to the
42 determination of the amount of support, or the estab-
43 lishment, modification, enforcement, collection or
44 distribution of support. The notice shall also advise the
45 obligee of his or her right to disclosure of records
46 provided in this section in order to determine what
47 records the child advocate office may have. In the
48 event of any objection, the children's advocate shall
49 determine whether or not the information shall be
50 released.

51 (4) Information in specific cases may be released as
52 is necessary or to determine the identity, location,
53 employment, income and assets of an obligor.

54 (5) Information and records may be disclosed to the
55 department of vital statistics, department of employ-
56 ment security, the department of workers' compensa-
57 tion, state tax department and the internal revenue
58 service, or other state or federal agencies or depart-
59 ments as may be necessary or desirable in obtaining
60 any address, employment, wage or benefit information
61 for the purpose of determining the amount of support
62 or establishing, enforcing, collecting and distributing
63 support.

64 (b) Any person who willfully violates this section
65 shall be guilty of a misdemeanor, and, upon conviction
66 thereof, shall be fined not less than one hundred nor

67 more than one thousand dollars, or confined in jail not
68 more than six months, or both fined and imprisoned.

ARTICLE 3. CHILDREN'S ADVOCATE.

§48A-3-3a. Representation by the children's advocate.

1 The Legislature recognizes a paramount interest of
2 the state in the establishment and enforcement of
3 family obligations as a function of the state in protect-
4 ing the health and welfare of the citizens of the state.
5 Accordingly, the state of West Virginia is, by operation
6 of law, a party in actions and proceedings arising from
7 the rights and obligations of persons involved in family
8 law issues. The Legislature recognizes that the chil-
9 dren's advocates, with the duties assigned to them
10 under the provisions of this chapter, represent the
11 interests of the state in carrying out such duties. The
12 Legislature further recognizes that, at times, the
13 interests of the state, while being advanced by a
14 children's advocate, may coincide with the interests of
15 the child, the obligee, the obligor, or other persons, as
16 the case may be, and the children's advocate may
17 therefore actively advance the interests of one or more
18 such persons while furthering the interests of the
19 state. It is the intent of the Legislature that under
20 such circumstances, the fact that the children's advo-
21 cate has actively advanced the interests of a party
22 other than the state shall not preclude the children's
23 advocate from advancing interests adverse to such
24 party.

ARTICLE 4. PROCEEDINGS BEFORE A MASTER.

§48A-4-1. Appointment of family law masters; term of office; vacancy; qualifications; removal; compensation and expenses; budget; location of offices; matters to be heard by master; fees for hearings; notice of master's hearing; content of notice; determination of issues by consent; hearing.

1 (a) On or before the fifteenth day of September, one
2 thousand nine hundred eighty-six, the governor shall
3 appoint family law masters in such numbers and to

4 serve such areas of the state as provided for under the
5 provisions of this article, and such initial appointments
6 of individuals as family law masters shall be for a
7 term ending on the thirtieth day of June, one thou-
8 sand nine hundred ninety. Thereafter, the length of
9 the term of the office of family law master shall be
10 four years, with terms commencing on the first day of
11 July, one thousand nine hundred ninety, and on a like
12 date in every fourth year thereafter, and ending on
13 the thirtieth day of June, one thousand nine hundred
14 ninety-four, and on a like date in every fourth year
15 thereafter. Upon the expiration of his or her term, a
16 family law master may continue to perform the duties
17 of the office until his or her successor is appointed, or
18 for sixty days after the date of the expiration of the
19 master's term, whichever is earlier. If from any cause
20 a vacancy shall occur in the office of family law
21 master, the governor shall, within thirty days after
22 such vacancy occurs, fill such vacancy by appointment
23 for the unexpired term: *Provided*, That if the remain-
24 ing portion of the unexpired term to be filled is less
25 than one year, the governor may, in his discretion,
26 simultaneously appoint an individual to the unexpired
27 term and to the next succeeding full four-year term.
28 An individual may be reappointed to succeeding terms
29 as a family law master to serve in the same or a
30 different region of the state.

31 (b) No individual may be appointed to serve as a
32 family law master unless he or she is a member in
33 good standing of the West Virginia state bar.

34 (c) Removal of a master during the term for which
35 he or she is appointed shall be only for incompetency,
36 misconduct, neglect of duty, or physical or mental
37 disability.

