

SB 0567

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STATE OF WEST VIRGINIA

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1995



## ENROLLED

SENATE BILL NO. 567

(By Senator Wooton, et al)



PASSED March 11, 1995

In Effect 90 days from Passage

**ENROLLED**

**Senate Bill No. 567**

(BY SENATORS WOOTON, WIEDEBUSCH, ANDERSON, BOWMAN,  
BUCKALEW, DITTMAR, GRUBB, MILLER, ROSS, SCOTT,  
WAGNER, WHITE AND YODER)

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[Passed March 11, 1995; in effect ninety days from passage.]

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AN ACT to repeal sections three-a, four, six, nine and ten, article three, chapter forty-eight-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal sections three-a, seven and seven-a, article five of said chapter; to amend and reenact section one, article two, chapter five-f of said code; to amend and reenact section five-d, article ten, chapter eleven of said code; to amend and reenact section three, article two-e, chapter sixteen of said code; to amend and reenact section eighteen-b, article five of said chapter; to amend and reenact section two, article five-b of said chapter; to further amend said article by adding thereto a new section, designated section thirteen; to amend and reenact section two, article twenty-one, chapter twenty-nine of said code; to amend and reenact section twenty-

seven-a, article twenty-two of said chapter; to amend and reenact sections fifteen-a and fifteen-b, article two, chapter forty-eight of said code; to further amend said article by adding thereto a new section, designated section thirty-seven; to amend and reenact section three, article one, chapter forty-eight-a of said code; to further amend said article by adding thereto a new section, designated section three-a; to amend and reenact article two of said chapter; to amend article three of said chapter by adding thereto a new section, designated section eleven; to amend and reenact section twenty-two, article four of said chapter; to amend and reenact sections one, three and eight, article five of said chapter; to amend and reenact sections one, three, four, five and six, article six of said chapter; to amend and reenact sections twelve and thirty-six, article seven of said chapter; and to amend and reenact section one, article two, chapter fifty-nine of said code, all relating generally to reorganizing the functions and offices of administrative agencies responsible for obtaining and enforcing support orders and establishing paternity; providing for the transfer and incorporation of agencies and boards and changing references from the child advocate office to the child support enforcement division; providing for the confidentiality and disclosure of tax returns and return information and changing references from the child advocate office to the child support enforcement division; authorizing the promulgation of legislative rules ensuring adequate care and accommodations for consumers of birthing centers and requiring birthing centers to implement a program for establishment of paternity; limiting the use of social security numbers by the division of vital statistics; requiring hospitals and institutions to implement a program for establishment of paternity as a condition of licensure; requiring public and private hospitals and birthing centers to establish a hospital-based paternity program; defining certain terms related to public defender services and removing a requirement that public defender services be provided

in paternity actions; providing for the payment of prizes under the state lottery act to be made to the child support enforcement division; providing for medical support enforcement and changing references from the child advocate office to the child support enforcement division; providing for the withholding from income of amounts due as support and changing references from the child advocate office to the child support enforcement division; providing for the calculation of interest on support obligations arising from domestic relations actions; defining certain terms related to the enforcement of family obligations; providing for the calculation of interest on support obligations arising from actions to establish and enforce support orders; establishing the West Virginia support enforcement commission; prescribing the membership of the commission and qualifications and eligibility for membership; describing terms of office and conditions of membership; requiring members to subscribe to an oath of office; providing for a commission chairman; providing for compensation and expenses of commission members; prescribing meeting requirements; authorizing the governor to remove commission members for cause; prescribing the general duties of the commission; describing the general powers of the commission; requiring certain rulemaking by the commission; establishing the child support enforcement division within the department of health and human resources; providing for the appointment of a director of the division; providing for organization of the division and its employees; fixing supervisory responsibilities within the division; prescribing the general powers and duties of the division; requiring the promulgation of legislative rules establishing guidelines for child support awards; creating a "child support enforcement fund" in the state treasury; prescribing certain fees to be assessed in actions related to establishing and enforcing support orders; requiring certain provisions to be included in contracts for providing services to the division; providing that attorneys employed by the division or providing

services to the division under contract represent the state or the division; requiring establishment of a parent locator service; requiring cooperation with other states in the enforcement of support obligations; providing for the disbursement of amounts collected as support; requiring support payments to be made to the division; authorizing the establishment of a data processing and retrieval system by the division; establishing procedures for obtaining support from federal tax refunds, state income tax refunds, and unemployment compensation benefits; requiring the division to provide obligees and obligors with statements of account; establishing a central registry of child support orders; authorizing the division to issue administrative subpoenas; requiring periodic investigation and review of support orders; providing for a form to identify child support payments; providing for billing of fees and costs; assenting to the purpose of federal laws; requiring the publicizing of the availability of support enforcement services; providing for the confidentiality of records of the division; prescribing when access may be had to information of the division; authorizing the governor, by executive order to transfer the division and the commission to the department of tax and revenue or the department of administration; providing for the repeal of article three, chapter forty-eight-a by operation of law upon the promulgation by the commission of emergency legislative rules; providing for the budget of the family law master system; prescribing actions which may be brought to obtain an order of support; providing for the withholding from income of amounts payable as support; providing for procedures before a family law master if a person contests action proposed to be taken against him; prescribing a civil action to establish paternity; providing for medical testing procedures to aid in the determination of paternity and allocating the costs of such tests; providing for the establishment of paternity and the duty to support; providing for the representation of the parties in a paternity action; providing for the establish-

ment of paternity through an acknowledgement by the natural father; providing that in interstate support proceedings, attorneys employed by the division and contract attorneys represent the division or the state; and providing for the waiver of payment of fees and costs by persons financially unable to pay.

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

1 That sections three-a, four, six, nine, ten, article three,  
2 chapter forty-eight-a of the code of West Virginia, one  
3 thousand nine hundred thirty-one, as amended, be  
4 repealed; that sections three-a, seven and seven-a, article  
5 five of said chapter be repealed; that section one, article  
6 two, chapter five-f of said code be amended and reen-  
7 acted; that section five-d, article ten, chapter eleven of  
8 said code be amended and reenacted; that section three,  
9 article two-e, chapter sixteen of said code be amended  
10 and reenacted; that section eighteen-b, article five of  
11 said chapter be amended and reenacted; that section  
12 two, article five-b of said chapter be amended and  
13 reenacted; that said article be further amended by  
14 adding thereto a new section, designated section thir-  
15 teen; that section two, article twenty-one, chapter  
16 twenty-nine of said code be amended and reenacted; that  
17 section twenty-seven-a, article twenty-two of said  
18 chapter be amended and reenacted; that sections fifteen-  
19 a and fifteen-b, article two, chapter forty-eight of said  
20 code be amended and reenacted; that said article two be  
21 further amended by adding thereto a new section,  
22 designated section thirty-seven; that section three,  
23 article one, chapter forty-eight-a of said code be  
24 amended and reenacted; that said article one be further  
25 amended by adding thereto a new section, designated  
26 section three-a; that article two of said chapter be  
27 amended and reenacted; that article three of said chapter  
28 be amended by adding thereto a new section, designated  
29 section eleven; that section twenty-two, article four of  
30 said chapter be amended and reenacted; that sections  
31 one, three and eight, article five of said chapter be

32 amended and reenacted; that sections one, three, four,  
33 five and six, article six of said chapter be amended and  
34 reenacted; that sections twelve and thirty-six, article  
35 seven of said chapter be amended and reenacted; and  
36 that section one, article two, chapter fifty-nine of said  
37 code be amended and reenacted, all to read as follows:

#### CHAPTER 4. THE LEGISLATURE.

##### ARTICLE 10. THE WEST VIRGINIA SUNSET LAW.

##### §4-10-5. Termination of agencies or boards following preliminary performance reviews.

1 The following agencies or boards shall be terminated  
2 on the date indicated, but no agency or board shall be  
3 terminated under this section unless a preliminary  
4 performance review has been conducted upon such  
5 agency or board:

6 (1) On the first day of July, one thousand nine hundred  
7 ninety-four: Farm management commission; state  
8 structural barriers compliance board; share in your  
9 future commission.

10 (2) On the first day of July, one thousand nine hundred  
11 ninety-five: Emergency medical services advisory  
12 council; commission on charitable organizations; infor-  
13 mation system advisory commission; West Virginia  
14 labor-management council; board of social work exam-  
15 iners; the rural health initiative advisory panel; the  
16 marketing and development divisions of the department  
17 of agriculture; real estate commission; juvenile facilities  
18 review panel; office of water resources; center for  
19 professional development; board of architects; state  
20 building commission; family law masters system; public  
21 employees insurance agency; public employees insurance  
22 agency finance board; division of rehabilitation services.

23 (3) On the first day of July, one thousand nine hundred  
24 ninety-six: U.S. geological survey program and white-  
25 water commission within the division of natural re-  
26 sources; state geological and economic survey; workers'

27 compensation; unemployment compensation; office of  
28 judges of workers' compensation; board of investments.

29 (4) On the first day of July, one thousand nine hundred  
30 ninety-seven: The driver's licensing advisory board;  
31 West Virginia health care cost review authority; gover-  
32 nor's cabinet on children and families; oil and gas  
33 conservation commission; child support enforcement  
34 division; West Virginia contractors' licensing board.

35 (5) On the first day of July, one thousand nine hundred  
36 ninety-eight: State lottery commission; the following  
37 divisions or programs of the department of agriculture:  
38 Meat inspection program and soil conservation commit-  
39 tee; women's commission; state board of risk and  
40 insurance management; board of examiners of land  
41 surveyors; commission on uniform state laws; council of  
42 finance and administration; forest management review  
43 commission; West Virginia's membership in the inter-  
44 state commission on the Potomac River basin; legislative  
45 oversight commission on education accountability; board  
46 of examiners in counseling; board of examiners in speech  
47 pathology and audiology.

48 (6) On the first day of July, one thousand nine hundred  
49 ninety-nine: Board of banking and financial institutions;  
50 capitol building commission; tree fruit industry self-  
51 improvement assessment program; public service com-  
52 mission.

53 (7) On the first day of July, two thousand: Family  
54 protection services board; environmental quality board;  
55 West Virginia's membership in the Ohio river valley  
56 water sanitation commission; ethics commission; oil and  
57 gas inspectors' examining board; veterans' council; West  
58 Virginia's membership in the southern regional educa-  
59 tion board.

#### **CHAPTER 5F. REORGANIZATION OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT.**



**ARTICLE 2. REORGANIZATION OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT.**

**§5F-2-1. Transfer and incorporation of agencies and boards; funds.**

1 (a) The following agencies and boards, including all of  
2 the allied, advisory, affiliated or related entities and  
3 funds associated with any such agency or board, are  
4 hereby transferred to and incorporated in and shall be  
5 administered as a part of the department of administra-  
6 tion:

7 (1) Building commission provided for in article six,  
8 chapter five of this code;

9 (2) Public employees insurance agency and public  
10 employees insurance agency advisory board provided for  
11 in article sixteen, chapter five of this code;

12 (3) Council of finance and administration provided for  
13 in article one, chapter five-a of this code;

14 (4) Employee suggestion award board provided for in  
15 article one-a, chapter five-a of this code;

16 (5) Governor's mansion advisory committee provided  
17 for in article five, chapter five-a of this code;

18 (6) Commission on uniform state laws provided for in  
19 article one-a, chapter twenty-nine of this code;

20 (7) Education and state employees grievance board  
21 provided for in article twenty-nine, chapter eighteen of  
22 this code and article six-a, chapter twenty-nine of this  
23 code;

24 (8) Board of risk and insurance management provided  
25 for in article twelve, chapter twenty-nine of this code;

26 (9) Boundary commission provided for in article  
27 twenty-three, chapter twenty-nine of this code;

28 (10) Public defender services provided for in article  
29 twenty-one, chapter twenty-nine of this code;

30 (11) Division of personnel provided for in article six,  
31 chapter twenty-nine of this code;

32 (12) The West Virginia ethics commission provided for  
33 in article two, chapter six-b of this code;

34 (13) Consolidated public retirement board provided for  
35 in article ten-d, chapter five of this code; and

36 (14) The child support enforcement division designated  
37 in chapter forty-eight-a of this code.

38 (b) The department of commerce, labor and environ-  
39 mental resources and the office of secretary of the  
40 department of commerce, labor and environmental  
41 resources are hereby abolished. For purposes of admin-  
42 istrative support and liaison with the office of the  
43 governor, the following agencies and boards, including  
44 all allied, advisory and affiliated entities shall be group-  
45 ed under three bureaus as follows:

46 (1) Bureau of commerce:

47 (A) Division of labor provided for in article one,  
48 chapter twenty-one of this code, which shall include:

49 (i) Occupational safety and health review commission  
50 provided for in article three-a, chapter twenty-one of  
51 this code; and

52 (ii) Board of manufactured housing construction and  
53 safety provided for in article nine, chapter twenty-one of  
54 this code;

55 (B) Office of miners' health, safety and training pro-  
56 vided for in article one, chapter twenty-two-a of this  
57 code. The following boards are transferred to the office  
58 of miners' health, safety and training for purposes of  
59 administrative support and liaison with the office of the  
60 governor:

61 (i) Board of coal mine health and safety and coal mine  
62 safety and technical review committee provided for in  
63 article six, chapter twenty-two-a of this code;

64 (ii) Board of miner training, education and certification  
65 provided for in article seven, chapter twenty-two-a of  
66 this code; and

67 (iii) Mine inspectors' examining board provided for in  
68 article nine, chapter twenty-two-a of this code;

69 (C) The West Virginia development office provided for in  
70 in article two, chapter five-b of this code, which shall  
71 include:

72 (i) Enterprise zone authority provided for in article  
73 two-b, chapter five-b of this code; and

74 (ii) Economic development authority provided for in  
75 article fifteen, chapter thirty-one of this code;

76 (D) Division of natural resources and natural resources  
77 commission provided for in article one, chapter twenty  
78 of this code. The Blennerhassett historical state park  
79 provided for in article eight, chapter twenty-nine of this  
80 code shall be under the division of natural resources;

81 (E) Division of forestry provided for in article one-a,  
82 chapter nineteen of this code;

83 (F) Geological and economic survey provided for in  
84 article two, chapter twenty-nine of this code;

85 (G) Water development authority and board provided  
86 for in article one, chapter twenty-two-c of this code;

87 (2) Bureau of employment programs provided for in  
88 article one, chapter twenty-one-a of this code.

