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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1992



# ENROLLED

HOUSE BILL No. H.759

(By Delegates Brown and Douglas)



Passed March 7, 1992

In Effect From Passage

**ENROLLED**  
**H. B. 4759**

(By DELEGATES BROWN AND DOUGLAS)

[Passed March 7, 1992; in effect from passage.]

AN ACT to repeal section eighteen, article two, chapter forty-eight-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal section thirty-one, article seven of said chapter; to amend and reenact section eighteen, article four, chapter twenty-three of said code; to amend article twenty-two of said chapter twenty-nine by adding thereto a new section, designated section twenty-seven-a; to amend and reenact section three, article two, chapter thirty-three of said code; to amend and reenact sections one, fifteen, seventeen and thirty-three, article two, chapter forty-eight of said code; to amend and reenact section three, article one and sections one, four, six and seven, article two, chapter forty-eight-a of said code; to further amend said article two by adding thereto two new sections, designated sections twenty-four and twenty-five; to amend and reenact section three, article three of said chapter forty-eight-a; to further amend said article three by adding thereto two new sections, designated section nine and ten; to amend and reenact section one, article five and sections one and three, article six of said chapter forty-eight-a; and to amend article five, chapter sixty-one of said code by adding thereto a new section, designated section twenty-nine, all relating to the enforcement of family obligations generally; authorizing the attachment of workers' compensation benefits for enforcing support orders; rearranging and clarifying certain current

language; compelling the director of the lottery to forward certain prize moneys to the child advocate office and to enter into written agreements to establish such collection procedure; mandating the commissioner of insurance to enforce certain provisions; redefining certain terms; injunctive relief upon ordering divorce or annulment or granting decree of separate maintenance; revising the process in which the recording of abstracts of support judgments become liens; establishing an accounting procedure; making a crime of false swearing for the deliberate failure to disclose assets; changing certain terminology consistent with government reorganization; exempting certain positions from civil service requirements; changing certain powers and duties of the director; directing employers to furnish certain information to the child advocate office; creating a crime for the failure to report such information and setting forth criminal penalties therefor; mandating all public and private entities to cooperate in locating missing parents; exceptions; prescribing duties of the children's advocate, subject to the supervision and control of the director of the child advocate office; revising duties of children's advocate with respect to investigation of support orders; providing that public agencies shall bill the child advocate office for fees and costs incurred; empowering the child advocate to subpoena certain information; authorizing the child advocate office to institute support and paternity proceedings; when child advocate may act on behalf of the department; revising conditions under which married women may file paternity actions; changing certain medical testing standards regarding paternity determination; when defendant may challenge tests; limiting period of time for additional testing; creating certain legal presumptions; providing for the admissibility of and weight to be given certain evidence; creating the crime of failing to meet an obligation to provide support; setting forth when such crime is a misdemeanor and when such crime is a felony; and establishing criminal penalties.

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

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

## **CHAPTER 23. WORKERS' COMPENSATION.**

### **ARTICLE 4. DISABILITY AND DEATH BENEFITS.**

#### **§23-4-18. Mode of paying benefits generally; exemptions of compensation from legal process.**

1 Except as provided by this section, compensation shall  
 2 be paid only to such employees or their dependents, and  
 3 shall be exempt from all claims of creditors and from  
 4 any attachment, execution or assignment other than  
 5 compensation to counsel for legal services, under the  
 6 provisions of, and subject to the limitations contained in  
 7 section five, article five of this chapter, and other than  
 8 for the enforcement of orders for child or spousal  
 9 support entered pursuant to the provisions of chapters  
 10 forty-eight and forty-eight-a of this code. Payments may  
 11 be made in such periodic installments as determined by  
 12 the commissioner in each case, but in no event less

13 frequently than semimonthly for any temporary award  
14 and monthly for any permanent award. Payments for  
15 permanent disability shall be paid on or before the third  
16 day of the month in which they are due. In all cases  
17 where compensation is awarded or increased, the  
18 amount thereof shall be calculated and paid from the  
19 date of disability.

**CHAPTER 29. MISCELLANEOUS  
BOARDS AND OFFICERS.**

**ARTICLE 22. STATE LOTTERY ACT.**

**§29-22-27a. Payment of prizes to the child advocate  
office.**

1 (a) Upon notification by the child advocate office that  
2 a person entitled to a prize or any winning ticket is  
3 delinquent in the payment of child support or spousal  
4 support, the director shall forward to the child advocate  
5 office such portion of any prize distributed directly from  
6 the state lottery office and that is available to pay all  
7 or any portion of the delinquent support payment.

8 (b) The director shall enter into a written agreement  
9 with the child advocate office for the purpose of  
10 establishing a procedure for the collection of prizes as  
11 set forth in subsection (a) of this section which shall  
12 include a method by which the child advocate office may  
13 receive the names of lottery winners as expeditiously as  
14 possible.

**CHAPTER 33. INSURANCE.**

**ARTICLE 2. INSURANCE COMMISSIONER.**

**§33-2-3. Duties of the commissioner; employment of legal  
counsel.**

1 (a) The commissioner shall enforce the provisions of  
2 this chapter and perform the duties required there-  
3 under; shall affix the commissioner's official seal to all  
4 documents and papers required to be filed in other  
5 states by domestic insurers and to other papers when an  
6 official seal is required; and shall, on or before the tenth  
7 day of each month, pay into the state treasury all fees  
8 and moneys which he or she has received during the

9 preceding calendar month.

10 (b) Notwithstanding any provisions of this code to the  
11 contrary, the commissioner may acquire such legal  
12 services as are deemed necessary, including representa-  
13 tion of the commissioner before any court or adminis-  
14 trative body. Such counsel may be employed either on  
15 a salaried basis or on a reasonable fee basis. In addition,  
16 the commissioner may call upon the attorney general for  
17 legal assistance and representation as provided by law.

## CHAPTER 48. DOMESTIC RELATIONS.

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

#### §48-2-1. Definitions.

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

12 (b) "Antenuptial agreement" or "prenuptial agree-  
13 ment" means an agreement between a man and woman  
14 before marriage, but in contemplation and generally in  
15 consideration of marriage, whereby the property rights  
16 and interests of the prospective husband and wife, or  
17 both of them, are determined, or where property is  
18 secured to either or both of them, to their separate  
19 estate, or to their children or other persons. An  
20 antenuptial agreement may include provisions which  
21 define the respective property rights of the parties  
22 during the marriage, or in the event of the death of  
23 either or both of the parties, and may provide for the  
24 disposition of marital property upon an annulment of  
25 the marriage or a divorce or separation of the parties.  
26 A prenuptial agreement is void if at the time it is made  
27 either of the parties is a minor.

28 (c) "Earnings" means compensation paid or payable  
29 for personal services, whether denominated as wages,  
30 salary, commission, bonus, or otherwise, and includes  
31 periodic payments pursuant to a pension or retirement  
32 program. "Disposable earnings" means that part of the  
33 earnings of any individual remaining after the deduc-  
34 tion from those earnings of any amounts required by law  
35 to be withheld.