38 (d) A family law master may not engage in any
39 other business, occupation or employment inconsistent
40 with the expeditious, proper and impartial perfor-
41 mance of his or her duties as a judicial officer. Family
42 law masters who do not engage in the practice of
43 criminal law shall be exempted from the appointments
44 in indigent cases which would otherwise be required

45 pursuant to article twenty-one, chapter twenty-nine of
46 this code.

47 (e) All family law masters, and all necessary clerical
48 and secretarial assistants employed in the offices of
49 family law masters, shall be deemed to be officers and
50 employees in the judicial branch of state government.
51 The director of the child advocate office and the
52 commissioner of the division of human services shall
53 enter into an agreement with the administrative office
54 of the supreme court of appeals whereby the office
55 and the division shall contract to pay the administra-
56 tive office of the supreme court of appeals for the
57 services of the family law masters required to be
58 furnished under the provisions of this chapter which
59 are not otherwise payable from the family law masters
60 fund created under the provisions of section twenty-
61 two, article two of this chapter.

62 Each county commission of this state shall enter into
63 an agreement with the administrative office of the
64 supreme court of appeals whereby the administrative
65 office of the supreme court of appeals shall contract to
66 pay to the county commission a reasonable amount as
67 rent for premises furnished by the county commission
68 to the family law master and its staff, which premises
69 shall be adequate for the conduct of the duties
70 required of such master under the provisions of this
71 chapter.

72 (f) A family law master appointed under the provi-
73 sions of this article shall receive as full compensation
74 for his or her services an annual salary of thirty-five
75 thousand dollars. The secretary-clerk of the family law
76 master shall receive an annual salary of sixteen
77 thousand five hundred dollars and shall be appointed
78 by the family law master and serve at his or her will
79 and pleasure. Disbursement of salaries shall be made
80 by or pursuant to the order of the director of the
81 administrative office of the supreme court of appeals.

82 (g) Family law masters serving under the provisions
83 of this article shall be allowed their actual and
84 necessary expenses incurred in the performance of

85 their duties. Such expenses and compensation shall be
86 determined and paid by the director of the administra-
87 tive office of the supreme court of appeals under such
88 regulations as he or she may prescribe with the
89 approval of the supreme court of appeals.

90 (h) The offices of the family law masters shall be
91 distributed geographically so as to provide an office of
92 the family law master for each of the following
93 regions:

- 94 (1) The counties of Brooke, Hancock and Ohio;
- 95 (2) The counties of Marshall, Tyler and Wetzel;
- 96 (3) The counties of Pleasants, Ritchie, Wirt and
97 Wood;
- 98 (4) The counties of Calhoun, Jackson and Roane;
- 99 (5) The counties of Mason and Putnam;
- 100 (6) The county of Cabell;
- 101 (7) The counties of McDowell and Wyoming;
- 102 (8) The counties of Logan and Mingo;
- 103 (9) The county of Kanawha;
- 104 (10) The county of Raleigh;
- 105 (11) The counties of Mercer and Summers;
- 106 (12) The counties of Fayette and Nicholas;
- 107 (13) The counties of Greenbrier, Pocahontas and
108 Monroe;
- 109 (14) The counties of Braxton, Clay, Gilmer and
110 Webster;
- 111 (15) The counties of Doddridge, Harrison, Lewis and
112 Upshur;
- 113 (16) The counties of Marion and Taylor;
- 114 (17) The counties of Monongalia and Preston;
- 115 (18) The counties of Barbour, Randolph and Tucker;
- 116 (19) The counties of Grant, Hampshire, Hardy,

117 Mineral and Pendleton;

118 (20) The counties of Berkeley, Jefferson and Morgan;
119 and

120 (21) The counties of Boone, Lincoln and Wayne;

121 The governor shall appoint two masters to the office
122 of the family law master for the region of Kanawha
123 County. In each of the other regions defined by this
124 subsection, the governor shall appoint one person as
125 family law master from such region. Nothing con-
126 tained herein shall prohibit the chief justice of the
127 supreme court of appeals from temporarily assigning,
128 from time to time as caseload may dictate, a family
129 law master from one geographical region to another
130 geographical region.