89 (3) Bureau of environment:

90 (A) Air quality board provided for in article five,  
91 chapter twenty-two of this code;

92 (B) Solid waste management board provided for in  
93 article three, chapter twenty-two of this code;

94 (C) Environmental quality board, or its successor  
95 board, provided for in article three, chapter twenty-two-

- 96 b of this code;
- 97 (D) Division of environmental protection provided for  
98 in article one, chapter twenty-two of this code;
- 99 (E) Surface mine board of review provided for in  
100 article four, chapter twenty-two-b of this code;
- 101 (F) Oil and gas inspectors' examining board provided  
102 for in article seven, chapter twenty-two-c of this code;
- 103 (G) Shallow gas well review board provided for in  
104 article eight, chapter twenty-two-c of this code; and
- 105 (H) Oil and gas conservation commission provided for  
106 in article nine, chapter twenty-two-c of this code.
- 107 (c) The following agencies and boards, including all of  
108 the allied, advisory, affiliated or related entities and  
109 funds associated with any such agency or board, are  
110 hereby transferred to and incorporated in and shall be  
111 administered as a part of the department of education  
112 and the arts:
- 113 (1) Library commission provided for in article one,  
114 chapter ten of this code;
- 115 (2) Educational broadcasting authority provided for in  
116 article five, chapter ten of this code;
- 117 (3) University of West Virginia board of trustees  
118 provided for in article two, chapter eighteen-b of this  
119 code;
- 120 (4) Board of directors of the state college system  
121 provided for in article three, chapter eighteen-b of this  
122 code;
- 123 (5) Joint commission for vocational-technical-occupa-  
124 tional education provided for in article three-a, chapter  
125 eighteen-b of this code;
- 126 (6) Division of culture and history provided for in  
127 article one, chapter twenty-nine of this code; and

128 (7) Division of rehabilitation services provided for in  
129 section two, article ten-a, chapter eighteen of this code.

130 (d) The following agencies and boards, including all of  
131 the allied, advisory, affiliated or related entities and  
132 funds associated with any such agency or board, are  
133 hereby transferred to and incorporated in and shall be  
134 administered as a part of the department of health and  
135 human resources:

136 (1) Human rights commission provided for in article  
137 eleven, chapter five of this code;

138 (2) Division of human services provided for in article  
139 two, chapter nine of this code;

140 (3) Division of health provided for in article one,  
141 chapter sixteen of this code;

142 (4) Office of emergency medical services and advisory  
143 council thereto provided for in article four-c, chapter  
144 sixteen of this code;

145 (5) Health care cost review authority provided for in  
146 article twenty-nine-b, chapter sixteen of this code;

147 (6) Commission on aging provided for in article four-  
148 teen, chapter twenty-nine of this code;

149 (7) Commission on mental retardation provided for in  
150 article fifteen, chapter twenty-nine of this code;

151 (8) Women's commission provided for in article twenty,  
152 chapter twenty-nine of this code; and

153 (9) The child support enforcement division designated  
154 in chapter forty-eight-a of this code.

155 (e) The following agencies and boards, including all of  
156 the allied, advisory, affiliated or related entities and  
157 funds associated with any such agency or board, are  
158 hereby transferred to and incorporated in and shall be  
159 administered as a part of the department of military  
160 affairs and public safety:

- 161 (1) Adjutant general's department provided for in  
162 article one-a, chapter fifteen of this code;
- 163 (2) Armory board provided for in article six, chapter  
164 fifteen of this code;
- 165 (3) Military awards board provided for in article one-g,  
166 chapter fifteen of this code;
- 167 (4) Division of public safety provided for in article two,  
168 chapter fifteen of this code;
- 169 (5) Office of emergency services and disaster recovery  
170 board provided for in article five, chapter fifteen of this  
171 code and emergency response commission provided for  
172 in article five-a of said chapter;
- 173 (6) Sheriffs' bureau provided for in article eight,  
174 chapter fifteen of this code;
- 175 (7) Division of corrections provided for in chapter  
176 twenty-five of this code;
- 177 (8) Fire commission provided for in article three,  
178 chapter twenty-nine of this code;
- 179 (9) Regional jail and correctional facility authority  
180 provided for in article twenty, chapter thirty-one of this  
181 code;
- 182 (10) Board of probation and parole provided for in  
183 article twelve, chapter sixty-two of this code; and
- 184 (11) Division of veterans' affairs and veterans' council  
185 provided for in article one, chapter nine-a of this code.
- 186 (f) The following agencies and boards, including all of  
187 the allied, advisory, affiliated or related entities and  
188 funds associated with any such agency or board, are  
189 hereby transferred to and incorporated in and shall be  
190 administered as a part of the department of tax and  
191 revenue:
- 192 (1) Tax division provided for in article one, chapter  
193 eleven of this code;

194 (2) Appraisal control and review commission provided  
195 for in article one-a, chapter eleven of this code;

196 (3) Racing commission provided for in article twenty-  
197 three, chapter nineteen of this code;

198 (4) Lottery commission and position of lottery director  
199 provided for in article twenty-two, chapter twenty-nine  
200 of this code;

201 (5) Agency of insurance commissioner provided for in  
202 article two, chapter thirty-three of this code;

203 (6) Office of alcohol beverage control commissioner  
204 provided for in article sixteen, chapter eleven of this  
205 code and article two, chapter sixty of this code;

206 (7) Division of professional and occupational licenses  
207 which may be hereafter created by the Legislature;

208 (8) Board of banking and financial institutions pro-  
209 vided for in article three, chapter thirty-one-a of this  
210 code;

211 (9) Lending and credit rate board provided for in  
212 chapter forty-seven-a of this code;

213 (10) Division of banking provided for in article two,  
214 chapter thirty-one-a of this code; and

215 (11) The child support enforcement division as desig-  
216 nated in chapter forty-eight-a of this code.

217 (g) The following agencies and boards, including all of  
218 the allied, advisory, affiliated or related entities and  
219 funds associated with any such agency or board, are  
220 hereby transferred to and incorporated in and shall be  
221 administered as a part of the department of transporta-  
222 tion:

223 (1) Road commission provided for in article two,  
224 chapter seventeen of this code;

225 (2) Division of highways provided for in article two-a,  
226 chapter seventeen of this code;

227 (3) Parkways, economic development and tourism  
228 authority provided for in article sixteen-a, chapter  
229 seventeen of this code;

230 (4) Division of motor vehicles provided for in article  
231 two, chapter seventeen-a of this code;

232 (5) Driver's licensing advisory board provided for in  
233 article two, chapter seventeen-b of this code;

234 (6) Aeronautics commission provided for in article two-  
235 a, chapter twenty-nine of this code;

236 (7) State rail authority provided for in article eighteen,  
237 chapter twenty-nine of this code; and

238 (8) Port authority provided for in article sixteen-b,  
239 chapter seventeen of this code.

240 (h) Except for such powers, authority and duties as  
241 have been delegated to the secretaries of the depart-  
242 ments by the provisions of section two of this article, the  
243 existence of the position of administrator and of the  
244 agency and the powers, authority and duties of each  
245 administrator and agency shall not be affected by the  
246 enactment of this chapter.

247 (i) Except for such powers, authority and duties as  
248 have been delegated to the secretaries of the depart-  
249 ments by the provisions of section two of this article, the  
250 existence, powers, authority and duties of boards and the  
251 membership, terms and qualifications of members of  
252 such boards shall not be affected by the enactment of  
253 this chapter and all boards which are appellate bodies or  
254 were otherwise established to be independent decision  
255 makers shall not have their appellate or independent  
256 decision-making status affected by the enactment of this  
257 chapter.

258 (j) Any department previously transferred to and  
259 incorporated in a department created in section two,  
260 article one of this chapter by prior enactment of this  
261 section in chapter three, acts of the Legislature, first



262 extraordinary session, one thousand nine hundred  
263 eighty-nine, and subsequent amendments thereto, shall  
264 henceforth be read, construed and understood to mean a  
265 division of the appropriate department so created.  
266 Wherever elsewhere in this code, in any act, in general or  
267 other law, in any rule or regulation, or in any ordinance,  
268 resolution or order, reference is made to any department  
269 transferred to and incorporated in a department created  
270 in section two, article one of this chapter, such reference  
271 shall henceforth be read, construed and understood to  
272 mean a division of the appropriate department so  
273 created, and any such reference elsewhere to a division  
274 of a department so transferred and incorporated shall  
275 henceforth be read, construed and understood to mean a  
276 section of the appropriate division of the department so  
277 created.

278 (k) When an agency, board or commission is trans-  
279 ferred under a bureau or agency other than a department  
280 headed by a secretary pursuant to this section, that  
281 transfer shall be construed to be solely for purposes of  
282 administrative support and liaison with the office of the  
283 governor, a department secretary or a bureau. The  
284 bureaus created by the Legislature upon the abolishment  
285 of the department of commerce, labor and environmental  
286 resources in the year one thousand nine hundred ninety-  
287 four shall be headed by a commissioner or other statu-  
288 tory officer of an agency within that bureau. Nothing in  
289 this section shall be construed to extend the powers of  
290 department secretaries under section two of this article  
291 to any person other than a department secretary and  
292 nothing herein shall be construed to limit or abridge the  
293 statutory powers and duties of statutory commissioners  
294 or officers pursuant to this code. Upon the abolishment  
295 of the office of secretary of the department of commerce,  
296 labor and environmental resources, the governor may  
297 appoint a statutory officer serving functions formerly  
298 within that department to a position which was filled by  
299 the secretary ex officio.

**CHAPTER 11. TAXATION.****ARTICLE 10. PROCEDURE AND ADMINISTRATION.****§11-10-5d. Confidentiality and disclosure of returns and return information.**

1     (a) *General rule.* — Except when required in an official  
2 investigation by the tax commissioner into the amount of  
3 tax due under any article administered under this article  
4 or in any proceeding in which the tax commissioner is a  
5 party before a court of competent jurisdiction to collect  
6 or ascertain the amount of such tax and except as  
7 provided in subsections (d) through (n) of this section, it  
8 shall be unlawful for any officer or employee of this state  
9 to divulge or make known in any manner the tax return,  
10 or any part thereof, of any person or disclose information  
11 concerning the personal affairs of any individual or the  
12 business of any single firm or corporation, or disclose the  
13 amount of income, or any particulars set forth or dis-  
14 closed in any report, declaration or return required to be  
15 filed with the tax commissioner by any article of this  
16 chapter imposing any tax administered under this article  
17 or by any rule or regulation of the tax commissioner  
18 issued thereunder, or disclosed in any audit or investiga-  
19 tion conducted under this article.

20     (b) *Definitions.* — For purposes of this section:

21     (1) *Background file document.* — The term “back-  
22 ground file document”, with respect to a written deter-  
23 mination, includes the request for that written determi-  
24 nation, any written material submitted in support of the  
25 request and any communication (written or otherwise)  
26 between the state tax department and any person outside  
27 the state tax department in connection with the written  
28 determination received before issuance of the written  
29 determination.

30     (2) *Disclosure.* — The term “disclosure” means the  
31 making known to any person in any manner whatsoever  
32 a return or return information.

33 (3) *Inspection.* — The terms “inspection” and “in-  
34 spected” mean any examination of a return or return  
35 information.

36 (4) *Return.* — The term “return” means any tax or  
37 information return or report, declaration of estimated  
38 tax, claim or petition for refund or credit or petition for  
39 reassessment that is required by, or provided for, or  
40 permitted under the provisions of this article (or any  
41 article of this chapter administered under this article)  
42 which is filed with the tax commissioner by, on behalf of,  
43 or with respect to any person, and any amendment or  
44 supplement thereto, including supporting schedules,  
45 attachments or lists which are supplemental to, or part  
46 of, the return so filed.

47 (5) *Return information.* — The term “return informa-  
48 tion” means:

49 (A) A taxpayer’s identity; the nature, source or amount  
50 of his income, payments, receipts, deductions, exemp-  
51 tions, credits, assets, liabilities, net worth, tax liability,  
52 tax withheld, deficiencies, overassessments or tax  
53 payments, whether the taxpayer’s return was, is being,  
54 or will be examined or subject to other investigation or  
55 processing, or any other data received by, recorded by,  
56 prepared by, furnished to or collected by the tax com-  
57 missioner with respect to a return or with respect to the  
58 determination of the existence, or possible existence, of  
59 liability (or the amount thereof) or by any person under  
60 the provisions of this article (or any article of this  
61 chapter administered under this article) for any tax,  
62 additions to tax, penalty, interest, fine, forfeiture or  
63 other imposition or offense; and

64 (B) Any part of any written determination or any  
65 background file document relating to such written  
66 determination. “Return information” does not include,  
67 however, data in a form which cannot be associated  
68 with, or otherwise identify, directly or indirectly, a  
69 particular taxpayer. Nothing in the preceding sentence,

70 or in any other provision of this code, shall be construed  
71 to require the disclosure of standards used or to be used  
72 for the selection of returns for examination or data used  
73 or to be used for determining such standards.