36 (d) "Income" includes, but is not limited to, the  
37 following:

38 (1) Commissions, earnings, salaries, wages, and other  
39 income due or to be due in the future to an individual  
40 from his employer and successor employers;

41 (2) Any payment due or to be due in the future to an  
42 individual from a profit-sharing plan, a pension plan, an  
43 insurance contract, an annuity, social security, unem-  
44 ployment compensation, supplemental employment  
45 benefits, workers' compensation benefits, state lottery  
46 winnings and prizes, and overtime pay;

47 (3) Any amount of money which is owing to an  
48 individual as a debt from an individual, partnership,  
49 association, public or private corporation, the United  
50 States or any federal agency, this state or any political  
51 subdivision of this state, any other state or a political  
52 subdivision of another state, or any other legal entity  
53 which is indebted to the obligor.

54 (e) "Marital property" means:

55 (1) All property and earnings acquired by either  
56 spouse during a marriage, including every valuable  
57 right and interest, corporeal or incorporeal, tangible or  
58 intangible, real or personal, regardless of the form of  
59 ownership, whether legal or beneficial, whether individ-  
60 ually held, held in trust by a third party, or whether  
61 held by the parties to the marriage in some form of co-  
62 ownership such as joint tenancy or tenancy in common,  
63 joint tenancy with the right of survivorship, or any other  
64 form of shared ownership recognized in other jurisdic-  
65 tions without this state, except that marital property  
66 shall not include separate property as defined in

67 subsection (f) of this section; and

68 (2) The amount of any increase in value in the separate  
69 property of either of the parties to a marriage, which  
70 increase results from (A) an expenditure of funds which  
71 are marital property, including an expenditure of such  
72 funds which reduces indebtedness against separate  
73 property, extinguishes liens, or otherwise increases the  
74 net value of separate property, or (B) work performed  
75 by either or both of the parties during the marriage.

76 The definitions of “marital property” contained in this  
77 subsection and “separate property” contained in subsec-  
78 tion (f) of this section shall have no application outside  
79 of the provisions of this article, and the common law as  
80 to the ownership of the respective property and earnings  
81 of a husband and wife, as altered by the provisions of  
82 article three of this chapter and other provisions of this  
83 code, are not abrogated by implication or otherwise,  
84 except as expressly provided for by the provisions of this  
85 article as such provisions are applied in actions brought  
86 under this article or for the enforcement of rights under  
87 this article.

88 (f) “Separate property” means:

89 (1) Property acquired by a person before marriage; or

90 (2) Property acquired by a person during marriage in  
91 exchange for separate property which was acquired  
92 before the marriage; or

93 (3) Property acquired by a person during marriage,  
94 but excluded from treatment as marital property by a  
95 valid agreement of the parties entered into before or  
96 during the marriage; or

97 (4) Property acquired by a party during marriage by  
98 gift, bequest, devise, descent or distribution; or

99 (5) Property acquired by a party during a marriage  
100 but after the separation of the parties and before the  
101 granting of a divorce, annulment or decree of separate  
102 maintenance; or

103 (6) Any increase in the value of separate property as  
104 defined in subdivision (1), (2), (3), (4) or (5) of this



105 subsection which is due to inflation or to a change in  
106 market value resulting from conditions outside the  
107 control of the parties.

108 (g) "Separation" or "separation of the parties" means  
109 the separation of the parties next preceding the filing  
110 of an action under the provisions of this article, which  
111 separation continues, without the parties cohabiting or  
112 otherwise living together as husband and wife, and  
113 without interruption.

114 (h) "Separation agreement" means a written agree-  
115 ment entered into by a husband and wife whereby they  
116 agree to live separate and apart from each other and,  
117 in connection therewith, agree to settle their property  
118 rights; or to provide for the custody and support of their  
119 minor child or children, if any; or to provide for the  
120 payment or waiver of alimony by either party to the  
121 other; or to otherwise settle and compromise issues  
122 arising out of their marital rights and obligations.  
123 Insofar as an antenuptial agreement as defined in  
124 subsection (b) of this section affects the property rights  
125 of the parties or the disposition of property upon an  
126 annulment of the marriage, or a divorce or separation  
127 of the parties, such antenuptial agreement shall be  
128 regarded as a separation agreement under the provi-  
129 sions of this article.

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

1 (a) Upon ordering a divorce or granting a decree of  
2 separate maintenance, the court may require either  
3 party to pay alimony in the form of periodic instal-  
4 lments, or a lump sum, or both, for the maintenance of  
5 the other party. Payments of alimony and child support  
6 are to be ordinarily made from a party's employment  
7 income and other recurring earnings, but in cases where  
8 the employment income and other recurring earnings  
9 are not sufficient to adequately provide for payments of  
10 alimony and child support, the court may, upon specific  
11 findings set forth in the order, order the party required  
12 to make such payments to make the same from the  
13 corpus of his or her separate estate. An award of such

14 relief shall not be disproportionate to a party's ability  
15 to pay as disclosed by the evidence before the court.

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

20 (1) The court may provide for the custody of minor  
21 children of the parties, subject to such rights of  
22 visitation, both in and out of the residence of the  
23 custodial parent or other person or persons having  
24 custody, as may be appropriate under the  
25 circumstances.

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

29 (3) As an incident to requiring the payment of alimony  
30 or child support, the court may order either party to  
31 continue in effect existing policies of insurance covering  
32 the costs of health care and hospitalization of the other  
33 party and the minor children of the parties: *Provided,*  
34 That if the other party is no longer eligible to be covered  
35 by such insurance because of the granting of an  
36 annulment or divorce, the court may require a party to  
37 substitute such insurance with a new policy to cover the  
38 other party, or may consider the prospective cost of such  
39 insurance in awarding alimony to be paid in periodic  
40 installments. If there is no such existing policy or  
41 policies, the court shall order such health care insurance  
42 coverage to be paid for by the noncustodial parent, if  
43 the court determines that such health care insurance  
44 coverage is available to the noncustodial parent at a  
45 reasonable cost. Payments made to an insurer pursuant  
46 to this subdivision, either directly or by a deduction  
47 from wages, shall be deemed to be alimony, child  
48 support or installment payments for the distribution of  
49 marital property, in such proportion as the court shall  
50 direct: *Provided, however,* That if the court does not set  
51 forth in the order that a portion of such payments is to  
52 be deemed child support or installment payments for the  
53 distribution of marital property, then all such payments

54 made pursuant to this subdivision shall be deemed to be  
55 alimony: *Provided further*, That the designation of  
56 insurance coverage as alimony under the provisions of  
57 this subdivision shall not, in and of itself, give rise to  
58 a subsequent modification of the order to provide for  
59 alimony other than insurance for covering the costs of  
60 health care and hospitalization.