131 (i) A circuit court or the chief judge thereof shall
132 refer to the master the following matters for hearing
133 to be conducted pursuant to section two of this article:
134 *Provided*, That on its own motion or upon motion of
135 a party, the circuit judge may revoke the referral of
136 a particular matter to a master if the master is
137 recused, if the matter is uncontested, or for other good
138 cause, or if the matter will be more expeditiously and
139 inexpensively heard by the circuit judge without
140 substantially affecting the rights of parties in actions
141 which must be heard by the circuit court:

142 (1) Actions to obtain orders of support brought under
143 the provisions of section one, article five of this
144 chapter;

145 (2) All actions to establish paternity under the
146 provisions of article six of this chapter: *Provided*, That
147 all actions wherein either or both of the parties have
148 demanded a trial by jury of the law and the facts shall
149 be heard by the circuit court;

150 (3) All motions for pendente lite relief affecting child
151 custody, visitation, child support or spousal support,
152 wherein either party has requested such referral or
153 the court on its own motion in individual cases or by
154 general order has referred such motions to the master:
155 *Provided*, That if the circuit court determines, in its

156 discretion, that the pleadings raise substantial issues
157 concerning the identification of separate property or
158 the division of marital property which may have a
159 bearing on an award of support, the court may decline
160 to refer a motion for support pendente lite to the
161 family law master;

162 (4) All petitions for modification of an order involv-
163 ing child custody, child visitation, child support or
164 spousal support;

165 (5) All actions for divorce, annulment or separate
166 maintenance brought pursuant to article two, chapter
167 forty-eight of this code: *Provided*, That an action for
168 divorce, annulment or separate maintenance which
169 does not involve child custody or child support shall be
170 heard by the circuit judge if, at the time of the filing
171 of the action, the parties file a written property
172 settlement agreement which has been signed by both
173 parties;

174 (6) All actions wherein an obligor is contesting the
175 enforcement of an order of support through the
176 withholding from income of amounts payable as
177 support or is contesting an affidavit of accrued sup-
178 port, filed with a circuit clerk, which seeks to collect
179 arrearages;

180 (7) All actions commenced under the provisions of
181 article seven of this chapter or under the provisions of
182 the revised uniform reciprocal enforcement of support
183 act of any other state; and

184 (8) Proceedings for the enforcement of support,
185 custody or visitation orders: *Provided*, That contempt
186 actions shall be heard by a circuit judge.

187 (j) The payment of initial fees for a hearing before
188 a master shall be paid before the commencement of
189 the hearing. Any additional hourly fees beyond the
190 initial fee shall be paid at the conclusion of the
191 hearing, unless a party is excused from payment
192 thereof under the provisions of section one, article
193 two, chapter fifty-nine of this code. Such initial fees
194 may be paid at any time prior to such hearing, but

195 shall not be required at the time the action is filed,
196 and no advance payment shall be required for addi-
197 tional fees beyond the initial fees required by this
198 section. Any payment of fees for a hearing shall be
199 refunded by the clerk of the circuit court if the master
200 verifies that such hearing was not held, upon the
201 request of the person paying such fees.

202 (k) Fees for hearings before a master shall be taxed
203 as court costs, which costs may be assessed against
204 either party or apportioned between the parties, in the
205 discretion of the master. The assessment of court costs
206 shall be made at the conclusion of the hearing and
207 included as findings in each case of a master's recom-
208 mended order. The fees for hearings before a master
209 shall be as follows:

210 (1) For an action to establish an order of support,
211 fifty dollars;

212 (2) For an action to establish paternity, one hundred
213 dollars;

214 (3) For a motion for pendente lite relief affecting
215 custody, visitation, child support or spousal support,
216 fifty dollars;

217 (4) For a petition for modification of an order
218 involving child custody, child visitation, child support
219 or spousal support, fifty dollars: *Provided*, That if the
220 matter is contested, the fee shall be fifty dollars for the
221 first hour or any portion thereof, and thirty dollars per
222 hour for each subsequent hour or any portion thereof;

223 (5) For an uncontested divorce action, fifty dollars;

224 (6) For a proceeding for the enforcement of an
225 order, fifty dollars: *Provided*, That if the matter is
226 contested, the fee shall be fifty dollars for the first
227 hour or any portion thereof, and thirty dollars per
228 hour for each subsequent hour or any portion thereof;
229 and

230 (7) For a contested divorce action matured for final
231 hearing, fifty dollars for the first hour or any portion
232 thereof, and thirty dollars per hour for each subse-

233 quent hour or any portion thereof.

234 (l) Persons entitled to notice of a master's hearing
235 shall be timely informed of:

236 (1) The time, place and nature of the hearing;

237 (2) The legal authority and jurisdiction under which
238 the hearing is to be held; and

239 (3) The matters of fact and law asserted.