74 (6) *Tax administration.* — The term “tax administra-  
75 tion” means:

76 (A) The administration, management, conduct, direc-  
77 tion and supervision of the execution and application of  
78 the tax laws or related statutes of this state and the  
79 development and formulation of state tax policy relating  
80 to existing or proposed state tax laws, and related  
81 statutes of this state; and

82 (B) Includes assessment, collection, enforcement,  
83 litigation, publication and statistical gathering functions  
84 under the laws of this state.

85 (7) *Taxpayer identity.* — The term “taxpayer identity”  
86 means the name of a person with respect to whom a  
87 return is filed, his mailing address, his taxpayer identify-  
88 ing number or a combination thereof.

89 (8) *Taxpayer return information.* — The term “tax-  
90 payer return information” means return information as  
91 defined in subdivision (5) of this subsection which is  
92 filed with, or furnished to, the tax commissioner by or on  
93 behalf of the taxpayer to whom such return information  
94 relates.

95 (9) *Written determination.* — The term “written  
96 determination” means a ruling, determination letter,  
97 technical advice memorandum or letter or administrative  
98 decision issued by the tax commissioner.

99 (c) *Criminal penalty.* — Any officer or employee (or  
100 former officer or employee) of this state who violates this  
101 section shall be guilty of a misdemeanor, and, upon  
102 conviction thereof, shall be fined not more than one  
103 thousand dollars or imprisoned for not more than one  
104 year, or both, together with costs of prosecution.

105 (d) *Disclosure to designee of taxpayer.* — Any person  
106 protected by the provisions of this article may, in writ-  
107 ing, waive the secrecy provisions of this section for such  
108 purpose and such period as he shall therein state. The  
109 tax commissioner may, subject to such requirements and  
110 conditions as he may prescribe, thereupon release to  
111 designated recipients such taxpayer's return or other  
112 particulars filed under the provisions of the tax articles  
113 administered under the provisions of this article, but  
114 only to the extent necessary to comply with a request for  
115 information or assistance made by the taxpayer to such  
116 other person. However, return information shall not be  
117 disclosed to such person or persons if the tax commis-  
118 sioner determines that such disclosure would seriously  
119 impair administration of this state's tax laws.

120 (e) *Disclosure of returns and return information for use*  
121 *in criminal investigations.*

122 (1) *In general.* — Except as provided in subdivision (3)  
123 of this subsection, any return or return information with  
124 respect to any specified taxable period or periods shall,  
125 pursuant to and upon the grant of an ex parte order by  
126 a federal district court judge, federal magistrate or  
127 circuit court judge of this state, under subdivision (2) of  
128 this subsection, be open (but only to the extent necessary  
129 as provided in such order) to inspection by, or disclosure  
130 to, officers and employees of any federal agency, or of  
131 any agency of this state, who personally and directly  
132 engaged in:

133 (A) Preparation for any judicial or administrative  
134 proceeding pertaining to the enforcement of a specifi-  
135 cally designated state or federal criminal statute to  
136 which this state, the United States or such agency is or  
137 may be a party;

138 (B) Any investigation which may result in such a  
139 proceeding; or

140 (C) Any state or federal grand jury proceeding pertain-

141 ing to enforcement of such a criminal statute to which  
142 this state, the United States or such agency is or may be  
143 a party.

144 Such inspection or disclosure shall be solely for the use  
145 of such officers and employees in such preparation,  
146 investigation, or grand jury proceeding.

147 (2) *Application of order.* — Any United States attorney,  
148 any special prosecutor appointed under Section 593 of  
149 Title 28, United States Code, or any attorney in charge of  
150 a United States justice department criminal division  
151 organized crime strike force established pursuant to  
152 Section 510 of Title 28, United States Code, may autho-  
153 rize an application to a circuit court judge or magistrate,  
154 as appropriate, for the order referred to in subdivision  
155 (1) of this subsection. Any prosecuting attorney of this  
156 state may authorize an application to a circuit court  
157 judge of this state for the order referred to in subdivision  
158 (1) of this subsection. Upon such application, such judge  
159 or magistrate may grant such order if he determines on  
160 the basis of the facts submitted by the applicant that:

161 (A) There is reasonable cause to believe, based upon  
162 information believed to be reliable, that a specific  
163 criminal act has been committed;

164 (B) There is reasonable cause to believe that the return  
165 or return information is or may be relevant to a matter  
166 relating to the commission of such act; and

167 (C) The return or return information is sought exclu-  
168 sively for use in a state or federal criminal investigation  
169 or proceeding concerning such act, and the information  
170 sought to be disclosed cannot reasonably be obtained,  
171 under the circumstances, from another source.

172 (3) The tax commissioner shall not disclose any return  
173 or return information under subdivision (1) of this  
174 subsection if he determines and certifies to the court that  
175 such disclosure would identify a confidential informant  
176 or seriously impair a civil or criminal tax investigation.

177 (f) *Disclosure to person having a material interest.* —  
178 The tax commissioner may, pursuant to legislative  
179 regulations promulgated by him, and upon such terms as  
180 he may require, disclose a return or return information  
181 to a person having a material interest therein: *Provided,*  
182 That such disclosure shall only be made if the tax  
183 commissioner determines, in his discretion, that such  
184 disclosure would not seriously impair administration of  
185 this state's tax laws.

186 (g) *Statistical use.* — This section shall not be con-  
187 strued to prohibit the publication or release of statistics  
188 so classified as to prevent the identification of particular  
189 returns and the items thereof.

190 (h) *Disclosure of amount of outstanding lien.* — If  
191 notice of lien has been recorded pursuant to section  
192 twelve of this article, the amount of the outstanding  
193 obligation secured by such lien may be disclosed to any  
194 person who furnishes written evidence satisfactory to the  
195 tax commissioner that such person has a right in the  
196 property subject to such lien or intends to obtain a right  
197 in such property.

198 (i) *Reciprocal exchange.* — The tax commissioner may,  
199 pursuant to written agreement, permit the proper officer  
200 of the United States, or the District of Columbia or any  
201 other state, or any political subdivision of this state, or  
202 his authorized representative, who is charged by law  
203 with responsibility for administration of a similar tax, to  
204 inspect reports, declarations or returns filed with the tax  
205 commissioner or may furnish to such officer or represen-  
206 tative a copy of any such document, provided such other  
207 jurisdiction grants substantially similar privileges to the  
208 tax commissioner or to the attorney general of this state.  
209 Such disclosure shall be only for the purpose of, and only  
210 to the extent necessary in, the administration of tax  
211 laws: *Provided,* That such information shall not be  
212 disclosed to the extent that the tax commissioner deter-  
213 mines that such disclosure would identify a confidential

214 informant or seriously impair any civil or criminal tax  
215 investigation.

216 (j) *Inspection of business and occupation tax returns by*  
217 *municipalities.* — The tax commissioner shall, upon the  
218 written request of the mayor of any West Virginia  
219 municipality having a business and occupation tax or  
220 privilege tax, allow the duly authorized agent of such  
221 municipality to inspect and make copies of the state  
222 business and occupation tax return filed by taxpayers of  
223 such municipality. Such inspection or copying shall only  
224 be for the purposes of securing information for municipi-  
225 pal tax purposes and shall only be allowed if such  
226 municipality allows the tax commissioner the right to  
227 inspect or make copies of the municipal business and  
228 occupation tax returns of such municipality.

229 (k) *Release of administrative decisions.* — The tax  
230 commissioner shall release to the public his administra-  
231 tive decisions, or a summary thereof: *Provided*, That  
232 unless the taxpayer appeals the administrative decision  
233 to circuit court or waives in writing his rights to confi-  
234 dentiality, any identifying characteristics or facts about  
235 the taxpayer shall be omitted or modified to such an  
236 extent so as to not disclose the name or identity of the  
237 taxpayer.

238 (l) *Release of taxpayer information.* —

239 (1) If the tax commissioner believes that enforcement  
240 of the tax laws administered under this article will be  
241 facilitated and enhanced thereby, he shall disclose, upon  
242 request, the names and address of persons:

243 (A) Who have a current business registration certifi-  
244 cate.

245 (B) Who are licensed employment agencies.

246 (C) Who are licensed collection agencies.

247 (D) Who are licensed to sell drug paraphernalia.



- 248 (E) Who are distributors of gasoline or special fuel.
- 249 (F) Who are contractors.
- 250 (G) Who are transient vendors.
- 251 (H) Who are authorized by law to issue a sales or use  
252 tax exemption certificate.
- 253 (I) Who are required by law to collect sales or use  
254 taxes.
- 255 (J) Who are foreign vendors authorized to collect use  
256 tax.
- 257 (K) Whose business registration certificate has been  
258 suspended or canceled or not renewed by the tax com-  
259 missioner.
- 260 (L) Against whom a tax lien has been recorded under  
261 section twelve of this article (including any particulars  
262 stated in the recorded lien).
- 263 (M) Against whom criminal warrants have been issued  
264 for a criminal violation of this state's tax laws.
- 265 (N) Who have been convicted of a criminal violation of  
266 this state's tax laws.
- 267 (m) *Disclosure of return information to child support*  
268 *enforcement division.*
- 269 (1) *State return information.* — The tax commissioner  
270 may, upon written request, disclose to the child support  
271 enforcement division created by article two, chapter  
272 forty-eight-a of this code:
- 273 (A) Available return information from the master files  
274 of the tax department relating to the social security  
275 account number, address, filing status, amounts and  
276 nature of income and the number of dependents reported  
277 on any return filed by, or with respect to, any individual  
278 with respect to whom child support obligations are  
279 sought to be enforced; and

280 (B) Available state return information reflected on any  
281 state return filed by, or with respect to any individual  
282 described in paragraph (A) of this subdivision, relating  
283 to the amount of such individual's gross income, but only  
284 if such information is not reasonably available from any  
285 other source.

286 (2) *Restrictions on disclosure.* — The tax commissioner  
287 shall disclose return information under subdivision (1) of  
288 this subsection only for purposes of, and to the extent  
289 necessary in, collecting child support obligations from,  
290 and locating individuals owing such obligations.

291 (n) *Disclosure of names and addresses for purposes of*  
292 *jury selection.*

293 The tax commissioner shall, at the written request of  
294 a circuit court or the chief judge thereof, provide to the  
295 circuit court within thirty calendar days a list of the  
296 names and addresses of individuals residing in the  
297 county or counties comprising the circuit who have filed  
298 a state personal income tax return for the preceding tax  
299 year. The list provided shall set forth names and ad-  
300 dresses only. The request shall be limited to counties  
301 within the jurisdiction of the requesting court.

302 The court, upon receiving the list or lists, shall direct  
303 the jury commission of the appropriate county to merge  
304 the names and addresses with other lists used in compil-  
305 ing a master list of residents of the county from which  
306 prospective jurors are to be chosen. Immediately after  
307 the master list is compiled, the jury commission shall  
308 cause the list provided by the tax commissioner and all  
309 copies thereof to be destroyed and shall certify to the  
310 circuit court and to the tax commissioner that the lists  
311 have been destroyed.

## CHAPTER 16. PUBLIC HEALTH.

### ARTICLE 2E. BIRTHING CENTERS.

#### §16-2E-3. State director of health to establish rules and

**regulations; legislative findings; emergency filing.**

1 The director of health shall promulgate rules and  
2 regulations not in conflict with any provision of this  
3 article, as it finds necessary in order to ensure adequate  
4 care and accommodations for consumers of birthing  
5 centers. In promulgating such regulations the director  
6 shall be limited to simple, necessary provisions which  
7 shall not have the effect of hampering the development  
8 and licensure of birthing centers. Such regulations shall  
9 not address acceptable site characteristics such as the  
10 number of minutes of travel time between a birthing  
11 center and a hospital, or physical environment, such as  
12 acceptable levels of temperature of any refrigerator  
13 found in a birthing center, or clinical equipment, such as  
14 the number and kind of clocks which a birthing center  
15 must have on the premises. Such regulations shall  
16 require that all birthing centers submit satisfactory  
17 evidence that the center has implemented the paternity  
18 program created pursuant to section thirteen of this  
19 article along with any application for licensure.

20 The Legislature hereby finds and declares that it is in  
21 the public interest to encourage the development of  
22 birthing centers for the purpose of providing an alterna-  
23 tive method of birth and therefore, in order to provide  
24 for the licensing of such birthing centers to prevent  
25 substantial harm to the public interest because of  
26 preexisting delay, within sixty days of passage of this  
27 act, the director of health shall proceed to promulgate  
28 such rules and regulations under the provisions of  
29 section fifteen, article three, chapter twenty-nine-a of  
30 this code.

**ARTICLE 5. VITAL STATISTICS.**

**§16-5-18b. Limitation on use of social security numbers.**

1 (a) A social security account number obtained in  
2 accordance with the provisions of this article with  
3 respect to the filing of: (1) A certificate of birth; (2) an

4 application for a delayed registration of birth; (3) a  
5 judicial order establishing a record of birth; (4) an  
6 adoption order or decree; or (5) a certificate of paternity  
7 shall not be transmitted to a clerk of the county commis-  
8 sion. Such social security account number shall not  
9 appear upon the public record of the register of births or  
10 upon any certificate of birth registration issued by the  
11 state registrar, local registrar, county clerk or other  
12 issuing authority, if any. Such social security account  
13 numbers shall be made available by the state registrar to  
14 the child support enforcement division created by article  
15 forty-eight-a upon the request of the division, to be used  
16 solely in connection with the enforcement of child  
17 support orders.