61 (4) As an incident to requiring the payment of alimony  
62 or child support, the court may grant the exclusive use  
63 and occupancy of the marital home to one of the parties,  
64 together with all or a portion of the household goods,  
65 furniture and furnishings reasonably necessary for such  
66 use and occupancy. Such use and occupancy shall be for  
67 a definite period, ending at a specific time set forth in  
68 the order, subject to modification upon the petition of  
69 either party. Except in extraordinary cases supported  
70 by specific findings set forth in the order granting  
71 relief, a grant of the exclusive use and occupancy of the  
72 marital home shall be limited to those situations where  
73 such use and occupancy is reasonably necessary to  
74 accommodate the rearing of minor children of the  
75 parties. The court may require payments to third  
76 parties in the form of home loan installments, land  
77 contract payments, rent, payments for utility services,  
78 property taxes, insurance coverage, or other expenses or  
79 charges reasonably necessary for the use and occupancy  
80 of the marital domicile. Payments made to a third party  
81 pursuant to this subdivision for the benefit of the other  
82 party shall be deemed to be alimony, child support or  
83 installment payments for the distribution of marital  
84 property, in such proportion as the court shall direct:  
85 *Provided*, That if the court does not set forth in the order  
86 that a portion of such payments is to be deemed child  
87 support or installment payments for the distribution of  
88 marital property, then all such payments made pursu-  
89 ant to this subdivision shall be deemed to be alimony.  
90 Nothing contained in this subdivision shall abrogate an  
91 existing contract between either of the parties and a  
92 third party, or affect the rights and liabilities of either  
93 party or a third party under the terms of such contract.

94 (5) As an incident to requiring the payment of

95 alimony, the court may grant the exclusive use and  
96 possession of one or more motor vehicles to either of the  
97 parties. The court may require payments to third  
98 parties in the form of automobile loan installments or  
99 insurance coverage if available at reasonable rates, and  
100 any such payments made pursuant to this subdivision  
101 for the benefit of the other party shall be deemed to be  
102 alimony or installment payments for the distribution of  
103 marital property, as the court may direct. Nothing  
104 contained in this subdivision shall abrogate an existing  
105 contract between either of the parties and a third party,  
106 or affect the rights and liabilities of either party or a  
107 third party under the terms of such contract.

108 (6) Where the pleadings include a specific request for  
109 specific property or raise issues concerning the equita-  
110 ble division of marital property as defined in section one  
111 of this article, the court shall order such relief as may  
112 be required to effect a just and equitable distribution  
113 of the property and to protect the equitable interests of  
114 the parties therein.

115 (7) Unless a contrary disposition be found appropriate  
116 and ordered pursuant to other provisions of this section,  
117 then upon the motion of either party, the court may  
118 compel the other party to deliver to the movant party  
119 any of his or her separate estate which may be in the  
120 possession or control of the respondent party, and may  
121 make such further order as is necessary to prevent  
122 either party from interfering with the separate estate  
123 of the other.

124 (8) The court shall, when allegations of abuse have  
125 been proven, enjoin the offending party from molesting  
126 or interfering with the other, or otherwise imposing any  
127 restraint on the personal liberty of the other, or  
128 interfering with the custodial or visitation rights of the  
129 other. Such order may permanently enjoin the offending  
130 party from entering the school, business or place of  
131 employment of the other for the purpose of molesting or  
132 harassing the other; or from contacting the other, in  
133 person or by telephone, for the purpose of harassment  
134 or threats; or from harassing or verbally abusing the  
135 other in a public place.

136 (9) The court may order either party to take necessary  
137 steps to transfer utility accounts and other accounts for  
138 recurring expenses from the name of one party into the  
139 name of the other party or from the joint names of the  
140 parties into the name of one party. Nothing contained  
141 in this subdivision shall affect the liability of the parties  
142 for indebtedness on any such account incurred before  
143 the transfer of such account.

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

149 (d) In any case where a divorce or annulment is  
150 granted in this state upon constructive service of  
151 process, and personal jurisdiction is thereafter obtained  
152 of the defendant in such case, the court may order all  
153 or any portion of the relief provided for in subsections  
154 (a) and (b) of this section which has been demanded or  
155 prayed for in the pleadings.

156 (e) At any time after the entry of an order pursuant  
157 to the provisions of this section, the court may, upon the  
158 verified petition of either of the parties, revise or alter  
159 such order concerning the maintenance of the parties,  
160 or either of them, and make a new order concerning the  
161 same, issuing it forthwith, as the altered circumstances  
162 or needs of the parties may render necessary to meet the  
163 ends of justice. The court may also from time to time  
164 afterward, on the verified petition of either of the  
165 parties, revise or alter such order to grant relief  
166 pursuant to subdivision (8), subsection (b) of this section,  
167 and make a new order concerning the same, issuing it  
168 forthwith, as the circumstances of the parties and the  
169 benefit of children may require. The court may also  
170 from time to time afterward, on the verified petition of  
171 either of the parties or other proper person having  
172 actual or legal custody of the minor child or children  
173 of the parties, revise or alter such order concerning the  
174 custody and support of the children, and make a new  
175 order concerning the same, issuing it forthwith, as the  
176 circumstances of the parents or other proper person or

177 persons and the benefit of the children may require:  
178 *Provided*, That an order providing for child support  
179 payments may be revised or altered for the reason, inter  
180 alia, that the existing order provides for child support  
181 payments in an amount that is less than eighty-five  
182 percent or more than one hundred fifteen percent of the  
183 amount that would be required to be paid under the  
184 child support guidelines promulgated pursuant to the  
185 provisions of section eight, article two, chapter forty-  
186 eight-a of this code. In granting relief under this  
187 subsection, the court may, where other means are not  
188 conveniently available, alter any prior order of the court  
189 with respect to the distribution of marital property, if  
190 such property is still held by the parties, and if  
191 necessary to give effect to a modification of alimony,  
192 child support or child custody or necessary to avoid an  
193 inequitable or unjust result which would be caused by  
194 the manner in which the modification will affect the  
195 prior distribution of marital property.

196 (f) In every case where a separation agreement is the  
197 basis for an award of alimony, the court, in approving  
198 the agreement, shall examine the agreement to ascer-  
199 tain whether it clearly provides for alimony to continue  
200 beyond the death of the payor party or to cease in such  
201 event. Where alimony is to be paid pursuant to the terms  
202 of a separation agreement which does not state whether  
203 the payment of alimony is to continue beyond the death  
204 of the payor party or is to cease, or where the parties  
205 have not entered into a separation agreement and  
206 alimony is to be awarded, the court shall specifically  
207 state as a part of its order whether such payments of  
208 alimony are to be continued beyond the death of the  
209 payor party or cease.

210 (g) In every case where a separation agreement is the  
211 basis for an award of alimony, the court, in approving  
212 the agreement, shall examine the agreement to ascer-  
213 tain whether it clearly provides for alimony to continue  
214 beyond the remarriage of the payee party or to cease in  
215 such event. Where alimony is to be paid pursuant to the  
216 terms of a separation agreement which does not state  
217 whether the payment of alimony is to continue beyond

218 the remarriage of the payee party or is to cease, or  
219 where the parties have not entered into a separation  
220 agreement and alimony is to be awarded, the court shall  
221 specifically state as a part of its order whether such  
222 payments of alimony are to be continued beyond the  
223 remarriage of the payee party or cease.