240 (m) The master shall give all interested parties
241 opportunity for the submission and consideration of
242 facts, arguments, offers of settlement or proposals of
243 adjustment when time, the nature of the proceedings
244 and the public interest permit. To the extent that the
245 parties are unable to settle or compromise a contro-
246 versy by consent, the master shall provide the parties
247 a hearing and make a recommended order in accor-
248 dance with the provisions of sections two and four of
249 this article.

250 (n) The master who presides at the reception of
251 evidence pursuant to section two of this article shall
252 prepare the default order or make and enter the
253 pendente lite order provided for in section three of
254 this article, or make the recommended order required
255 by section four of this article, as the case may be.
256 Except to the extent required for disposition of ex
257 parte matters as authorized by this chapter, a master
258 may not consult a person or party on a fact in issue,
259 unless on notice and opportunity for all parties to
260 participate; nor shall the master attempt to supervise
261 or direct an employee or agent engaged in the perfor-
262 mance of investigative or prosecuting functions for a
263 prosecuting attorney, the division of human services
264 or any other agency or political subdivision of this
265 state.

ARTICLE 5. REMEDIES FOR THE ENFORCEMENT OF SUPPORT OBLIGATIONS AND VISITATION.

§48A-5-2. Arrearages; enforcement through writ of execu- tion, suggestion or suggestee execution.

1 (a) The total of any matured, unpaid installments of

2 child support required to be paid by an order entered
3 or modified by a court of competent jurisdiction, or by
4 the order of a magistrate court of this state under the
5 prior enactments of this code, shall stand, by operation
6 of law, as a decretal judgment against the obligor
7 owing such support. The amount of unpaid support
8 shall bear interest from the date it accrued, at a rate
9 of ten dollars upon one hundred dollars per annum,
10 and proportionately for a greater or lesser sum, or for
11 a longer or shorter time. A child support order shall
12 not be retroactively modified so as to cancel or alter
13 accrued installments of support. When an obligor is in
14 arrears in the payment of support which is required to
15 be paid by the terms of such order, an obligee may file
16 an "Affidavit of Accrued Support" with the clerk of
17 the circuit court, setting forth the particulars of such
18 arrearage, and requesting a writ of execution, sugges-
19 tion or suggestee execution. If the duty of support is
20 based upon a foreign support order, the obligee shall
21 first register the foreign support order with the clerk
22 in the same manner and with the same effect as such
23 orders are registered in actions under the revised
24 uniform reciprocal enforcement of support act, sec-
25 tions thirty-four, thirty-five, thirty-seven and thirty-
26 eight, article seven of this chapter: *Provided*, That a
27 copy of the reciprocal enforcement of support law of
28 the state in which the order was made need not be
29 filed with the clerk.

30 (b) The affidavit may be filed in the county wherein
31 the obligee or the obligor resides, or where the
32 obligor's source of income is located.

33 (c) The affidavit may be filed when a payment
34 required by such order has been delinquent, in whole
35 or in part, for a period of fourteen days.

36 (d) The affidavit shall:

37 (1) Identify the obligee and obligor by name and
38 address, and shall list the obligor's social security
39 number or numbers, if known;

40 (2) Name the court which entered the support order
41 and set forth the date of such entry;

42 (3) State the total amount of accrued support which
43 has not been paid by the obligor;

44 (4) List the date or dates when support payments
45 should have been paid but were not, and the amount
46 of each such delinquent payment; and

47 (5) If known, the name and address of the obligor's
48 source of income.

49 (e) Upon receipt of the affidavit, the clerk shall issue
50 a writ of execution, suggestion or suggestee execution,
51 and shall mail a copy of the affidavit and a notice of
52 the filing of the affidavit to the obligor, at his last
53 known address. If the children's advocate is not acting
54 on behalf of the obligee in filing the affidavit, the clerk
55 shall forward a copy of the affidavit and the notice of
56 the filing to the children's advocate.

57 (f) The notice provided for in subsection (e) of this
58 section shall inform the obligor that if he or she
59 desires to contest the affidavit on the grounds that the
60 amount claimed to be in arrears is incorrect or that a
61 writ of execution, suggestion or suggestee execution is
62 not proper because of mistakes of fact, he or she must,
63 within fourteen days of the date of the notice: (1)
64 Inform the children's advocate in writing of the
65 reasons why the affidavit is contested and request a
66 meeting with the children's advocate; or (2) obtain a
67 date for a hearing before the family law master and
68 mail written notice of such hearing to the obligee and
69 to the children's advocate on a form prescribed by the
70 administrative office of the supreme court of appeals
71 and made available through the office of the clerk of
72 the circuit court.