18 (b) A parent who desires not to furnish a social security  
19 account number as required by the provisions of this  
20 article or article six, chapter forty-eight-a of this code  
21 shall file with the person responsible for obtaining  
22 personal data from the parent, a request that he or she  
23 not be required to furnish such number. The request  
24 shall be made on a form prescribed by the state registrar  
25 of vital statistics or in a substantially similar instrument  
26 and shall set forth the reasons that the parent declines or  
27 is unable to furnish such number. Supplies of a form for  
28 the request shall be made available to hospitals, circuit  
29 clerks and other persons responsible for obtaining  
30 personal data from parents, and shall be provided to any  
31 parent who states that he or she desires not to be re-  
32 quired to furnish such number. A request, when re-  
33 ceived, shall be transmitted in the same manner as a  
34 record of a social security account number. The board of  
35 health shall promulgate legislative rules in accordance  
36 with the provisions of chapter twenty-nine-a of this code  
37 which shall establish the procedural means and substan-  
38 tive criteria by which the state registrar may determine  
39 whether there exists good cause for not requiring the  
40 furnishing of such number. In proposing the promulga-  
41 tion of such rules, the board of health shall give due

42 consideration to related regulations prescribed by the  
43 secretary of health and human services of the United  
44 States.

**ARTICLE 5B. HOSPITALS AND SIMILAR INSTITUTIONS.**

**§16-5B-2. Hospitals and institutions to obtain license; quali-  
fications of applicant.**

1 No person, partnership, association, corporation or any  
2 local governmental unit or any division, department,  
3 board or agency thereof may continue to operate an  
4 existing ambulatory health care facility, ambulatory  
5 surgical facility, hospital or extended care facility  
6 operated in connection with a hospital, or open an  
7 ambulatory health care facility, ambulatory surgical  
8 facility, a hospital or extended care facility operated in  
9 connection with a hospital, unless such operation shall  
10 have been approved and regularly licensed by the state  
11 as hereinafter provided. Licenses shall be issued for a  
12 particular number by type of beds and/or type of ser-  
13 vices. Any change in the number by type of bed and/or  
14 type of services shall require the issuance of a new  
15 license.

16 Before a license shall be issued under this article, the  
17 person applying, if an individual, shall submit evidence  
18 satisfactory to the state department of health that he is  
19 not less than eighteen years of age, of reputable and  
20 responsible character and otherwise qualified. In the  
21 event the applicant is an association, corporation or  
22 governmental unit, like evidence shall be submitted as to  
23 the members thereof and the persons in charge.

24 Every applicant shall, in addition, submit satisfactory  
25 evidence of his ability to comply with the minimum  
26 standards and with all rules and regulations lawfully  
27 promulgated. Every applicant shall further submit  
28 satisfactory evidence that he has implemented the  
29 paternity program created pursuant to section thirteen  
30 of this article.

**§16-5B-13. Hospital-based paternity program.**

1 (a) Every public and private hospital licensed pursuant  
2 to section two of this article and every birthing center  
3 licensed pursuant to section two, article two-e of this  
4 chapter, that provides obstetrical services in West  
5 Virginia shall participate in the hospital-based paternity  
6 program.

7 (b) The child support enforcement division as de-  
8 scribed in section twelve, article two, chapter forty-  
9 eight-a of this code shall provide all public and private  
10 hospitals and all birthing centers providing obstetric  
11 services in this state with:

12 (1) Information regarding the establishment of pater-  
13 nity;

14 (2) An affidavit of paternity fulfilling the requirements  
15 of section six, article six, chapter forty-eight-a of this  
16 code; and

17 (3) The telephone contact number for the child support  
18 enforcement division that a parent may call for further  
19 information regarding the establishment of paternity.

20 (c) Prior to the discharge from any facility included in  
21 this section of any mother who has given birth to a live  
22 infant, the administrator, or his or her assignee, shall  
23 ensure that the following materials are provided to any  
24 unmarried woman and any person holding himself out to  
25 be the natural father of the child:

26 (1) Information regarding the establishment of pater-  
27 nity;

28 (2) An affidavit of paternity fulfilling the requirements  
29 of section six, article six, chapter forty-eight-a of this  
30 code; and

31 (3) The telephone contact number for the child support  
32 enforcement division that a parent may call for further  
33 information regarding the establishment of paternity.

34 (d) The child support enforcement division shall notify  
35 the state department of health of any failure of any  
36 hospital or birthing center to conform with the require-  
37 ments of this section.

38 (e) Any hospital or birthing center described in this  
39 article should provide the information detailed in  
40 subsection (c) of this section at any time when such  
41 facility is providing obstetrical services.

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

### **ARTICLE 21. PUBLIC DEFENDER SERVICES.**

#### **§29-21-2. Definitions.**

1 As used in this article, the following words and phrases  
2 are hereby defined:

3 (1) "Eligible client": Any person who meets the  
4 requirements established by this article to receive  
5 publicly funded legal representation in an eligible  
6 proceeding as defined herein;

7 (2) "Eligible proceeding": Criminal charges which may  
8 result in incarceration, juvenile proceedings, proceedings  
9 to revoke parole or probation if the revocation may  
10 result in incarceration, contempt of court, child abuse  
11 and neglect proceedings which may result in a termina-  
12 tion of parental rights, mental hygiene commitment  
13 proceedings, extradition proceedings, proceedings  
14 brought in aid of an eligible proceeding and appeals  
15 from or post conviction challenges to the final judgment  
16 in an eligible proceeding. Legal representation provided  
17 pursuant to the provisions of this article is limited to the  
18 court system of the state of West Virginia, but does not  
19 include representation in municipal courts unless the  
20 accused is at risk of incarceration;

21 (3) "Legal representation": The provision of any legal  
22 services or legal assistance consistent with the purposes  
23 and provisions of this article;

24 (4) "Private practice of law": The provision of legal  
25 representation by a public defender or assistant public  
26 defender to a client who is not entitled to receive legal  
27 representation under the provisions of this article, but  
28 does not include, among other activities, teaching;

29 (5) "Public defender": The staff attorney employed on  
30 a full-time basis by a public defender corporation who,  
31 in addition to providing direct representation to eligible  
32 clients, has administrative responsibility for the opera-  
33 tion of the public defender corporation. The public  
34 defender may be a part-time employee if the board of  
35 directors of the public defender corporation finds  
36 efficient operation of the corporation does not require a  
37 full-time attorney and the executive director approves  
38 such part-time employment;

39 (6) "Assistant public defender": A staff attorney  
40 providing direct representation to eligible clients whose  
41 salary and status as a full-time or part-time employee  
42 are fixed by the board of directors of the public defender  
43 corporation;

44 (7) "Public defender corporation": A corporation  
45 created under section eight of this article for the sole  
46 purpose of providing legal representation to eligible  
47 clients; and

48 (8) "Public defender office": An office operated by a  
49 public defender corporation to provide legal representa-  
50 tion under the provisions of this article.

**ARTICLE 22. STATE LOTTERY ACT.**

**§29-22-27a. Payment of prizes to the child support enforce-  
ment division.**

1 (a) Upon notification by the child support enforcement  
2 division created by article two, chapter forty-eight-a of  
3 this code that a person entitled to a prize or any winning  
4 ticket is delinquent in the payment of child support or  
5 spousal support, the director shall forward to said child  
6 support enforcement division such portion of any prize



7 distributed directly from the state lottery office and that  
8 is available to pay all or any portion of the delinquent  
9 support payment.

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

#### **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, legal  
3 guardian, committee or other third party appointed by  
4 court order as custodian of child or children for whom  
5 child support is ordered.

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

10 (3) "Insurance coverage" means coverage for medical,  
11 dental, including orthodontic, optical, psychological,  
12 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 for  
17 children in need of child support.

18 (6) "Insurer" means any company, health maintenance  
19 organization, self-funded group, multiple employer  
20 welfare arrangement, hospital or medical services  
21 corporation, trust, group health plan, as defined in 29

22 U.S.C. §1167, Section 607(1) of the Employee Retirement  
23 Income Security Act of 1974 or other entity which  
24 provides insurance coverage or offers a service benefit  
25 plan.

26 (b) In every action to establish or modify an order  
27 which requires the payment of child support, the court  
28 shall ascertain the ability of each parent to provide  
29 medical care for the children of the parties. In any  
30 temporary or final order establishing an award of child  
31 support or any temporary or final order modifying a  
32 prior order establishing an award of child support, the  
33 court shall order one or more of the following:

34 (1) The court shall order either parent or both parents  
35 to provide insurance coverage for a child, if such insur-  
36 ance coverage is available to that parent on a group basis  
37 through an employer or through an employee's union. If  
38 similar insurance coverage is available to both parents,  
39 the court shall order the child to be insured under the  
40 insurance coverage which provides more comprehensive  
41 benefits. If such insurance coverage is not available at  
42 the time of the entry of the order, the order shall require  
43 that if such coverage thereafter becomes available to  
44 either party, that party shall promptly notify the other  
45 party of the availability of insurance coverage for the  
46 child.

47 (2) If the court finds that insurance coverage is not  
48 available to either parent on a group basis through an  
49 employer, multi-employer trust or employees' union, or  
50 that the group insurer is not accessible to the parties, the  
51 court may order either parent or both parents to obtain  
52 insurance coverage which is otherwise available at a  
53 reasonable cost.

54 (3) Based upon the respective ability of the parents to  
55 pay, the court may order either parent or both parents to  
56 be liable for reasonable and necessary medical care for  
57 a child. The court shall specify the proportion of the  
58 medical care for which each party shall be responsible.

59 (4) If insurance coverage is available, the court shall  
60 also determine the amount of the annual deductible on  
61 insurance coverage which is attributable to the children  
62 and designate the proportion of the deductible which  
63 each party shall pay.

64 (5) The order shall require the obligor to continue to  
65 provide the child support enforcement division created  
66 by article two, chapter forty-eight-a of this code with  
67 information as to his or her employer's name and address  
68 and information as to the availability of employer-  
69 related insurance programs providing medical care  
70 coverage so long as the child continues to be eligible to  
71 receive support.

72 (c) The cost of insurance coverage shall be considered  
73 by the court in applying the child support guidelines  
74 provided for in section seventeen, article two, chapter  
75 forty-eight-a of this code.

76 (d) Within thirty days after the entry of an order  
77 requiring the obligated parent to provide insurance  
78 coverage for the children, that parent shall submit to the  
79 custodian for the child written proof that the insurance  
80 has been obtained or that an application for insurance  
81 has been made. Such proof of insurance coverage shall  
82 consist of, at a minimum:

83 (1) The name of the insurer;

84 (2) The policy number;

85 (3) An insurance card;

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

87 (5) A description of any restrictions on usage, such as  
88 prior approval for hospital admission, and the manner in  
89 which to obtain such approval;

90 (6) A description of all deductibles; and

91 (7) Five copies of claim forms.

92 (e) The custodian for the child shall send the insurer or  
93 the obligated parent's employer the children's address  
94 and notice that the custodian will be submitting claims  
95 on behalf of the children. Upon receipt of such notice, or  
96 an order for insurance coverage under this section, the  
97 obligated parent's employer, multi-employer trust or  
98 union shall, upon the request of the custodian for the  
99 child, release information on the coverage for the chil-  
100 dren, including the name of the insurer.

101 (f) A copy of the court order for insurance coverage  
102 shall not be provided to the obligated parent's employer  
103 or union or the insurer unless ordered by the court, or  
104 unless:

105 (1) The obligated parent, within thirty days of receiv-  
106 ing effective notice of the court order, fails to provide to  
107 the custodian for the child written proof that the insur-  
108 ance has been obtained or that an application for insur-  
109 ance has been made;

110 (2) The custodian for the child serves written notice by  
111 mail at the obligated parent's last known address of  
112 intention to enforce the order requiring insurance  
113 coverage for the child; and

114 (3) The obligated parent fails within fifteen days after  
115 the mailing of the notice to provide written proof to the  
116 custodian for the child that the child has insurance  
117 coverage.

118 (g) (1) Upon service of the order requiring insurance  
119 coverage for the children, the employer, multi-employer  
120 trust or union shall enroll the child as a beneficiary in  
121 the group insurance plan and withhold any required  
122 premium from the obligated parent's income or wages.

123 (2) If more than one plan is offered by the employer,  
124 multi-employer trust or union, the child shall be enrolled  
125 in the same plan as the obligated parent at a reasonable  
126 cost.

127 (3) Insurance coverage for the child which is ordered  
128 pursuant to the provisions of this section shall not be  
129 terminated except as provided in subsection (j) of this  
130 section.

131 (h) Where a parent is required by a court or adminis-  
132 trative order to provide health coverage, which is  
133 available through an employer doing business in this  
134 state, the employer is required:

135 (1) To permit the parent to enroll under family cover-  
136 age any child who is otherwise eligible for coverage  
137 without regard to any enrollment season restrictions;

138 (2) If the parent is enrolled but fails to make applica-  
139 tion to obtain coverage of the child, to enroll the child  
140 under family coverage upon application by the child's  
141 other parent, by the state agency administering the  
142 medicaid program or by the child support enforcement  
143 division;

144 (3) Not to disenroll or eliminate coverage of any such  
145 child unless the employer is provided satisfactory  
146 written evidence that:

147 (A) The court or administrative order is no longer in  
148 effect;

149 (B) The child is or will be enrolled in comparable  
150 coverage which will take effect no later than the effec-  
151 tive date of disenrollment; or

152 (C) The employer has eliminated family health cover-  
153 age for all of its employees;

154 (4) To withhold from the employee's compensation the  
155 employee's share, if any, of premiums for health cover-  
156 age and to pay this amount to the insurer: *Provided,*  
157 That the amount so withheld may not exceed the maxi-  
158 mum amount permitted to be withheld under 15 U.S.C.  
159 §1673, Section 303(b) of the Consumer Credit Protection  
160 Act.