224 (h) In addition to the statement provided for in  
225 subsection (d), section thirteen of this article and in  
226 addition or in lieu of the disclosure requirements set  
227 forth in section thirty-three of this article, the court may  
228 order accounts to be taken as to all or any part of  
229 marital property or the separate estates of the parties,  
230 and may direct that the accounts be taken as of the date  
231 of the marriage, the date upon which the parties  
232 separated, or any other time deemed to be appropriate  
233 in assisting the court in the determination and equitable  
234 division of property.

235 (i) In determining whether alimony is to be awarded,  
236 or in determining the amount of alimony, if any, to be  
237 awarded under the provisions of this section, the court  
238 shall consider and compare the fault or misconduct of  
239 either or both of the parties and the effect of such fault  
240 or misconduct as a contributing factor to the deteriora-  
241 tion of the marital relationship. However, alimony shall  
242 not be awarded in any case where both parties prove  
243 grounds for divorce and are denied a divorce, nor shall  
244 an award of alimony under the provisions of this section  
245 be ordered which directs the payment of alimony to a  
246 party determined to be at fault, when, as a grounds  
247 granting the divorce, such party is determined by the  
248 court:

249 (1) To have committed adultery; or

250 (2) To have been convicted for the commission of a  
251 crime which is a felony, subsequent to the marriage if  
252 such conviction has become final; or

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

255 (j) Whenever under the terms of this section or section  
256 thirteen of this article a court enters an order requiring

257 the payment of alimony or child support, if the court  
258 anticipates the payment of such alimony or child  
259 support or any portion thereof to be paid out of  
260 “disposable retired or retainer pay” as that term is  
261 defined in 10 U.S.C. §1408, relating to members or  
262 former members of the uniformed services of the United  
263 States, the court shall specifically provide for the  
264 payment of an amount, expressed in dollars or as a  
265 percentage of disposable retired or retainer pay, from  
266 the disposable retired or retainer pay of the payor party  
267 to the payee party.

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

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

16 (b) Notice of the recordation of the abstract and  
17 affidavit shall be given to the person against whom the  
18 order is entered by first class mail to his or her last  
19 known address. The notice shall inform the person  
20 against whom the order is entered of his or her right  
21 to require the filing of an accounting and the right to  
22 contest the accounting, as provided for in subsection (d)  
23 of this section.

24 (c) The abstract of the order and the affidavit shall  
25 be recorded in the same manner as other abstracts of  
26 judgments are recorded, but shall not constitute a lien



27 unless both the abstract and affidavit are recorded. The  
28 abstract of judgment shall contain the name of the  
29 parties to the action in which the order of alimony, child  
30 support or separate maintenance was entered, the name  
31 of the party in whose favor such award was made, the  
32 date of the judgment and the court which rendered such  
33 judgment. In no event shall the judgment order, in its  
34 entirety, be recorded.

35 (d) The person against whom the order is entered may,  
36 at any time, by notice in writing, require the other party  
37 to file an accounting, in the office of the clerk of the  
38 circuit court, of the matured, unpaid installments of  
39 alimony, child support or separate maintenance alleged  
40 to be due and owing as of the date of recordation of the  
41 abstract of the order. Such accounting shall also be  
42 mailed, by first class mail, to the other party. If the  
43 party from whom the accounting is requested fails to file  
44 the accounting, within ten days after receipt of the  
45 written notice to do so, the lien created by such affidavit  
46 shall be discharged and extinguished. If the person  
47 against whom the order is entered desires to contest the  
48 accounting, then he or she shall, within fourteen days  
49 of the filing of the accounting, inform the other party  
50 in writing of the reasons that the accounting is contested  
51 and obtain a date for a hearing before the family law  
52 master. Forms for accounting and for the notices  
53 required by the provisions of this subsection shall be  
54 prescribed by the administrative office of the supreme  
55 court of appeals and made available through the office  
56 of the clerk of the circuit court. The lien created by such  
57 recording shall be effective as to the amount of any  
58 judgment rendered in such proceeding regardless of  
59 whether such judgment be for less or more than the sum  
60 contained in the accounting.

61 (e) The provisions of this section restricting the right  
62 of recordation of judgment orders shall not be deemed  
63 to limit the right of any person to record a judgment  
64 for a sum certain for past-due alimony, child support or  
65 separate maintenance.

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

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

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

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

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

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

79 (g) A person who knowingly provides incorrect  
80 information or who deliberately fails to disclose infor-  
81 mation pursuant to the provisions of this section is guilty  
82 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 system”  
3       means a computerized data processing system designed  
4       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 addresses  
11       and mailing addresses of any individual with respect to  
12       whom support obligations are sought to be established  
13       or enforced and with respect to any person to whom such  
14       support obligations are owing) to assure sufficient  
15       compatibility among the systems of different jurisdic-  
16       tions to permit periodic screenings to determine  
17       whether such individual is paying or is obligated to pay  
18       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 applicable  
23       federal reporting requirements on a timely basis; and

24       (iv) Delinquency and enforcement activities;

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

31       (C) To control, account for and monitor the costs of all  
32       services rendered, either directly or by exchanging  
33       information with state agencies responsible for main-

34 taining financial management and expenditure  
35 information;

36 (D) To provide access to the records of the department  
37 of health and human resources or aid to families with  
38 dependent children in order to determine if a collection  
39 of a support payment causes a change affecting eligibil-  
40 ity for or the amount of aid under such program;

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

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

51 (G) To provide management information on all cases  
52 from initial referral or application through collection  
53 and enforcement.

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

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

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

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

68 (3) "Child advocate office" means the office within the  
69 department of health and human resources created  
70 under the provisions of article two of this chapter,  
71 intended by the Legislature to be the single and separate

72 organizational unit of state government administering  
73 programs of child and spousal support enforcement and  
74 meeting the staffing and organizational requirements of  
75 the secretary of the federal department of health and  
76 human services.

77 (4) "Children's advocate" or "advocate" means a person  
78 appointed to such position under the provisions of  
79 section two, article three of this chapter.

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

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

97 (7) "Custodial parent" or "custodial parent of a child"  
98 means a parent who has been granted custody of a child  
99 by a court of competent jurisdiction. "Noncustodial  
100 parent" means a parent of a child with respect to whom  
101 custody has been adjudicated with the result that such  
102 parent has not been granted custody of the child.

103 (8) "Domestic relations matter" means any circuit  
104 court proceeding involving child custody, child visita-  
105 tion, child support or alimony.

106 (9) "Earnings" means compensation paid or payable  
107 for personal services, whether denominated as wages,  
108 salary, commission, bonus, or otherwise, and includes  
109 periodic payments pursuant to a pension or retirement  
110 program. "Disposable earnings" means that part of the

111 earnings of any individual remaining after the deduc-  
112 tion from those earnings of any amounts required by law  
113 to be withheld.

114 (10) "Employer" means any individual, sole proprie-  
115 torship, partnership, association, public or private  
116 corporation, the United States or any federal agency,  
117 this state or any political subdivision of this state, any  
118 other state or a political subdivision of another state, and  
119 any other legal entity which hires and pays an individ-  
120 ual for his services.