73 (g) Upon being informed by an obligor that he or she
74 desires to contest the affidavit, the children's advocate
75 shall inform the court of such fact, and the court shall
76 require the obligor to give security, post a bond, or
77 give some other guarantee to secure payment of
78 overdue support.

79 (h) The clerk of the circuit court shall make avail-
80 able form affidavits for use under the provisions of

81 this section. Such form affidavits shall be provided to
82 the clerk by the child advocate office. The notice of the
83 filing of an affidavit shall be in a form prescribed by
84 the child advocate office.

85 (i) Writs of execution, suggestions or suggestee
86 executions issued pursuant to the provisions of this
87 section shall have priority over any other legal process
88 under the laws of this state against the same income,
89 except for withholding from income of amounts
90 payable as support in accordance with the provisions
91 of section three of this article, and shall be effective
92 despite any exemption that might otherwise be appli-
93 cable to the same income.

94 (j) Notwithstanding any other provision of this code
95 to the contrary, the amount to be withheld from the
96 disposable earnings of an obligor pursuant to a sugges-
97 tee execution in accordance with the provisions of this
98 section shall be the same amount which could prop-
99 erly be withheld in the case of a withholding order
100 under the provisions of subsection (e), section three of
101 this article.

§48A-5-3. Withholding from income of amounts payable as support.

1 (a) The withholding from an obligor's income of
2 amounts payable as spousal or child support shall be
3 enforced by the children's advocate in accordance with
4 the provisions of this section. Every support order
5 heretofore or hereafter entered by a circuit court or a
6 magistrate of this state and every support order
7 entered by a court of competent jurisdiction of
8 another state shall be considered to provide for an
9 order of income withholding in accordance with the
10 provisions of section fifteen-a or fifteen-b, article two,
11 chapter forty-eight of this code, notwithstanding the
12 fact that such support order does not in fact provide
13 for such an order of withholding.

14 (b) In any case in which immediate income with-
15 holding is not required, the children's advocate shall
16 cause the mailing of a notice to the obligor pursuant
17 to this section when the support payments required by

18 the order are in arrears in an amount equal to:

19 (1) One month's support, if the order requires
20 support to be paid in monthly installments;

21 (2) Four week's support, if the order requires
22 support to be paid in weekly or biweekly installments;
23 or

24 (3) Two biweekly installments, if biweekly payments
25 are provided.

26 (c) If notice required by subsection (b) of this section
27 is appropriate, the children's advocate shall determine
28 the time for a meeting between the obligor and the
29 children's advocate and the time for a hearing before
30 the family law master, and shall then set forth in such
31 notice the times and places at which the meeting and
32 hearing will be held if withholding is contested. The
33 meeting and hearing may be scheduled on the same
34 date, but in no case shall the meeting with the
35 advocate be scheduled less than fifteen days after the
36 date the notice is mailed nor shall the hearing before
37 the master be scheduled more than twenty-one days
38 after the date the notice is mailed. The children's
39 advocate shall send such notice by first class mail to
40 the delinquent obligor. The notice shall inform the
41 delinquent obligor of the following:

42 (1) The amount owed;

43 (2) That it is proposed that there be withholding
44 from the obligor's income of amounts payable as
45 support, and that if withholding is uncontested, or is
46 contested but determined appropriate, the amount
47 withheld will be equal to the amount required under
48 the terms of the current support order, plus amounts
49 for any outstanding arrearages;

50 (3) The definition of "income" as defined in section
51 three, article one of this chapter;

52 (4) That the withholding will apply to the obligor's
53 present source of income and to any future source of
54 income;

55 (5) That any action by the obligor to purposefully

56 minimize his or her income will result in the enforce-
57 ment of support being based upon potential and not
58 just actual earnings;

59 (6) That payment of the arrearage after the date of
60 the notice is not a bar to such withholding;

61 (7) That if the obligor fails to appear at the meeting,
62 withholding will automatically occur as described in
63 the notice;

64 (8) That a mistake of fact exists only when there is
65 an error in the amount of current or overdue support
66 claimed in the notice, or there is a mistake as to the
67 identity of the obligor;