161 (i) (1) The signature of the custodian for the child shall  
162 constitute a valid authorization to the insurer for the  
163 purposes of processing an insurance payment to the  
164 provider of medical care for the child.

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

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

172 (4) All insurers in this state shall comply with the  
173 provisions of section sixteen, article fifteen, chapter  
174 thirty-three of this code and section eleven, article  
175 sixteen of said chapter and shall provide insurance  
176 coverage for the child of a covered employee notwith-  
177 standing the amount of support otherwise ordered by the  
178 court and regardless of the fact that the child may not be  
179 living in the home of the covered employee.

180 (j) When an order for insurance coverage for a child  
181 pursuant to this section is in effect and the obligated  
182 parent's employment is terminated, or the insurance  
183 coverage for the child is denied, modified or terminated,  
184 the insurer shall in addition to complying with the  
185 requirements of article sixteen-a, chapter thirty-three of  
186 this code, within ten days after the notice of change in  
187 coverage is sent to the covered employee, notify the  
188 custodian for the child and provide an explanation of  
189 any conversion privileges available from the insurer.

190 (k) A child of an obligated parent shall remain eligible  
191 for insurance coverage until the child is emancipated or  
192 until the insurer under the terms of the applicable  
193 insurance policy terminates said child from coverage,  
194 whichever is later in time, or until further order of the  
195 court.

196 (l) If the obligated parent fails to comply with the

197 order to provide insurance coverage for the child, the  
198 court shall:

199 (1) Hold the obligated parent in contempt for failing or  
200 refusing to provide the insurance coverage or for failing  
201 or refusing to provide the information required in  
202 subsection (d) of this section;

203 (2) Enter an order for a sum certain against the obli-  
204 gated parent for the cost of medical care for the child  
205 and any insurance premiums paid or provided for the  
206 child during any period in which the obligated parent  
207 failed to provide the required coverage; and

208 (3) In the alternative, other enforcement remedies  
209 available under sections two and three, article five,  
210 chapter forty-eight-a of this code, or otherwise available  
211 under law, may be used to recover from the obligated  
212 parent the cost of medical care or insurance coverage for  
213 the child.

214 (4) In addition to other remedies available under law,  
215 the child support enforcement division may garnish the  
216 wages, salary or other employment income of, and  
217 withhold amounts from state tax refunds to any person  
218 who:

219 (A) Is required by court or administrative order to  
220 provide coverage of the cost of health services to a child  
221 eligible for medical assistance under medicaid; and

222 (B) Has received payment from a third party for the  
223 costs of such services but has not used the payments to  
224 reimburse either the other parent or guardian of the  
225 child or the provider of the services, to the extent  
226 necessary to reimburse the state medicaid agency for its  
227 costs: *Provided*, That claims for current and past due  
228 child support shall take priority over these claims.

229 (m) Proof of failure to maintain court ordered insur-  
230 ance coverage for the child constitutes a showing of  
231 substantial change in circumstances or increased need

232 pursuant to section fifteen of this article, and provides  
233 a basis for modification of the child support order.

**§48-2-15b. Withholding from income.**

1 (a) Every order entered or modified under the provi-  
2 sions of this article, not described in subsection (d) of  
3 this section, which requires the payment of child support  
4 or spousal support shall include a provision for auto-  
5 matic withholding from income of the obligor, in order  
6 to facilitate income withholding as a means of collecting  
7 support.

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

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

32 (2) The order shall also provide that income withhold-  
33 ing will begin immediately upon the occurrence of any of



34 the following:

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

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

43 (C) When the obligor requests the child support  
44 enforcement division to commence income withholding;  
45 or

46 (D) When the obligee requests that such withholding  
47 begin, if the request is approved by the court in accor-  
48 dance with procedures and standards established by  
49 rules and regulations promulgated by the commission  
50 pursuant to this section and to chapter twenty-nine-a of  
51 this code.

52 (c) On and after the first day of January, one thousand  
53 nine hundred ninety-four, the wages of an obligor shall  
54 be subject to withholding, regardless of whether child  
55 support payments are in arrears, on the date the order  
56 for child support is entered: *Provided*, That where one  
57 of the parties demonstrates, and the court finds, that  
58 there is good cause not to require immediate income  
59 withholding, or in any case where there is filed with the  
60 court a written agreement between the parties which  
61 provides for an alternative arrangement, such order shall  
62 not provide for income withholding to begin immedi-  
63 ately.

64 (d) The supreme court of appeals shall make available  
65 to the circuit courts standard language to be included in  
66 all such orders, so as to conform such orders to the  
67 applicable requirements of state and federal law regard-  
68 ing the withholding from income of amounts payable as  
69 support.

70 (e) Every support order entered by a circuit court of  
71 this state prior to the effective date of this section shall  
72 be considered to provide for an order of income with-  
73 holding, by operation of law, which complies with the  
74 provisions of this section, notwithstanding the fact that  
75 such support order does not in fact provide for such  
76 order of withholding.

77 (f) The court shall consider the best interests of the  
78 child in determining whether "good cause" exists under  
79 this section. The court may also consider the obligor's  
80 payment record in determining whether "good cause"  
81 has been demonstrated.

82 (g) The commission as defined in section one, article  
83 two, chapter forty-eight-a of this code shall promulgate  
84 legislative rules pursuant to chapter twenty-nine-a of  
85 this code further defining the duties of the child support  
86 enforcement division and the employer in wage with-  
87 holding.

**§48-2-37. Calculation of interest.**

1 If an obligation to pay interest arises under this  
2 chapter and the rate is not specified, the rate is that  
3 specified in section thirty-one, article six, chapter fifty-  
4 six of this code. On or after the effective date of this  
5 section, interest shall accrue only upon the outstanding  
6 principal of such obligation. This section shall be con-  
7 strued to permit the accumulation of simple interest, and  
8 may not be construed to permit the compounding of  
9 interest. Interest which has accrued on unpaid install-  
10 ments accruing before the effective date of this section  
11 may not be modified by any court, irrespective of wheth-  
12 er such installment accrued simple or compound interest:  
13 *Provided*, That unpaid installments upon which interest  
14 was compounded before the effective date of this section  
15 shall accrue only simple interest thereon on and after the  
16 effective date of this section.

**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 or  
13 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 screening to determine whether  
17 such individual is paying or is obligated to pay support  
18 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 distri-  
28 bution 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 informa-  
35 tion;

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 access  
42 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 mainte-  
47 nance of accurate records regarding the payment of  
48 support and the prompt provision of notice to appropri-  
49 ate officials with respect to any arrearage in support  
50 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; or

57 (B) The chief judge of the circuit court in a judicial  
58 circuit having two or more circuit judges.

59 (3) "Child advocate office" and "child support enforce-  
60 ment division" mean the agency created under the  
61 provisions of article two of this chapter, or any public or  
62 private entity or agency contracting to provide a service.  
63 The "child advocate office" or "child support enforce-  
64 ment division" is that agency intended by the Legisla-  
65 ture to be the single and separate organizational unit of

66 state government administering programs of child and  
67 spousal support enforcement and meeting the staffing  
68 and organizational requirements of the secretary of the  
69 federal department of health and human services.

70 (4) "Children's advocate" or "advocate" means any  
71 public or private agency, entity or person providing child  
72 support enforcement services required by this chapter.  
73 The term includes those persons or agencies or entities  
74 providing services under the direction of or pursuant to  
75 a contract with the child support enforcement division as  
76 provided for in article two of this chapter and in any  
77 such contract.

78 (5) "Court" means a circuit court of this state, unless  
79 the context in which such term is used clearly indicates  
80 that reference to some other court is intended.

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

92 (7) "Custodial parent" or "custodial parent of a child"  
93 means a parent who has been granted custody of a child  
94 by a court of competent jurisdiction. "Noncustodial  
95 parent" means a parent of a child with respect to whom  
96 custody has been adjudicated with the result that such  
97 parent has not been granted custody of the child.

98 (8) "Director" means any person appointed pursuant to  
99 section thirteen, article two of this chapter, who directs  
100 all child support establishment and enforcement services  
101 for the child support enforcement division.

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

105 (10) "Earnings" means compensation paid or payable  
106 for personal services, whether denominated as wages,  
107 salary, commission, bonus or otherwise, and includes  
108 periodic payments pursuant to a pension or retirement  
109 program. "Disposable earnings" means that part of the  
110 earnings of any individual remaining after the deduction  
111 from those earnings of any amounts required by law to  
112 be withheld.

113 (11) "Employer" means any individual, sole proprietor-  
114 ship, partnership, association, public or private corpora-  
115 tion, the United States or any federal agency, this state  
116 or any political subdivision of this state, any other state  
117 or a political subdivision of another state and any other  
118 legal entity which hires and pays an individual for his  
119 services.

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

124 (13) "Income" includes, but is not limited to, the  
125 following:

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

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

135 (C) Any amount of money which is owing to the obligor  
136 as a debt from an individual, partnership, association,

137 public or private corporation, the United States or any  
138 federal agency, this state or any political subdivision of  
139 this state, any other state or a political subdivision of  
140 another state or any other legal entity which is indebted  
141 to the obligor.

142 (14) "Individual entitled to support enforcement  
143 services under the provisions of this chapter and the  
144 provisions of Title IV-D of the federal Social Security  
145 Act" means:

146 (A) An individual who has applied for or is receiving  
147 services from the child support enforcement division and  
148 who is the custodial parent of a child, or the primary  
149 caretaker of a child, or the guardian of the property of a  
150 child when:

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

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

157 (B) An individual who has applied for or is receiving  
158 services from the child support enforcement division and  
159 who is an adult or an emancipated minor whose spouse  
160 or former spouse has been ordered by a court of compe-  
161 tent jurisdiction to pay spousal support to the individual,  
162 whether such support is denominated alimony or sepa-  
163 rate maintenance, or is identified by some other termi-  
164 nology, thus establishing a support obligation with  
165 respect to such spouse, when the obligor required to pay  
166 such spousal support is not meeting the obligation, or  
167 has not met such obligation in the past; or

168 (C) Any individual who is an obligee in a support order,  
169 entered by a court of competent jurisdiction after the  
170 thirty-first day of December, one thousand nine hundred  
171 ninety-three.

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

175 (16) "Obligee" means:

176 (A) An individual to whom a duty of support is or is  
177 alleged to be owed or in whose favor a support order has  
178 been issued or a judgment determining parentage has  
179 been rendered;

180 (B) A state or political subdivision to which the rights  
181 under a duty of support or support order have been  
182 assigned or which has independent claims based on  
183 financial assistance provided to an individual obligee; or

184 (C) An individual seeking a judgment determining  
185 parentage of the individual's child.

186 (17) "Obligor" means an individual or the estate of a  
187 decedent:

188 (A) Who owes or is alleged to owe a duty of support;

189 (B) Who is alleged, but has not been adjudicated, to be  
190 a parent of a child; or

191 (C) Who is liable under a support order.

192 (18) "Office of the children's advocate" or "child  
193 support enforcement division" means the agency created  
194 in section twelve, article two of this chapter or any  
195 public or private entity or agency contracting with the  
196 child support enforcement division to provide these  
197 services pursuant to article two of this chapter.

198 (19) "Primary caretaker of a child" means a parent or  
199 other person having actual physical custody of a child  
200 without a court order granting such custody and who has  
201 been primarily responsible for exercising parental rights  
202 and responsibilities with regard to such child.

203 (20) "Secretary" means the secretary of the department  
204 in which the child support enforcement division is



205 located according to section forty-two, article two of this  
206 chapter.

207 (21) "Source of income" means an employer or succes-  
208 sor employer or any other person who owes or will owe  
209 income to an obligor.

210 (22) "Support" means the payment of money including  
211 interest:

212 (A) For a child or spouse, ordered by a court of compe-  
213 tent jurisdiction, whether the payment is ordered in an  
214 emergency, temporary, permanent or modified order,  
215 decree or judgment of such court, and the amount of  
216 unpaid support shall bear simple interest from the date  
217 it accrued, at a rate of ten dollars upon one hundred  
218 dollars per annum, and proportionately for a greater or  
219 lesser sum, or for a longer or shorter time;

220 (B) To third parties on behalf of a child or spouse,  
221 including, but not limited to, payments to medical,  
222 dental or educational providers, payments to insurers for  
223 health and hospitalization insurance, payments of  
224 residential rent or mortgage payments, payments on an  
225 automobile or payments for day care; and/or

226 (C) For a mother, ordered by a court of competent  
227 jurisdiction, for the necessary expenses incurred by or  
228 for the mother in connection with her confinement or of  
229 other expenses in connection with the pregnancy of the  
230 mother.

231 (23) "Support order" means any order of a court of  
232 competent jurisdiction for the payment of support,  
233 whether or not for a sum certain.