121 (11) "Guardian of the property of a child" means a  
122 person lawfully invested with the power, and charged  
123 with the duty, of managing and controlling the estate  
124 of a child.

125 (12) "Income" includes, but is not limited to, the  
126 following:

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

130 (B) Any payment due or to be due in the future to an  
131 obligor from a profit-sharing plan, a pension plan, an  
132 insurance contract, an annuity, social security, unem-  
133 ployment compensation, supplemental employment  
134 benefits, workers' compensation benefits, state lottery  
135 winnings and prizes, and overtime pay;

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

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

145 (A) An individual who has applied for or is receiving  
146 services from the child advocate office and who is the  
147 custodial parent of a child, or the primary caretaker of  
148 a child, or the guardian of the property of a child when:

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

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

155 (B) An individual who has applied for or is receiving  
156 services from the child advocate office and who is an  
157 adult or an emancipated minor whose spouse or former  
158 spouse has been ordered by a court of competent  
159 jurisdiction to pay spousal support to the individual,  
160 whether such support is denominated alimony or  
161 separate maintenance, or is identified by some other  
162 terminology, thus establishing a support obligation with  
163 respect to such spouse, when the obligor required to pay  
164 such spousal support is not meeting the obligation, or  
165 has not met such obligation in the past.

166 (14) “Master” or “family law master” means a person  
167 appointed to such position under the provisions of  
168 section one, article four of this chapter.

169 (15) “Obligee” means an individual to whom a duty of  
170 support is owed, or the state of West Virginia or the  
171 department of health and human resources, if support  
172 has been assigned to the state or department.

173 (16) “Obligor” means a person who owes a legal duty  
174 to support another person.

175 (17) “Office of the children’s advocate” means the  
176 office created in section two, article three of this  
177 chapter.

178 (18) “Primary caretaker of a child” means a parent or  
179 other person having actual physical custody of a child  
180 without a court order granting such custody, and who  
181 has been primarily responsible for exercising parental  
182 rights and responsibilities with regard to such child.

183 (19) “Source of income” means an employer or  
184 successor employer or any other person who owes or will  
185 owe income to an obligor.

186 (20) “Support” means the payment of money including



187 interest:

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

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

202 (C) For a mother, ordered by a court of competent  
203 jurisdiction, for the necessary expenses incurred by or  
204 for the mother in connection with her confinement or of  
205 other expenses in connection with the pregnancy of the  
206 mother.

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

**ARTICLE 2. WEST VIRGINIA CHILD ADVOCATE OFFICE.**

**§48A-2-1. Reestablishment of the West Virginia child  
advocate office.**

1 (a) There is hereby established within the department  
2 of health and human resources the child advocate office.

3 (b) After having conducted a performance and fiscal  
4 audit through its joint committee on government  
5 operations, pursuant to section nine, article ten, chapter  
6 four of this code, the Legislature hereby finds and  
7 declares the child advocate office should be continued  
8 and reestablished. Accordingly, notwithstanding the  
9 provisions of section four, article ten, chapter four of this  
10 code, the child advocate office shall continue to exist  
11 until the first day of July, one thousand nine hundred  
12 ninety-three, so that the joint committee on government

13 operations may monitor compliance by the child  
14 advocate office with the recommendations of the  
15 performance audit.

**§48A-2-4. Director; appointment; qualifications; oath of  
office; director not to hold other office or  
engage in political activity.**

1 (a) There shall be a director of the child advocate  
2 office who shall be appointed by the secretary of the  
3 department of health and human resources. The salary  
4 of the director shall be set by the commissioner and be  
5 paid with funds of the office. The director shall be  
6 allowed and paid necessary expenses incident to the  
7 performance of his or her official duties.

8 (b) The director shall be selected with special refer-  
9 ence and consideration given to his or her training,  
10 experience, capacity and interest in or relating to the  
11 child and spousal support enforcement programs  
12 administered by the child advocate office.

13 (c) Before entering upon the duties of his or her office,  
14 the director shall take and subscribe to the oath of office  
15 prescribed by section five, article IV of the West  
16 Virginia constitution, and shall execute a corporate  
17 surety bond in the sum of fifteen thousand dollars for  
18 the faithful performance of his or her duties. The bond  
19 shall be in the form prescribed by the attorney general  
20 and approved by the governor, and both the certificate  
21 of the oath and the bond shall be filed with the secretary  
22 of state. Premiums upon the bond shall be paid out of  
23 the funds of the child advocate office.

24 (d) The director shall not be a candidate for, or hold,  
25 any other public office or public employment under the  
26 federal government, or the government of this state or  
27 any of its political subdivisions, or be a member or  
28 officer of any political party committee, or serve as an  
29 election official, or engage in any political activity, other  
30 than to vote, in behalf of, or in opposition to, any  
31 candidate, or political party in an election. Any violation  
32 by the director of the provisions of this paragraph shall  
33 be cause for removal from office.

**§48A-2-6. Organization of the child advocate office.**

1 (a) Within limits of state appropriations and federal  
2 grants and subject to provisions of state and federal  
3 laws, rules and regulations, the director shall organize  
4 the office into appropriate administrative units which  
5 shall be operationally and functionally distinct and  
6 separate from any other units or programs of the  
7 department of health and human resources so that  
8 employees of the office shall not be required to perform  
9 functions or duties of the department which are outside  
10 the scope of activities of the child advocate office as  
11 defined in this chapter. Consistent with the require-  
12 ments of article six, chapter twenty-nine of this code, the  
13 director shall appoint and employ for the office such  
14 assistants and employees, as may in his or her judgment  
15 be necessary or desirable to carry out fully and in an  
16 orderly, efficient and economical manner the powers,  
17 duties and responsibilities of the office.

18 (b) Notwithstanding the provisions of section three  
19 and four, article six, chapter twenty-nine of this code  
20 relating to the manner in which additions are made to  
21 the list of positions in the classified service, and any  
22 other provision of this code to the contrary, the positions  
23 held by employees of the office shall be positions in the  
24 classified service except for children's advocate, assist-  
25 ant children's advocate, the director's secretary and  
26 those positions named in subdivisions (2),(3),(4),(9) and  
27 (12), subsection (a) of said section four.

**§48A-2-7. Powers and duties of the director; advisory council.**

1 (a) The director may promulgate legislative rules in  
2 accordance with the provisions of article three, chapter  
3 twenty-nine-a of this code where such rules are required  
4 to implement the provisions of this chapter.

5 (b) The director shall annually prepare a proposed  
6 budget for the next fiscal year. Such budget shall  
7 include all sums necessary to support the activities of  
8 the child advocate office.

9 (c) In addition to any other duties required by this

10 chapter, the director shall:

11 (1) Develop and recommend guidelines for the con-  
12 duct, operations and procedures of the office and his or  
13 her employees, including, but not limited to, the  
14 following:

15 (A) Caseload and staffing standards for employees  
16 who perform investigation and recommendation func-  
17 tions, enforcement functions and clerical functions.