68 (9) That matters such as lack of visitation, inappro-
69 priateness of the support award, or changed financial
70 circumstances of the obligee or the obligor will not be
71 considered at any hearing held pursuant to the notice,
72 but may be raised by the filing of a separate petition;

73 (10) That if the obligor contests the withholding, in
74 writing, a meeting with the children's advocate will be
75 held at a time and place set forth in the notice, for the
76 purpose of attempting to settle any issues which are
77 contested, and that a hearing before the family law
78 master cannot be held until after the meeting with the
79 children's advocate occurs;

80 (11) That if the meeting with the children's advocate
81 fails to resolve the issues being contested, a hearing
82 before the family law master will be held at a time
83 and place set forth in the notice, and that following
84 such hearing, the master will make a recommended
85 order to the circuit court;

86 (12) That a master's recommended order as to
87 withholding will become effective when it is con-
88 firmed and entered by the circuit court, and that if the
89 obligor disagrees with the master's recommended
90 order, he or she will be given the opportunity to make
91 objections known to the circuit court; and

92 (13) That if, while the withholding is being con-
93 tested, it is determined that the obligor is in arrears in

94 an amount equal to or greater than one month's
95 support obligation, but the amount of the arrearage is
96 disputed, then income withholding for the current
97 payment of support will be instituted, and may not be
98 stayed pending a final determination as to the amount
99 of arrearages due.

100 (d) Withholding should occur when the support
101 order provides for immediate income withholding, or
102 if immediate income withholding is not so provided,
103 and the withholding is contested, then after entry of
104 the master's recommended order by the circuit court.
105 In any case where withholding should occur, the
106 source of income shall proceed to withhold so much of
107 the obligor's income as is necessary to comply with the
108 order authorizing such withholding, up to the maxi-
109 mum amount permitted under applicable law. Such
110 withholding, unless otherwise terminated under the
111 provisions of this section, shall apply to any subse-
112 quent source of income or any subsequent period of
113 time during which income is received by the obligor.

114 (e) Notwithstanding any other provision of this code
115 to the contrary which provides for a limitation upon
116 the amount which may be withheld from earnings
117 through legal process, the amount of an obligor's
118 aggregate disposable earnings for any given workweek
119 which can be withheld as support payments is to be
120 determined in accordance with the provisions of this
121 subsection, as follows:

122 (1) After ascertaining the status of the payment
123 record of the obligor under the terms of the support
124 order, the payment record shall be examined to
125 determine whether any arrearages are due for
126 amounts which should have been paid prior to a
127 twelve-week period which ends with the workweek
128 for which withholding is sought to be enforced.

129 (2) If none of the withholding is for amounts which
130 came due prior to such twelve-week period, then:

131 (A) When the obligor is supporting another spouse or
132 dependent child other than the spouse or child for
133 whom the proposed withholding is being sought, the

134 amount withheld may not exceed fifty percent of the
135 obligor's disposable earnings for that week; and

136 (B) When the obligor is not supporting another
137 spouse or dependent child as described in paragraph
138 (A) of this subdivision, the amount withheld may not
139 exceed sixty percent of the obligor's disposable earn-
140 ings for that week.

141 (3) If a part of the withholding is for amounts which
142 came due prior to such twelve-week period, then:

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

148 (B) Where the obligor is not supporting another
149 spouse or dependent child as described in paragraph
150 (A) of this subdivision, the amount withheld may not
151 exceed sixty-five percent of the obligor's disposable
152 earnings for that week.

153 (4) In addition to the percentage limitations set forth
154 in subdivisions (2) and (3) of this subsection, it shall be
155 a further limitation that when current payments plus
156 arrearages are being withheld from salaries or wages
157 in no case shall the total amounts withheld for current
158 payments plus arrearages exceed the amounts with-
159 held for current payments by an amount greater than
160 ten percent of the obligor's disposable income.

161 (5) The provisions of this subsection shall apply
162 directly to the withholding of disposable earnings of an
163 obligor regardless of whether the obligor is paid on a
164 weekly, biweekly, monthly or other basis.

165 (6) If an obligor acts so as to purposefully minimize
166 his or her income and to thereby circumvent the
167 provisions of this section which provide for withhold-
168 ing from income of amounts payable as support, the
169 amount to be withheld as support payments may be
170 based upon the obligor's potential earnings rather than
171 his or her actual earnings, and such obligor may not
172 rely upon the percentage limitations set forth in this

173 subsection which limit the amount to be withheld
174 from disposable earnings.