**§48A-1-3a. Calculation of interest.**

1 (a) If an obligation to pay interest arises under this  
2 chapter and the rate is not specified, the rate is that  
3 specified in section thirty-one, article six, chapter fifty-  
4 six of this code. Interest shall accrue only upon the  
5 outstanding principal of such obligation. On and after

6 the effective date of this section, this section shall be  
7 construed to permit the accumulation of simple interest,  
8 and may not be construed to permit the compounding of  
9 interest. Interest which has accrued on unpaid install-  
10 ments accruing before the effective date of this section  
11 may not be modified by any court, irrespective of  
12 whether such installment accrued simple or compound  
13 interest: *Provided*, That unpaid installments upon which  
14 interest was compounded before the effective date of this  
15 section shall accrue only simple interest thereon on and  
16 after the effective date of this section.

**ARTICLE 2. WEST VIRGINIA SUPPORT ENFORCEMENT COMMISSION;  
CHILD SUPPORT ENFORCEMENT DIVISION; ESTABLISHMENT AND ORGANIZATION.**

**§48A-2-1. Creation of support enforcement commission;  
number of members.**

1 The West Virginia support enforcement commission,  
2 consisting of nine members, is hereby created in the  
3 department of health and human resources and may use  
4 the administrative support and services of that depart-  
5 ment. The commission is not subject to control, supervi-  
6 sion or direction by the department of health and human  
7 resources, but is an independent, self-sustaining com-  
8 mission that shall have the powers and duties specified  
9 in this chapter and all other powers necessary and  
10 proper to establish policies and procedures for fully and  
11 effectively carrying out the purposes of administering,  
12 regulating, overseeing and enforcing the provisions of  
13 this chapter and chapter forty-eight of this code which  
14 relate to the establishment and enforcement of support  
15 obligations.

16 The commission is a part-time commission whose  
17 members make policy and have such other powers and  
18 perform such other duties as specified in this chapter or  
19 set forth in legislative rules promulgated by the commis-  
20 sion. The ministerial duties of the commission shall be  
21 administered and carried out by the director of the child  
22 support enforcement division, with the assistance of such

23 staff of the department of health and human resources as  
24 secretary may assign.

25 Each member of the commission shall devote the time  
26 necessary to carry out the duties and obligations of the  
27 office and the six members appointed by the governor  
28 may pursue and engage in another business, occupation,  
29 or gainful employment that is not in conflict with the  
30 duties of the commission.

31 While the commission is self-sustaining and independ-  
32 ent, it, its members, its employees and the director are  
33 subject to article nine-a of chapter six, chapter six-b,  
34 chapter twenty-nine-a, and chapter twenty-nine-b of  
35 this code.

**§48A-2-2. Appointment of members of support enforcement  
commission; qualifications and eligibility.**

1 (a) Of the nine members of the commission, three shall  
2 be members by virtue of the public offices which they  
3 hold, and the remaining six members are to be appointed  
4 by the governor. No more than five members of the  
5 commission may belong to the same political party;

6 (1) One member is to be the secretary of the depart-  
7 ment of health and human resources;

8 (2) One member is to be the secretary of the depart-  
9 ment of tax and revenue;

10 (3) One member is to be the secretary of the depart-  
11 ment of administration;

12 (4) One member is to be a lawyer licensed by, and in  
13 good standing with, the West Virginia state bar, with at  
14 least five years of professional experience in domestic  
15 relations law and the establishment and enforcement of  
16 support obligations;

17 (5) One member is to be a person experienced as a  
18 public administrator in the supervision and regulation of  
19 a governmental agency;

20 (6) One member is to be an employer experienced in  
21 withholding support payments from the earnings of  
22 obligors;

23 (7) One member is to be a person selected from a list of  
24 nominees submitted by the West Virginia judicial  
25 association: *Provided*, That the list of nominees shall not  
26 include any person currently exercising the powers of  
27 the judicial department; and

28 (8) Two members are to be representatives of the  
29 public at large.

30 (b) Each member of the commission is to be a citizen  
31 of the United States, a resident of the state of West  
32 Virginia and at least twenty-one years of age.

**§48A-2-3. Terms of commission members; conditions of  
membership.**

1 (a) The term of office for each member of the commis-  
2 sion who serves as a member by virtue of the public  
3 office held is for a period concurrent with that person's  
4 tenure in the office. The term of office for each member  
5 of the commission appointed by the governor is four  
6 years, except that for an initial period, the terms of  
7 office of the initial six commission members appointed  
8 by the governor commence from an initial date of  
9 appointment not later than the first day of July, one  
10 thousand nine hundred ninety-five and run as follows:

11 (1) Two members shall be appointed for a term ending  
12 on the thirtieth day of June, one thousand nine hundred  
13 ninety-seven;

14 (2) Two members shall be appointed for terms ending  
15 on the thirtieth day of June, one thousand nine hundred  
16 ninety-eight; and

17 (3) Two members shall be appointed for terms ending  
18 on the thirtieth day of June, one thousand nine hundred  
19 ninety-nine.

20 (b) After the initial appointments made pursuant to  
21 the provisions of subdivisions (1), (2) and (3), subsection  
22 (a) of this section, members appointed by the governor  
23 shall thereafter be appointed or reappointed for terms of  
24 office which end on the thirtieth day of June in the  
25 fourth year following the expiration date of the previous  
26 term or terms.

27 (c) Appointments to fill vacancies on the commission  
28 are for the unexpired term of the member replaced.

29 (d) At the expiration of a member's term, the member  
30 shall continue to serve until a successor is appointed and  
31 qualified.

#### §48A-2-4. Oath.

1 Before entering upon the discharge of the duties as  
2 commissioner, each commissioner shall take and sub-  
3 scribe to the oath of office prescribed in section five,  
4 article four of the Constitution of West Virginia.

#### §48A-2-5. Commission chairman.

1 In making the initial appointments to the commission,  
2 the governor shall designate a member to serve as  
3 chairman for a term ending on the thirtieth day of June,  
4 one thousand nine hundred ninety-six. The member so  
5 designated shall serve in such capacity until his or her  
6 successor as chairman is elected by the commission as  
7 hereinafter provided.

8 Following the term of the initial chairman, thereafter  
9 the chairman shall be elected by the commission from  
10 among its members, and the member so elected shall: (1)  
11 Serve as chairman for a term of two years and until his  
12 or her successor shall have been elected; or (2) shall serve  
13 in such capacity throughout his or her service as a  
14 member of the commission, whichever period is shorter.  
15 In the event that a successor chairman is not elected by  
16 the commission members within ninety calendar days  
17 after the expiration of a chairman's term, a vacancy shall

18 be deemed to exist, and the governor shall designate a  
19 chairman from among the members of the commission.  
20 A member may not serve more than two consecutive  
21 terms as chairman.

**§48A-2-6. Compensation of members; reimbursement for expenses.**

1 (a) Each member of the commission shall receive one  
2 hundred dollars for each day or portion thereof spent in  
3 the discharge of his or her official duties.

4 (b) Each member of the commission shall be reim-  
5 bursed for all actual and necessary expenses and dis-  
6 bursements involved in the execution of official duties.

**§48A-2-7. Meeting requirements.**

1 (a) The commission shall meet within the state at least  
2 once per calendar quarter and at such other times as the  
3 chairman may decide. The commission shall also meet  
4 upon a call of five or more members upon seventy-two  
5 hours written notice to each member.

6 (b) Five members of the commission are a quorum for  
7 the transaction of any business and for the performance  
8 of any duty.

9 (c) A majority vote of the members present is required  
10 for any final determination by the commission.

11 (d) The commission may elect to meet in executive  
12 session after an affirmative vote of a majority of its  
13 members present according to section four, article nine-  
14 a, chapter six of this code.

15 (e) The commission shall keep a complete and accurate  
16 record of all its meetings according to section five,  
17 article nine-a, chapter six of this code.

**§48A-2-8. Removal of commission members.**

1 Notwithstanding the provisions of section four, article  
2 six, chapter six of this code, the governor may remove

3 any commission member for incompetence, misconduct,  
4 gross immorality, misfeasance, malfeasance or nonfea-  
5 sance in office.

**§48A-2-9. General duties of support enforcement commis-  
sion.**

1 The support enforcement commission shall have  
2 general responsibility for establishing policies and  
3 procedures for obtaining and enforcing support orders  
4 and establishing paternity according to this chapter, as  
5 hereinafter provided, including, without limitation, the  
6 responsibility for the following:

7 (a) To propose for promulgation, according to the  
8 provisions of chapter twenty-nine-a of this code, such  
9 legislative rules as in its judgment may be necessary to  
10 fulfill the policies of this chapter;

11 (b) To undertake directly, or by contract, legal or  
12 policy research related to obtaining and enforcing  
13 support orders and establishing paternity;

14 (c) To serve as a clearinghouse for information;

15 (d) To keep a record of all commission proceedings  
16 available for public inspection;

17 (e) To file a written annual report to the governor, the  
18 president of the Senate and the speaker of the House of  
19 Delegates on or before the thirtieth day of January of  
20 each year, and such additional reports as the governor or  
21 Legislature may request.

**§48A-2-10. General powers of support enforcement commis-  
sion.**

1 In establishing policies and procedures for enforcing  
2 the provisions of this chapter, the commission shall have  
3 the following power and authority:

4 (1) To establish and maintain procedures under which  
5 expedited processes, administrative or judicial, are in  
6 effect for obtaining and enforcing support orders and

7 establishing paternity according to this chapter;

8 (2) To monitor the child support enforcement system  
9 of this state and from time to time to advise the child  
10 support enforcement division and other agencies of the  
11 state of West Virginia regarding the establishment and  
12 enforcement of child support orders;

13 (3) To promulgate all emergency and legislative rules  
14 pursuant to chapter twenty-nine-a of this code as are  
15 required by this chapter: *Provided*, That all rules which  
16 are in effect at the time of the implementation of this  
17 section shall continue in full force and effect until the  
18 commission promulgates a rule or rules regarding the  
19 same subject matter;

20 (4) To promulgate legislative rules pursuant to chapter  
21 twenty-nine-a of this code establishing guidelines for  
22 child support awards;

23 (5) To promulgate legislative rules pursuant to chapter  
24 twenty-nine-a of this code relating to the structure of the  
25 child support enforcement division, including, but not  
26 limited to, the designation of administrative and legal  
27 tasks and the location of offices for the division through-  
28 out the state. This rule shall constitute an emergency  
29 rule within the meaning of section fifteen, article three,  
30 chapter twenty-nine-a of this code;

31 (6) To adopt standards for staffing, recordkeeping,  
32 reporting, intergovernmental cooperation, training,  
33 physical structures and time frames for case processing;

34 (7) To review the state plan for child and spousal  
35 support to determine its conformance or nonconform-  
36 ance with the provisions of 42 U.S.C. §654, and make  
37 recommendations or promulgate to legislative rules  
38 based upon such review;

39 (8) To cooperate with judicial organizations and the  
40 private bar to provide training to persons involved in the  
41 establishment and enforcement of child support orders;



42 (9) To study the issues involving retroactive and  
43 reimbursement child support payments which are  
44 ordered following the establishment of paternity and to  
45 make a recommendation to the Legislature on or before  
46 the first day of December, one thousand nine hundred  
47 ninety-five, regarding any statutory or regulatory action  
48 which should be implemented to ensure that fathers are  
49 not ordered to pay retroactive or reimbursement child  
50 support or medical expenses when such payments would  
51 be unconscionable or inequitable given the totality of the  
52 circumstances arising from the facts of a given case; and

53 (10) To promulgate such further legislative rules  
54 pursuant to chapter twenty-nine-a of this code which  
55 may aid the child support enforcement division in the  
56 establishment and enforcement of child support orders.  
57 In addition to the specific designation of such rules that  
58 constitute emergency rules within the meaning of section  
59 fifteen, article three, chapter twenty-nine-a of this code,  
60 the commission may promulgate other rules as emer-  
61 gency rules when such rule is necessary to ensure that  
62 the state is awarded federal funds for the actions de-  
63 scribed in the rule or when the promulgation of such rule  
64 is necessary to prevent substantial harm to the public  
65 interest by insuring that child support is timely collected  
66 and disbursed.

**§48A-2-11. Required rulemaking.**

1 The commission shall, without limitation on the  
2 powers conferred in section ten of this article, include  
3 within its legislative rules the following specific provi-  
4 sions according to the provisions of this chapter:

5 (1) Prescribing the methods and forms of proposal that  
6 a prospective contractor shall follow and complete  
7 before consideration of a proposal by the commission,  
8 which rules shall require such plans as shall assure the  
9 commission that the proposal conforms with the require-  
10 ments of this chapter and all applicable federal statutes  
11 and regulations;

12 (2) Prescribing standards and guidelines for contrac-  
13 tors providing professional services to ensure the main-  
14 tenance of the highest quality of service and professional  
15 standards, the preservation of the attorney-client  
16 relationship, and the protection of the integrity of the  
17 adversarial process from any impairment in furnishing  
18 legal representation;

19 (3) Requiring the division, and any contractors provid-  
20 ing professional services or collection services to the  
21 division, to adopt procedures for the provision of such  
22 services which will best advance the needs and interests  
23 of the obligees and dependents who seek assistance in  
24 obtaining and enforcing support orders and establishing  
25 paternity according to this chapter, without regard to  
26 whether such procedures optimize or maximize the  
27 profits derived by the contractor or result in the payment  
28 of reimbursements or financial incentives to the division;

29 (4) Prescribing standards and guidelines for contrac-  
30 tors providing professional services to ensure that  
31 appropriate training and support services are provided  
32 to employees of the contractor who are engaged in  
33 activities to obtain and enforce support orders and  
34 establish paternity according to this chapter;

35 (5) Prescribing minimum procedures for the exercise  
36 of effective control over the internal fiscal affairs of a  
37 contractor providing collection services, including  
38 provisions for the safeguarding of support payments, the  
39 recording of receipts and evidence of nonpayment by  
40 obligors, and the maintenance of reliable records,  
41 accounts, and reports of transactions, operations and  
42 events, including reports to the commission;

43 (6) Providing for a minimum uniform standard of  
44 accounting methods, procedures and forms; a uniform  
45 code of accounts and accounting classifications; and  
46 other standard operating procedures, as may be neces-  
47 sary to assure consistency, comparability, and effective  
48 disclosure of all financial information by a contractor

49 providing collection services; and

50 (7) Requiring periodic financial reports and the form  
51 thereof, including an annual audit prepared by a certi-  
52 fied public accountant licensed to do business in this  
53 state, attesting to the financial condition of a contractor  
54 providing collection services and disclosing whether the  
55 accounts, records and control procedures examined are  
56 maintained by the contractor as required by this chapter.