18 (B) Orientation programs for recipients of services of  
19 the office.

20 (C) Public educational programs regarding domestic  
21 relations law and community resources, including  
22 financial and other counseling, and employment  
23 opportunities.

24 (D) Model pamphlets and procedural forms, which  
25 shall be distributed to each local office serving recip-  
26 ients of services.

27 (2) Provide training programs for the children's  
28 advocates and other employees of the office, to better  
29 enable them to carry out the duties described in this  
30 chapter.

31 (3) Gather and monitor relevant statistics.

32 (4) Develop standards and procedures for the transfer  
33 of part or all of the responsibilities for a case from one  
34 office to another in situations considered appropriate.

35 (5) Subject to appropriation of funds by the Legisla-  
36 ture, install in the office of each children's advocate,  
37 adequate computer hardware and software to enable the  
38 advocate to utilize word processing and other data  
39 processing functions in the preparation of pleadings and  
40 other documents required for the proper discharge of  
41 the duties of the office.

42 (6) Enter into contracts and agreements with public  
43 and private institutions.

44 (d) The director shall appoint a nine-person advisory  
45 committee, serving without compensation except as  
46 provided in subsection (e) of this section, composed of the

47 following:

48 (1) Three public members who are eligible for services  
49 with an office of the children's advocate;

50 (2) Three attorneys who are members of the West  
51 Virginia state bar with experience in domestic relations  
52 law, not more than two of whom may be employees of  
53 the department of health and human resources: *Pro-*  
54 *vided*, That one of the attorneys appointed shall be a  
55 children's advocate selected by the children's advocates  
56 throughout the state; and

57 (3) Three human service professionals who provide  
58 family counseling, not more than two of whom may be  
59 employees of the department of health and human  
60 resources.

61 Of the nine members initially appointed, one public  
62 member, one attorney and one professional shall be  
63 appointed for a term of one year; one public member,  
64 one attorney and one professional shall be appointed for  
65 a term of two years; and one public member, one  
66 attorney and one professional shall be appointed for a  
67 term of three years. After the expiration of the initial  
68 terms, appointments thereafter shall be made for terms  
69 of three years. The director shall fill any vacancies  
70 resulting from death or resignation by appointment for  
71 the unexpired term. Members of the advisory council  
72 may be reappointed.

73 (e) The advisory committee established under subsec-  
74 tion (d) of this section shall advise the director in the  
75 performance of his or her duties under this section.  
76 Advisory committee members shall be reimbursed for  
77 their actual expenses for mileage, meals, and, if  
78 necessary, lodging.

79 (f) The director shall appoint general counsel for the  
80 child advocate office to supervise and assist the child-  
81 ren's advocates in the performance of their professional,  
82 nonadministrative duties and to promote uniformity in,  
83 and increase the quality of, legal services provided by  
84 children's advocates throughout the state. Such general  
85 counsel shall also serve as counsel to the director. A

86 person appointed as general counsel shall be a member  
87 in good standing of the West Virginia state bar.  
88 Compensation and expenses of the general counsel shall  
89 be fixed by the director and paid by the child advocate  
90 office. The position of general counsel shall be a position  
91 in the classified service.

**§48A-2-24. Employment and income reporting.**

1 (a) Upon notice by the director of the child advocate  
2 office, and except as provided in subsections (b) and (c)  
3 of this section, all employers doing business in the state  
4 of West Virginia shall report to the child advocate office:

5 (1) The hiring of any person who resides or works in  
6 this state to whom the employer anticipates paying  
7 earnings; and

8 (2) The rehiring or return to work of any employee  
9 who resides or works in this state.

10 (b) Employers are not required to report the hiring,  
11 rehiring or return to work of any person who:

12 (1) Is employed for less than one month's duration; or

13 (2) Is employed sporadically so that the employee will  
14 be paid for less than three hundred fifty hours during  
15 a continuous six-month period; or

16 (3) Has gross earnings of less than three hundred  
17 dollars per month.

18 (c) The director of the child advocate office may  
19 establish additional exemptions to reduce unnecessary  
20 or burdensome reporting.

21 (d) Employers may report by mailing to the child  
22 advocate office a copy of the employee's W-4 form, by  
23 transmitting magnetic tape in a compatible format, or  
24 by any other means mutually agreed to by the employer  
25 and by the child advocate office to achieve timely and  
26 complete reporting.

27 (e) Employers shall submit a report within thirty-five  
28 days of the date of the hiring, rehiring or return to work  
29 of the employee. The report shall include the employee's  
30 name, address, social security number, and date of birth

31 and the employer's name and address, any different  
32 address of the payroll office and the employer's federal  
33 tax identification number.

34 (f) An employer of an obligor shall provide to the child  
35 advocate office, upon its written request, information  
36 regarding the obligor's employment, wages or salary,  
37 medical insurance, and location of employment. The  
38 information required under this subsection is in addition  
39 to the information required by subsection (e).

40 (g) An employer who fails to report in accordance with  
41 the provisions of this section shall be guilty of a  
42 misdemeanor, and, upon conviction thereof, shall be  
43 fined not less than five hundred dollars nor more than  
44 one thousand dollars.

45 (h) Employers required to report under this section  
46 may assess each employee so reported one dollar for the  
47 administrative costs of reporting.

**§48A-2-25. Access to information.**

1 (a) All state, county and municipal agencies, offices  
2 and employers receiving a request for information and  
3 assistance from the child advocate office shall cooperate  
4 with the office in the location of parents who have  
5 abandoned and deserted children and shall provide the  
6 office with all available pertinent information concern-  
7 ing the location, income and property of those parents.

8 (b) Notwithstanding any other provision of law to the  
9 contrary, any entity conducting business in this state or  
10 incorporated under the laws of this state shall, upon  
11 certification by the office that the information is needed  
12 to locate a parent for the purpose of collecting child  
13 support, provide the office with the following informa-  
14 tion about the parent: Full name, social security  
15 number, date of birth, home address, wages and number  
16 of dependents listed for income tax purposes: *Provided,*  
17 That no entity may provide any information obtained in  
18 the course of providing legal services, medical treatment  
19 or medical services.

**ARTICLE 3. CHILDREN'S ADVOCATE.**

**§48A-3-3. Duties of the children's advocate.**

1 Subject to the control and supervision of the director:

2 (a) The children's advocate shall supervise and direct  
3 the secretarial, clerical and other employees in his or  
4 her office in the performance of their duties as such  
5 performance affects the delivery of legal services. The  
6 children's advocate will provide appropriate instruction  
7 and supervision to employees of his or her office who are  
8 nonlawyers, concerning matters of legal ethics and  
9 matters of law, in accordance with applicable state and  
10 federal statutes, rules, and regulations.