175 (f) The source of income of any obligor who is
176 subject to withholding, upon being given notice of
177 withholding, shall withhold from such obligor's
178 income the amount specified by the notice and pay
179 such amount to the child advocate office for distribu-
180 tion in accordance with the provisions of section four,
181 article three of this chapter. The notice given to the
182 source of income shall contain only such information
183 as may be necessary for the source of income to
184 comply with the withholding order. Such notice to the
185 source of income shall include, at a minimum, the
186 following:

187 (1) The amount to be withheld from the obligor's
188 disposable earnings, and a statement that the amount
189 to be withheld for support and other purposes, includ-
190 ing the fee specified under subdivision (3) of this
191 subsection, may not be in excess of the maximum
192 amounts permitted under section 303(b) of the federal
193 consumer credit protection act or limitations imposed
194 under the provisions of this code;

195 (2) That the source of income must send the amount
196 to be withheld from the obligor's income along with
197 such identifying information as may be required by
198 the child advocate office to the child advocate office
199 within ten days of the date the obligor is paid;

200 (3) That, in addition to the amount withheld under
201 the provisions of subdivision (1) of this subsection, the
202 source of income may deduct a fee, not to exceed one
203 dollar, for administrative costs incurred by the source
204 of income, for each withholding;

205 (4) That withholding is binding on the source of
206 income until further notice by the child advocate
207 office;

208 (5) That the source of income is subject to a fine for
209 discharging an obligor from employment, refusing to
210 employ, or taking disciplinary action against any
211 obligor because of the withholding;

212 (6) That if the source of income fails to withhold
213 income in accordance with the provisions of the notice,
214 the source of income is liable for the accumulated
215 amount the source of income should have withheld
216 from the obligor's income;

217 (7) That the withholding under the provisions of this
218 section shall have priority over any other legal process
219 under the laws of this state against the same income,
220 and shall be effective despite any exemption that
221 might otherwise be applicable to the same income;

222 (8) That the source of income may combine withheld
223 amounts from obligors' income in a single payment to
224 the child advocate office and separately identify the
225 portion of the single payment which is attributable to
226 each obligor;

227 (9) That the source of income must implement
228 withholding no later than the first pay period or first
229 date for payment of income that occurs after fourteen
230 days following the date the notice to the source of
231 income was mailed; and

232 (10) That the source of income must notify the child
233 advocate office promptly when the obligor terminates
234 his or her employment or otherwise ceases receiving
235 income from the source of income, and must provide
236 the obligor's last known address and the name and
237 address of the obligor's new source of income, if
238 known.

239 (g) The director shall, by administrative rule, estab-
240 lish procedures for promptly refunding to obligors
241 amounts which have been improperly withheld under
242 the provisions of this section.

243 (h) A source of income must send the amount to be
244 withheld from the obligor's income to the child
245 advocate office and must notify the child advocate
246 office of the date of withholding, within ten days of
247 the date the obligor is paid.

248 (i) In addition to any amounts payable as support
249 withheld from the obligor's income, the source of
250 income may deduct a fee, not to exceed one dollar, for

251 administrative costs incurred by the source of income,
252 for each withholding.

253 (j) Withholding of amounts payable as support under
254 the provisions of this section is binding on the source
255 of income until further notice by the child advocate
256 office.

257 (k) Every source of income who receives a notice of
258 withholding under the provisions of this section shall
259 implement withholding no later than the first pay
260 period or first date for the payment of income which
261 occurs after fourteen days following the date the
262 notice to the source of income was mailed.

263 (l) A source of income who employs or otherwise
264 pays income to an obligor who is subject to withhold-
265 ing under the provisions of this section must notify the
266 child advocate office promptly when the obligor
267 terminates employment or otherwise ceases receiving
268 income from the source of income, and must provide
269 the office with the obligor's last known address and
270 the name and address of the obligor's new source of
271 income, if known.

272 (m) A source of income who has more than a single
273 obligor who is subject to withholding from income
274 under the provisions of this article may combine all
275 withheld amounts into a single payment to the child
276 advocate office, with the portion thereof which is
277 attributable to each obligor being separately
278 designated.

279 (n) A source of income is liable to an obligee,
280 including the state of West Virginia or the department
281 of health and human resources where appropriate, for
282 any amount which the source of income fails to
283 withhold from income due an obligor following receipt
284 by such source of income of proper notice under
285 subsection (f) of this section: *Provided*, That a source
286 of income shall not be required to vary the normal pay
287 and disbursement cycles in order to comply with the
288 provisions of this section.