**§48A-2-12. Establishment of the child support enforcement  
division; cooperation with the division of  
human services.**

1 (a) Effective the first day of July, one thousand nine  
2 hundred ninety-five, there is hereby established in the  
3 department of health and human resources the child  
4 support enforcement division. The division is under the  
5 immediate supervision of the director, who is responsible  
6 for the exercise of the duties and powers assigned to the  
7 division under the provisions of this chapter. The  
8 division is designated as the single and separate organi-  
9 zational unit within this state to administer the state  
10 plan for child and spousal support according to 42 U.S.C.  
11 §654(3).

12 (b) The division of human services shall cooperate  
13 with the child support enforcement division. At a  
14 minimum, such cooperation shall require that the  
15 division of human services:

16 (1) Notify the child support enforcement division when  
17 the division of human services proposes to terminate or  
18 provide public assistance payable to any obligee;

19 (2) Receive support payments made on behalf of a  
20 former or current recipient to the extent permitted by  
21 Title IV-D, Part D, of the Social Security Act; and

22 (3) Accept the assignment of the right, title or interest  
23 in support payments and forward a copy of the assign-  
24 ment to the child support enforcement division.

**§48A-2-13. Appointment of director; duties; compensation.**

1 (a) There is hereby created the position of director  
2 whose duties include the ministerial management and  
3 administration of the office of the support enforcement  
4 commission. The director shall:

5 (1) Be appointed by the secretary;

6 (2) Serve at the will and pleasure of the secretary;

7 (3) Serve on a full-time basis and shall not engage in  
8 any other profession or occupation, including the holding  
9 of a political office in the state either by election or  
10 appointment, while serving as director;

11 (4) Be a lawyer licensed by, and in good standing with,  
12 the West Virginia state bar; and

13 (5) Have responsible administrative experience, possess  
14 management skills, and have knowledge of the law as it  
15 relates to domestic relations and the establishment and  
16 enforcement of support obligations.

17 Before entering upon the discharge of the duties as  
18 commissioner, the director shall take and subscribe to  
19 the oath of office prescribed in section five, article four  
20 of the Constitution of West Virginia.

21 (b) The duties of the director shall include the follow-  
22 ing:

23 (1) To direct and administer the daily operations of the  
24 commission;

25 (2) To administer the child support enforcement fund  
26 created pursuant to section eighteen of this article;

27 (3) To keep the records and papers of the commission,  
28 including a record of each proceeding;

29 (4) To prepare, issue and submit reports of the com-  
30 mission; and

31 (5) To perform any other duty that the commission

32 directs.

33 (c) All payments to the director as compensation shall  
34 be made from the child support enforcement fund. The  
35 director is entitled to:

36 (1) A reasonable and competitive compensation pack-  
37 age to be established by the secretary; and

38 (2) Reimbursement for expenses under the standard  
39 state travel regulations.

**§48A-2-14. Organization and employees.**

1 (a) The director shall organize the work of the division  
2 in such offices or other organizational units as he or she  
3 may determine to be necessary for effective and efficient  
4 operation.

5 (b) The secretary may transfer employees and re-  
6 sources of the department to the child support enforce-  
7 ment division as may be necessary to fulfill the duties  
8 and responsibilities of the division under this chapter:  
9 *Provided*, That the secretary may not transfer employees  
10 of other divisions and agencies within the department to  
11 the child support enforcement division without a prior  
12 finding that the office or position held by the employee  
13 may be eliminated and until the office or position is, in  
14 fact, eliminated. On the first day of July, one thousand  
15 nine hundred ninety-five, the secretary shall transfer  
16 and allocate to the division all functions, offices, person-  
17 nel and equipment of the child advocate office previ-  
18 ously created within the division of human services by  
19 the prior enactment of section one of this article.

20 (c) The director, if he or she deems such action neces-  
21 sary, may hire legal counsel for the division, notwith-  
22 standing the provisions of section two, article three,  
23 chapter five of this code or any other code provision to  
24 the contrary, or may request the attorney general to  
25 appoint assistant attorneys general who shall perform  
26 such duties as may be required by the division. The

27 attorney general, in pursuance of such request, may  
28 select and appoint assistant attorneys general, to serve  
29 during the will and pleasure of the attorney general, and  
30 such assistants shall be paid out of any funds allocated  
31 and appropriated to the child support enforcement fund.

32 (d) The director may employ such staff or employees as  
33 may be necessary to administer and enforce this chapter.

**§48A-2-15. Supervisory responsibilities within the child support enforcement division.**

1 The director shall have control and supervision of the  
2 child support enforcement division and shall be respon-  
3 sible for the work of each of its organizational units.  
4 Each organizational unit shall be headed by an employee  
5 of the division appointed by the director who shall be  
6 responsible to the director for the work of his or her  
7 organizational unit.

**§48A-2-16. General duties and powers of the child support enforcement division.**

1 In carrying out the policies and procedures for enforc-  
2 ing the provisions of this chapter, the division shall have  
3 the following power and authority:

4 (1) To undertake directly, or by contract, activities to  
5 obtain and enforce support orders and establish pater-  
6 nity;

7 (2) To undertake directly, or by contract, activities to  
8 establish paternity for minors for whom paternity has  
9 not been acknowledged by the father or otherwise  
10 established by law;

11 (3) To undertake directly, or by contract, activities to  
12 collect and disburse support payments;

13 (4) To contract for professional services with any  
14 person, firm, partnership, professional corporation,  
15 association or other legal entity to provide representa-  
16 tion for the division and the state in administrative or

17 judicial proceedings brought to obtain and enforce  
18 support orders and establish paternity;

19 (5) To ensure that activities of a contractor under a  
20 contract for professional services are carried out in a  
21 manner consistent with attorneys' professional responsi-  
22 bilities as established in the rules of professional conduct  
23 as promulgated by the supreme court of appeals;

24 (6) To contract for collection services with any person,  
25 firm, partnership, corporation, association or other legal  
26 entity to collect and disburse amounts payable as  
27 support;

28 (7) To ensure the compliance of contractors and their  
29 employees with the provisions of this chapter and  
30 legislative rules promulgated pursuant to this chapter,  
31 and to terminate, after notice and hearing, the contrac-  
32 tual relationship between the division and a contractor  
33 who fails to comply;

34 (8) To require a contractor to take appropriate reme-  
35 dial or disciplinary action against any employee who has  
36 violated or caused the contractor to violate the provi-  
37 sions of this chapter, in accordance with procedures  
38 prescribed in legislative rules promulgated by the  
39 commission;

40 (9) To locate parents who owe a duty to pay child  
41 support;

42 (10) To cooperate with other agencies of this state and  
43 other states to search their records to help locate absent  
44 parents;

45 (11) To cooperate with other states in establishing and  
46 enforcing support obligations;

47 (12) If the child support enforcement division is  
48 transferred to the department of tax and revenue pursu-  
49 ant to section forty-two of this article, the director of the  
50 child support enforcement division may exercise any  
51 power available to him or her as director, or to the tax

52 commissioner, in order to accomplish the purposes of  
53 this chapter, including, but not limited to, the powers  
54 associated with gaining access to all information gained  
55 and maintained by the department of tax and revenue in  
56 the collection of taxes, and any and all powers to levy,  
57 through distraint or seizure by any means, upon all  
58 property or rights to property without the need to obtain  
59 a separate court order for the attachment; and

60 (13) To exercise such other powers as may be neces-  
61 sary to effectuate the provisions of this chapter.

**§48A-2-17. Guidelines for child support awards.**

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

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

25 (2) When the child support award proposed to be made



26 pursuant to the guidelines would be contrary to the best  
27 interests of the child or children, or contrary to the best  
28 interests of the parties.

29 (b) The Legislature, by the enactment of this article,  
30 recognizes that children have a right to share in their  
31 natural parents' level of living. Accordingly, guidelines  
32 promulgated under the provisions of this section shall  
33 not be based upon any schedule of minimum costs for  
34 rearing children based upon subsistence level amounts  
35 set forth by various agencies of government. The Legis-  
36 lature recognizes that expenditures in families are not  
37 made in accordance with subsistence level standards, but  
38 are rather made in proportion to household income, and  
39 as parental incomes increase or decrease, the actual  
40 dollar expenditures for children also increase or de-  
41 crease correspondingly. In order to ensure that children  
42 properly share in their parents' resources, regardless of  
43 family structure, the guidelines shall be structured so as  
44 to provide that after a consideration of respective  
45 parental incomes, that child support will be related, to  
46 the extent practicable, to the level of living which such  
47 children would enjoy if they were living in a household  
48 with both parents present.

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

61 (d) The guidelines shall be structured so as to take into  
62 consideration any preexisting support orders which

63 impose additional duties of support upon an obligor  
64 outside of the instant case and shall provide direction in  
65 cases involving split or shared custody.

66 (e) The guidelines shall have application to cases of  
67 divorce, paternity, actions for support and modifications  
68 thereof.

69 (f) In determining the child support obligation of a  
70 parent whose employment income consists, in part, of  
71 compensation for overtime hours worked, the guidelines  
72 shall provide for a child support order which includes a  
73 consideration of such overtime compensation, balancing  
74 the interest of children to share in the resources of such  
75 parent with the interest of the parent in not being  
76 penalized for accepting overtime work. Any formula  
77 which is used to compute anticipated overtime compen-  
78 sation shall allow for the irregular nature of such  
79 compensation.

80 (g) In determining the child support obligation of a  
81 parent whose employment income consists of compensa-  
82 tion for seasonal employment, the guidelines shall  
83 provide for discretionary use of alternative payment  
84 schedules which may vary the periodic amounts required  
85 to be paid.

86 (h) The guidelines promulgated shall provide that in  
87 determining the child support obligation of a parent  
88 whose support obligation extends to the children of more  
89 than one family, the guidelines shall be structured so as  
90 to equitably provide for all children to whom the obligor  
91 owes a duty of support. The commission, in promulgat-  
92 ing guidelines in conformity to this section, shall formu-  
93 late a policy regarding whether a remarried parent's  
94 spouse's income affects a support obligation, and a  
95 policy regarding the consideration to be given to the  
96 costs of multiple family child raising obligations, other  
97 than the costs for those children for whom the support  
98 action was brought. The policy of the commission shall  
99 be declared explicitly in the guidelines, and if it is the

100 policy of the commission that the amount of support  
101 ordered should be altered because of a consideration of  
102 these factors, then the formula for calculating the  
103 alteration under the guidelines shall be explicitly stated.

104 (i) The guidelines shall incorporate standards for the  
105 computation of child support payments for persons when  
106 the parent's combined monthly net income is less than  
107 six hundred dollars or more than ten thousand dollars.  
108 The guidelines shall provide for crediting third party  
109 payments as child support when such third party pay-  
110 ments are ordered by a court in a child support order.

111 (j) In promulgating the legislative rule provided for  
112 under the provisions of this section, the commission shall  
113 be directed by the following legislative findings:

114 (1) That amounts to be fixed as child support should  
115 not include awards for alimony, notwithstanding the fact  
116 that any amount fixed as child support may impact upon  
117 the living conditions of custodial parents;

118 (2) That parental expenditures on children represent a  
119 relatively constant percentage of family consumption as  
120 family consumption increases, so that as family income  
121 increases, the family's level of consumption increases,  
122 and the children should share in and benefit from this  
123 increase;

124 (3) That parental expenditures on children represent a  
125 declining proportion of family income as the gross  
126 income of the family increases, so that while total dollar  
127 outlays for children have a positive relationship to the  
128 family's gross income, the proportion of gross family  
129 income allotted for the children has a negative relation-  
130 ship to gross income;

131 (4) That expenditures on children vary according to the  
132 number of children in the family, and as the number of  
133 children in the family increases, the expenditures for the  
134 children as a group increase and the expenditures on  
135 each individual child decrease; so that due to increasing

136 economies of scale and the increased sharing of resources  
137 among family members, spending will not increase in  
138 direct proportion to the number of children; and

139 (5) That as children grow older, expenditures on  
140 children increase, particularly during the teenage years.

141 (k) Prior to the first day of May, one thousand nine  
142 hundred ninety-six, the commission shall review the  
143 guidelines and propose a legislative rule for promulga-  
144 tion in accordance with the provisions of article three,  
145 chapter twenty-nine of this code to amend and update  
146 the guidelines required by this section. Such proposed  
147 rule shall include, but not be limited to, provisions which  
148 specifically address the requirements set forth in subsec-  
149 tions (f), (g) and (h) of this section. In preparing such  
150 legislative rule to be proposed for promulgation, the  
151 commission is directed to study the feasibility and  
152 desirability of basing support guidelines on an income  
153 shares formula. Notwithstanding the provisions of this  
154 section to the contrary, the commission may, in its  
155 discretion, propose for promulgation support guidelines  
156 based on an income shares formula. In preparing such  
157 legislative rule to be proposed for promulgation, the  
158 commission is directed to study the feasibility and  
159 desirability of limiting the maximum amount to be paid  
160 as child support in cases involving a parent or parents  
161 with high incomes, and to also study the possible alter-  
162 native disposition of available income to an educational  
163 trust or other investment through which the child or  
164 children hold the beneficial interest, and the commission  
165 may, in its discretion, propose for promulgation support  
166 guidelines which address these issues.