11 (b) In accordance with the requirements of rule 5.4(c)  
12 of the rules of professional conduct as promulgated and  
13 adopted by the supreme court of appeals, the children's  
14 advocate shall not permit a nonlawyer who is employed  
15 by the department of health and human resources in a  
16 supervisory position over the children's advocate to  
17 direct or regulate the advocate's professional judgment  
18 in rendering legal services to recipients of services in  
19 accordance with the provisions of this chapter; nor shall  
20 any nonlawyer employee of the department attempt to  
21 direct or regulate the advocate's professional judgment.

22 (c) The children's advocate shall make available to the  
23 public an informational pamphlet, designed in consul-  
24 tation with the director. The informational pamphlet  
25 shall explain the procedures of the court and the  
26 children's advocate; the duties of the children's advocate;  
27 the rights and responsibilities of the parties; and the  
28 availability of human services in the community. The  
29 informational pamphlet shall be provided as soon as  
30 possible after the filing of a complaint or other initiating  
31 pleading. Upon request, a party to a domestic relations  
32 proceeding shall receive an oral explanation of the  
33 informational pamphlet from the office of the children's  
34 advocate.

35 (d) The children's advocate shall act to establish the  
36 paternity of every child born out of wedlock for whom  
37 paternity has not been established, when such child's  
38 primary caretaker is an applicant for or recipient of aid  
39 to families with dependent children, and when such



40 primary caretaker has assigned to the division of human  
41 services any rights to support for the child which might  
42 be forthcoming from the putative father: *Provided*, That  
43 if the children's advocate is informed by the secretary  
44 of the department of health and human resources or his  
45 or her authorized employee that it has been determined  
46 that it is against the best interest of the child to establish  
47 paternity, the children's advocate shall decline to so act.  
48 The children's advocate, upon the request of any  
49 primary caretaker of a child born out of wedlock,  
50 regardless of whether such primary caretaker is an  
51 applicant or recipient of aid to families with dependent  
52 children, shall undertake to establish the paternity of  
53 such child.

54 (e) The children's advocate shall undertake to secure  
55 support for any individual who is receiving aid to  
56 families with dependent children when such individual  
57 has assigned to the division of human services any rights  
58 to support from any other person such individual may  
59 have: *Provided*, That if the children's advocate is  
60 informed by the secretary of the department of health  
61 and human resources or his or her authorized employee  
62 that it has been determined that it is against the best  
63 interests of a child to secure support on the child's  
64 behalf, the children's advocate shall decline to so act.  
65 The children's advocate, upon the request of any  
66 individual, regardless of whether such individual is an  
67 applicant or recipient of aid to families with dependent  
68 children, shall undertake to secure support for the  
69 individual. If circumstances require, the children's  
70 advocate shall utilize the provisions of article seven of  
71 this chapter and any other reciprocal arrangements  
72 which may be adopted with other states for the  
73 establishment and enforcement of support obligations,  
74 and if such arrangements and other means have proven  
75 ineffective, the children's advocate may utilize the  
76 federal courts to obtain and enforce court orders for  
77 support.

78 (f) The children's advocate shall pursue the enforce-  
79 ment of support orders through the withholding from  
80 income of amounts payable as support:

81 (1) Without the necessity of an application from the  
82 obligee in the case of a support obligation owed to an  
83 obligee to whom services are already being provided  
84 under the provisions of this chapter; and

85 (2) On the basis of an application for services in the  
86 case of any other support obligation arising from a  
87 support order entered by a court of competent  
88 jurisdiction.

89 (g) The children's advocate may decline to commence  
90 an action to obtain an order of support under the  
91 provisions of section one, article five of this chapter if  
92 an action for divorce, annulment, or separate mainte-  
93 nance is pending, or the filing of such action is  
94 imminent, and such action will determine the issue of  
95 support for the child: *Provided*, That such action shall  
96 be deemed to be imminent if it is proposed by the  
97 obligee to be commenced within the twenty-eight days  
98 next following a decision by the children's advocate that  
99 an action should properly be brought to obtain an order  
100 for support.

101 (h) If the child advocate office, through the children's  
102 advocate, shall undertake paternity determination  
103 services, child support collection, or support collection  
104 services for a spouse or former spouse upon the written  
105 request of an individual who is not an applicant or  
106 recipient of assistance from the division of human  
107 services, the office may impose an application fee for  
108 furnishing such services. Such application fee shall be  
109 in a reasonable amount, not to exceed twenty-five  
110 dollars, as determined by the director: *Provided*, That  
111 the director may fix such amount at a higher or lower  
112 rate which is uniform for this state and all other states  
113 if the secretary of the federal department of health and  
114 human services determines that a uniform rate is  
115 appropriate for any fiscal year to reflect increases or  
116 decreases in administrative costs. Any cost in excess of  
117 the application fee so imposed may be collected from the  
118 obligor who owes the child or spousal support obligation  
119 involved.

**§48A-3-9. Billing for fees and costs.**

1 A state or county official and the clerk of any court  
2 who charges a deposit, library fee, filing fee or a fee for  
3 filing or copying documents or other service, if the  
4 filing, copying or service is for the child advocate office  
5 shall bill the child advocate office monthly.

**§48A-3-10. Subpoenas.**

1 In order to obtain financial and medical insurance  
2 information pursuant to the establishment, enforcement  
3 and modification provisions set forth in chapters forty-  
4 eight or forty-eight-a of this code, the children's  
5 advocate may serve, by certified mail or personal  
6 service, an administrative subpoena on any person,  
7 corporation, partnership, financial institution, labor  
8 union or state agency, for an appearance or for produc-  
9 tion of financial or medical insurance information. In  
10 case of disobedience to the subpoena, the children's  
11 advocate may invoke the aid of any circuit court in  
12 requiring the appearance or production of records and  
13 financial documents.

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

**§48A-5-1. Action to obtain an order for support of minor  
child.**

1 (a) An action may be brought in circuit court to obtain  
2 an order for the support of a minor child when:

3 (1) Such child has a parent and child relationship with  
4 an obligor;

5 (2) Such obligor is not the primary caretaker or  
6 guardian of the child;

7 (3) The obligor is not meeting an obligation to support  
8 the child;

9 (4) An enforceable order for the support of the child  
10 by the obligor has not been entered by a court of  
11 competent jurisdiction; and

12 (5) There is no pending action for divorce, separate  
13 maintenance, or annulment in which the obligation of  
14 support owing from the obligor to the child is at issue.

15 (b) An action may be brought under the provisions of  
16 subsection (a) of this section by:

17 (1) A custodial parent of a child, when the divorce  
18 order or other order which granted custody did not  
19 make provision for the support of the child by the  
20 obligor;

21 (2) A primary caretaker of a child;

22 (3) A guardian of the property of a child or the  
23 committee for a child; or

24 (4) The department of health and human resources, or  
25 the child advocate office on its behalf, when the  
26 department is providing assistance on behalf of the child  
27 in the form of aid to families with dependent children,  
28 and an assignment of any right to support has been  
29 assigned to the department.

30 (c) An action under the provisions of this section may  
31 be brought in the county where the obligee, the obligor  
32 or the child resides.

33 (d) If an action for child support is brought under the  
34 provisions of this section by an obligee against his or her  
35 spouse, such obligee may also seek spousal support from  
36 the obligor, unless such support has been previously  
37 waived by agreement or otherwise.