289 (o) A source of income who knowingly and willfully

290 conceals the fact that the source of income is paying
291 income to an obligor, with the intent to avoid with-
292 holding from the obligor's income of amounts payable
293 as support, is guilty of a misdemeanor, and, upon
294 conviction thereof, shall be fined not more than one
295 hundred dollars.

296 (p) If the children's advocate makes a written
297 request to a source of income to provide information
298 as to whether the source of income has paid income to
299 a specific obligor, within the preceding sixty day
300 period, the source of income shall, within fourteen
301 days thereafter, respond to such request, itemizing all
302 such income, if any, paid to the obligor during such
303 sixty day period. A source of income shall not be
304 liable, civilly or criminally, for providing such infor-
305 mation in good faith.

306 (q) Support collection under the provisions of this
307 section shall have priority over any other legal process
308 under the laws of this state against the same income,
309 and shall be effective despite any exemption that
310 might otherwise be applicable to the same income.

311 (r) Any source of income who discharges from
312 employment, refuses to employ, or takes disciplinary
313 action against any obligor subject to income withhold-
314 ing required by this section because of the existence of
315 such withholding and the obligations or additional
316 obligations which it imposes on the source of income,
317 shall be guilty of a misdemeanor, and, upon conviction
318 thereof, shall be fined not less than five hundred
319 dollars nor more than one thousand dollars.

320 (s) In any case where immediate income withhold-
321 ing is not required then, at any time following a period
322 of eighteen months during which the obligor has owed
323 no arrearages to the obligee or to the state of West
324 Virginia or any other state, if the obligee and obligor
325 agree to the termination of withholding and demon-
326 strate to the children's advocate that there is a reliable
327 alternative method by which to make the support
328 payments, they may request the children's advocate to
329 terminate withholding and such withholding from

330 income may cease until such time as further withhold-
331 ing is required by law. The director of the child
332 advocate office shall, by legislative rule, establish state
333 termination standards which will ensure, at a mini-
334 mum, that withholding will not be terminated where
335 there are indications that it is unlikely that support
336 will continue without such withholding. The mere fact
337 that all arrearages have been paid shall not be a
338 sufficient ground for the termination of withholding.

ARTICLE 6. ESTABLISHMENT OF PATERNITY.

§48A-6-5. Representation of parties.

1 (a) The children's advocate of the county where the
2 action under this section is brought shall represent the
3 state of West Virginia and shall litigate the action in
4 the best interests of the child although the action is
5 commenced in the name of a plaintiff listed in section
6 one of this article.

7 (b) The defendant shall be advised of his right to
8 counsel. In the event he files an affidavit that he is a
9 poor person within the meaning of section one, article
10 two, chapter fifty-nine of this code, counsel shall be
11 appointed to represent him. The service and expenses
12 of counsel shall be paid in accordance with the
13 provisions of article twenty-one, chapter twenty-nine
14 of this code: *Provided*, That the court shall make a
15 finding of eligibility for appointed counsel in accor-
16 dance with the requirements of said article and, if the
17 person qualifies, any blood or tissue tests ordered to be
18 taken shall be paid as part of the costs of the
19 proceeding.

20 (c) The children's advocate shall litigate the action
21 only to the extent of establishing paternity and
22 establishing and enforcing a child support order.

ARTICLE 7. REVISED UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT.

§48A-7-12. Children's advocate to represent the state and advance the interests of the child.

1 If this state is acting as an initiating state, the

2 children's advocate shall represent the state of West
3 Virginia and shall advance the best interests of the
4 child in any proceedings under this article.

§48A-7-36. Children's advocate to represent state.

1 If this state is acting either as a rendering or a
2 registering state, the children's advocate shall repre-
3 sent the state of West Virginia and shall advance the
4 best interests of the child in proceedings under
5 sections thirty-three through thirty-eight of this
6 article.

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

Homer Deck
.....
Chairman Senate Committee

Ernest C. Moore
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Parrell E. Brown
.....
Clerk of the Senate

Donald G. Kopp
.....
Clerk of the House of Delegates

Keith Brundette
.....
President of the Senate

Rollin C. Chubb
.....
Speaker House of Delegates

The within *enrolled* this the *3rd*
day of *April*, 1990.

Gaston Caperton
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/28/91

Time 10:50am