38 (e) Every order of support heretofore or hereafter  
39 entered or modified under the provisions of this section  
40 shall include a provision for the income withholding in  
41 accordance with the provisions of section fifteen-a or  
42 fifteen-b, article two, chapter forty-eight of this code.

43 (f) At any time after the entry of an order for support,  
44 the court may, upon the verified petition of an obligee  
45 or the obligor, revise or alter such order, and make a  
46 new order, as the altered circumstances or needs of a  
47 child, an obligee, or the obligor may render necessary  
48 to meet the ends of justice.

#### **ARTICLE 6. ESTABLISHMENT OF PATERNITY.**

##### **§48A-6-1. Action for establishment of paternity.**

1 (a) A civil action to establish the paternity of a child

2 and to obtain an order of support for the child may be  
3 instituted, by verified complaint, in the circuit court of  
4 the county where the plaintiff, the defendant or the child  
5 resides. Such action may be brought by any of the  
6 following persons:

7 (1) An unmarried woman with physical or legal  
8 custody of a child to whom she gave birth;

9 (2) A married woman with physical or legal custody  
10 of a child to whom she gave birth, if the complaint  
11 alleges that:

12 (A) Such married woman lived separate and apart  
13 from her husband preceding the birth of the child;

14 (B) Such married woman did not cohabit with her  
15 husband at any time during such separation and that  
16 such separation has continued without interruption; and

17 (C) The defendant, rather than her husband, is the  
18 father of the child.

19 (3) Any person, including the state of West Virginia  
20 or the department of health and human resources, or the  
21 child advocate office on its behalf, who is not the mother  
22 of the child, but who has physical or legal custody of  
23 such child;

24 (4) The guardian or committee of such child;

25 (5) The next friend of such child when the child is a  
26 minor;

27 (6) By such child in his own right at any time after  
28 the child's eighteenth birthday but prior to the child's  
29 twenty-first birthday; or

30 (7) A man purporting to be the father of a child born  
31 out-of-wedlock, when there has been no prior judicial  
32 determination of paternity.

33 (b) A person who has sexual intercourse in this state  
34 submits to the jurisdiction of the courts of this state for  
35 an action brought under this article with respect to a  
36 child who was conceived by that act of intercourse.  
37 Service of process may be perfected according to the  
38 rules of civil procedure.

39 (c) If the person against whom the action is brought  
40 has failed to plead or otherwise defend the action after  
41 proper service has been obtained, judgment by default  
42 may be issued by the court as provided by the rules of  
43 civil procedure.

**§48A-6-3. Medical testing procedures to aid in the  
determination of paternity.**

1 (a) The court may, on its own motion, or shall upon  
2 the motion of any party, order the mother, her child and  
3 the man to submit to blood tests or tissue tests to aid  
4 the court in proving or disproving paternity. Such  
5 motion may be made, upon ten days' written notice to  
6 the mother and alleged father, without the necessity of  
7 filing a complaint. If such tests are ordered, the court  
8 shall direct that the inherited characteristics, including,  
9 but not limited to, blood types, be determined by  
10 appropriate testing procedures at a hospital, independ-  
11 ent medical institution or independent medical labora-  
12 tory, duly licensed under the laws of this state, or any  
13 other state, and shall appoint an expert qualified as an  
14 examiner of genetic markers to analyze and interpret  
15 the results and to report to the court. The court shall  
16 consider the results as follows:

17 (1) Blood or tissue test results which exclude the man  
18 as the father of the child are admissible and shall be  
19 clear and convincing evidence of nonpaternity and the  
20 court shall, upon considering such evidence, dismiss the  
21 action.

22 (2) Blood or tissue test results which show a statistical  
23 probability of paternity of less than ninety-eight percent  
24 are admissible and shall be weighed along with other  
25 evidence of the defendant's paternity.

26 (3) Undisputed blood or tissue test results which show  
27 a statistical probability of paternity of more than ninety-  
28 eight percent shall, when filed with the court, legally  
29 establish the man as the father of the child for all  
30 purposes and child support may be established pursuant  
31 to the provisions of this chapter.

32 (4) If the defendant desires to challenge the results of

33 the blood or tissue tests or the expert's analysis of  
34 inherited characteristics, he shall file a written protest  
35 within thirty days of the filing of such test results, and  
36 serve a copy of such protest upon the other party. The  
37 court, upon reasonable request of a party, shall order  
38 that additional tests be made by the same laboratory or  
39 another laboratory within thirty days of the entry of  
40 such order, at the expense of the party requesting  
41 additional testing. If the results of the blood or tissue  
42 tests or the expert's analysis which show a statistical  
43 probability of paternity of more than ninety-eight  
44 percent are confirmed by the additional testing, then  
45 such results are admissible evidence which is clear and  
46 convincing evidence of paternity. The admission of such  
47 evidence creates a presumption that the defendant is the  
48 father.

49 (b) Documentation of the chain of custody of the blood  
50 or tissue specimens is competent evidence to establish  
51 such chain of custody. A verified expert's report shall  
52 be admitted at trial unless a challenge to the testing  
53 procedures or a challenge to the results of test analysis  
54 has been made before trial. The costs and expenses of  
55 making such tests shall be paid by the parties in  
56 proportions and at times determined by the court.

## CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

### ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.

#### **§61-5-29. Failure to meet an obligation to provide support to a minor; penalties.**

1 (1) A person who (a) persistently fails to provide  
2 support which he or she can reasonably provide and  
3 which he or she knows he or she has a duty to provide  
4 to a minor; or (b) is subject to court order to pay any  
5 amount for the support of a minor child and is delin-  
6 quent in meeting the full obligation established by such  
7 order and has been so delinquent for a period of at least  
8 six months duration, is guilty of a misdemeanor, and,  
9 upon conviction thereof, shall be fined not less than one  
10 hundred dollars nor more than one thousand dollars, or  
11 imprisoned in the county jail for not more than one year,  
12 or both fined and imprisoned.

13       (2) A person who persistently fails to provide support  
14       which he or she can reasonably provide and which he  
15       or she knows he or she has a duty to provide to a minor  
16       by virtue of a court or administrative order and the  
17       failure results in (a) an arrearage of not less than ten  
18       thousand dollars; or (b) twelve consecutive months  
19       without payment of support, is guilty of a felony, and,  
20       upon conviction thereof, shall be fined not less than one  
21       hundred dollars nor more than one thousand dollars, or  
22       imprisoned for not less than one year nor more than  
23       three years, or both fined and imprisoned.



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

*James Heck*

Chairman Senate Committee

*Ernest C. Moore*

Chairman House Committee

Originating in the House.

Takes effect from passage.

*David E. Schmes*

Clerk of the Senate

*Donald D. Koep*

Clerk of the House of Delegates

*Paul Boudette*

President of the Senate

*Robert A. Cole*

Speaker of the House of Delegates

The within is approved this the 27<sup>th</sup> day of March 1992.

*William W. Gaston*  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/26/92

Time 3:10 pm