167 (l) The commission shall review the guidelines at least  
168 once every four years to ensure that their application  
169 results in the determination of appropriate child support  
170 awards. Such four-year period shall begin on the first  
171 day of July, two thousand.

**§48A-2-18. Creation of child support enforcement fund;**

**purpose; funding; disbursements.**

1 (a) There is hereby created in the state treasury a  
2 separate special revenue account, which shall be an  
3 interest bearing account, to be known as the "child  
4 support enforcement fund". The special revenue account  
5 shall consist of all incentive payments paid by the  
6 federal government pursuant to 42 U.S.C §658 as a  
7 percentage of the total amount of support collected  
8 directly or by contract by the child support enforcement  
9 division, all amounts appropriated by the Legislature to  
10 maintain and operate the child support enforcement  
11 division according to this chapter, and all interest or  
12 other earnings from moneys in the fund. Any agency or  
13 entity receiving federal matching funds for services of  
14 the child support enforcement division shall enter into  
15 an agreement with the secretary whereby all federal  
16 matching funds paid to and received by that agency or  
17 entity for the activities of the child support enforcement  
18 division shall be paid into the child support enforcement  
19 fund. Said agreement shall provide for advance pay-  
20 ments into the fund by such agencies, from available  
21 federal funds, pursuant to Title IV-D of the Social  
22 Security Act and in accordance with federal regulations.  
23 No expenses incurred under this section shall be a  
24 charge against the general funds of the state.

25 (b) Moneys in the special revenue account shall be  
26 appropriated to the department and used exclusively, in  
27 accordance with appropriations by the Legislature, to  
28 pay costs, fees and expenses incurred, or to be incurred  
29 for the following purpose: the provision of child support  
30 services authorized pursuant to Title VI, Part D of the  
31 Social Security Act and any further duty as set forth in  
32 this chapter, including, but not limited to, the duties  
33 assigned to the division by virtue of its being designated  
34 as the single and separate organizational unit within this  
35 state to administer the state plan for child and spousal  
36 support according to section twelve of this article.

37 (c) Any balance remaining in the special revenue  
38 account at the end of any state fiscal year shall not  
39 revert to the general revenue fund but shall remain in  
40 the special revenue account and shall be used solely in a  
41 manner consistent with this section: *Provided*, That for  
42 the three succeeding fiscal years after the effective date  
43 of this section, any appropriation made to the special  
44 revenue account from general revenue shall be repaid to  
45 the general revenue fund from moneys available in the  
46 special revenue account.

47 (d) Disbursements from the special revenue account  
48 shall be authorized by the director.

**§48A-2-19. Fees.**

1 (a) When the child support enforcement division  
2 provides child support collection services either to a  
3 public assistance recipient or to a party who does not  
4 receive public assistance, the child support enforcement  
5 division shall, upon written notice to the obligor, charge  
6 a monthly collection fee equivalent to the full monthly  
7 cost of the services, in addition to the amount of child  
8 support which was ordered by the court. The fee shall be  
9 deposited in the child support enforcement fund. The  
10 service fee assessed may not exceed ten percent of the  
11 monthly court ordered child support and may not be  
12 assessed against any obligor who is current in payment  
13 of the monthly court ordered child support payments:  
14 *Provided*, That this fee may not be assessed when the  
15 obligor is also a recipient of public assistance.

16 (b) Except for those persons applying for services  
17 provided by the child support enforcement division who  
18 are applying for or receiving public assistance from the  
19 division of human services or persons for whom fees are  
20 waived pursuant to a legislative rule promulgated  
21 pursuant to this section, all applicants shall pay an  
22 application fee of twenty-five dollars.

23 (c) Fees imposed by state and federal tax agencies for

24 collection of overdue support shall be imposed on the  
25 person for whom these services are provided. Upon  
26 written notice to the obligee the child support enforce-  
27 ment division shall assess a fee of twenty-five dollars to  
28 any person not receiving public assistance for each  
29 successful federal tax interception. The fee shall be  
30 withheld prior to the assistance for each successful  
31 federal tax interception. The fee shall be withheld prior  
32 to the release of the funds received from each intercep-  
33 tion and deposited in the child support enforcement fund  
34 established pursuant to section eighteen of this article.

35 (d) In any action brought by the child support enforce-  
36 ment division, the family law master shall order that the  
37 obligor shall pay attorney fees for the services of the  
38 attorney representing the child support enforcement  
39 division in an amount calculated at a rate similar to the  
40 rate paid to court appointed attorneys paid pursuant to  
41 section thirteen-a, article twenty-one, chapter twenty-  
42 nine of this code, and all court costs associated with the  
43 action: *Provided*, That no such award shall be made  
44 when the family law master or circuit judge finds that  
45 the award of attorneys fees would create a substantial  
46 financial hardship on the obligor or when the obligor is  
47 a recipient of public assistance. Further, the child  
48 support enforcement division may not collect such fees  
49 until the obligor is current in the payment of child  
50 support. No court may order the child support enforce-  
51 ment division to pay attorney's fees to any party in any  
52 action brought pursuant to this chapter or chapter forty-  
53 eight of this code.

54 (e) This section shall not apply to the extent it is  
55 inconsistent with the requirements of federal law for  
56 receiving funds for the program under Title IV-A and  
57 Title IV-D of the Social Security Act, United States  
58 Code, article three, Title 42, Sections 601 to 613 and  
59 United States Code, Title 42, Sections 651 to 662.

60 (f) The commission shall, by legislative rule promul-

61 gated pursuant to chapter twenty-nine-a of this code,  
62 describe the circumstances under which fees charged by  
63 the child support enforcement division may be modified  
64 or waived, and such rule shall provide for the waiver of  
65 any fee, in whole or in part, when such fee would other-  
66 wise be required to be paid under the provisions of this  
67 chapter. Further, such rule shall initially be promul-  
68 gated as an emergency rule pursuant to section fifteen,  
69 article three, chapter twenty-nine-a of this code.

**§48A-2-20. Contracts for services.**

- 1 (a) Contracts with persons, firms, partnerships, corpo-  
2 rations, associations or other legal entities to provide  
3 services to the child support enforcement division shall,  
4 at a minimum:
  - 5 (1) Provide for the employment and training of person-  
6 nel necessary to perform the services;
  - 7 (2) Provide that any federal incentive payment that is  
8 payable shall be payable to the fund established pursu-  
9 ant to section eighteen of this article;
  - 10 (3) Delegate responsibility that is consistent with the  
11 rules promulgated pursuant to this article;
  - 12 (4) Include any and all provisions required by state or  
13 federal law and specifically include terms regarding  
14 cancellation and renewal of the contract;
  - 15 (5) Provide for the assessment of penalties for the  
16 failure to fully or timely provide services included in the  
17 agreement;
  - 18 (6) Prohibit the assignment of the contract or the  
19 subcontracting of services to be provided under the  
20 contract without first obtaining the express written  
21 approval of the director;
  - 22 (7) Provide that the contractor consents to perfor-  
23 mance audits of its operations by the performance  
24 evaluation and research division, legislative auditor's



25 office of the West Virginia Legislature; and

26 (8) Establish reasonable administrative and fiscal  
27 requirements for providing and continuing services and  
28 reimbursement.

29 (b) Prior to entering into such agreement, the director  
30 shall provide all proposals to the members of the com-  
31 mission who may review and comment on those propos-  
32 als.

33 (c) The director shall enter into such agreement only  
34 when the director finds that based upon the information  
35 provided to the director and upon the comments made by  
36 members of the commission, that the provider of services  
37 is capable of carrying out the responsibilities of the  
38 agreement.

39 (d) All contracts entered into pursuant to this section  
40 shall meet all requirements for such agreements as  
41 detailed in article three, chapter five-a of this code:  
42 *Provided*, That when the commission, after reviewing  
43 any contract, finds that the contract meets all require-  
44 ments as set forth in this section and further that the  
45 child support enforcement division should enter into  
46 such contract, the contract shall not be subject to the  
47 requirements as detailed in article three, chapter five-a  
48 of this code.

49 (e) Any agreement entered into pursuant to this  
50 section may include a provision relating to the loan of  
51 equipment in the possession of the child support enforce-  
52 ment division.

**§48A-2-21. Attorneys representing state.**

1 (a) Attorneys employed by the child support enforce-  
2 ment division may represent this state or another state in  
3 an action brought under the authority of federal law of  
4 this chapter.

5 (b) An attorney employed by the child support enforce-  
6 ment division or employed by a person or agency or

7 entity pursuant to a contract with the child support  
8 enforcement division represents the interest of the state  
9 or the division and not the interest of any other party.  
10 The child support enforcement division shall, at the time  
11 an application for child support services is made, inform  
12 the applicant that any attorney who provides services for  
13 the child support enforcement division is the attorney for  
14 the State of West Virginia and that the attorney provid-  
15 ing those services does not provide legal representation  
16 to the applicant.

17 (c) An attorney employed by the child support enforce-  
18 ment division or pursuant to a contract with the child  
19 support enforcement division, may not be appointed or  
20 act as a guardian ad litem or attorney ad litem for a child  
21 or another party.

**§48A-2-22. Establishment of parent locator service.**

1 (a) The child support enforcement division shall  
2 establish a parent locator service to locate obligors,  
3 utilizing all sources of information and available records  
4 and the parent locator service in the federal department  
5 of health and human services. Any person, agency or  
6 entity providing services to the child support enforce-  
7 ment division pursuant to a contract shall have access to  
8 such service when the contract includes a provision to  
9 ensure that the confidentiality of such information is  
10 maintained.

11 (b) Upon entering into an agreement with the secretary  
12 of the federal department of health and human services  
13 for the use of that department's parent locator service,  
14 the child support enforcement division shall accept and  
15 transmit to the secretary of the department of health and  
16 human services requests for information to be furnished  
17 by such federal parent locator service to authorized  
18 persons. The child support enforcement division shall  
19 charge a reasonable fee sufficient to cover the costs to  
20 the state and to the federal department of health and  
21 human services incurred by reason of such requests, and

22 shall transfer to that department from time to time, so  
23 much of the fees collected as are attributable to the costs  
24 incurred by that department.

**§48A-2-23. Cooperation with other states in the enforcement  
of child support.**

1 (a) The child support enforcement division shall  
2 cooperate with any other state in the following:

3 (1) In establishing paternity;

4 (2) In locating an obligor residing temporarily or  
5 permanently in this state, against whom any action is  
6 being taken for the establishment of paternity or the  
7 enforcement of child and spousal support;

8 (3) In securing compliance by an obligor residing  
9 temporarily or permanently in this state, with an order  
10 issued by a court of competent jurisdiction against such  
11 obligor for the support and maintenance of a child or  
12 children or the parent of such child or children; and

13 (4) In carrying out other functions necessary to a  
14 program of child and spousal support enforcement.

15 (b) The commission shall, by legislative rule, establish  
16 procedures necessary to extend the child support en-  
17 forcement divisions's system of withholding under  
18 section three, article five of this chapter so that such  
19 system may include withholding from income derived  
20 within this state in cases where the applicable support  
21 orders were issued in other states, in order to assure that  
22 child support owed by obligors in this state or any other  
23 state will be collected without regard to the residence of  
24 the child for whom the support is payable or the resi-  
25 dence of such child's custodial parent.

**§48A-2-24. Disbursements of amounts collected as support.**

1 (a) Amounts collected as child or spousal support by  
2 the child support enforcement division shall be distrib-  
3 uted within ten days of receipt, except as otherwise

4 specifically provided in this chapter. Such amounts  
5 shall, except as otherwise provided under the provisions  
6 of subsection (c) of this section, be distributed as follows:

7 (1) The first fifty dollars of such amounts as are  
8 collected periodically which represent monthly support  
9 payments shall be paid to the obligee without affecting  
10 the eligibility of such person's family for assistance from  
11 the department of health and human resources or  
12 decreasing any amount otherwise payable as assistance  
13 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 child  
18 support enforcement division to the appropriate admin-  
19 istrative unit of the department of health and human  
20 resources to reimburse it for assistance payments to the  
21 family during such period (with appropriate reimburse-  
22 ment of the federal government to the extent of its  
23 participation in the financing);

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

30 (4) Such amounts as are in excess of amounts required  
31 to be distributed under subdivisions (1), (2) and (3) of  
32 this subsection shall be: (A) Paid by the child support  
33 enforcement division to the appropriate administrative  
34 unit of the department of health and human resources  
35 (with appropriate reimbursement of the federal govern-  
36 ment to the extent of its participation in the financing)  
37 as 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 been  
40 made by the department which have not been repaid,

41 such amounts shall be paid to the obligee.

42 (b) (1) Whenever a family for whom support payments  
43 have been collected and distributed under the provisions  
44 of this chapter ceases to receive assistance from the  
45 department of health and human resources, the child  
46 support enforcement division shall provide notice to the  
47 family of their rights with regard to a continuation of  
48 services. Unless notified by the family that services are  
49 no longer desired, the child support enforcement division  
50 shall continue to collect amounts of support payments  
51 which represent monthly support payments from the  
52 obligor and pay any amount so collected, which repre-  
53 sents monthly support payments, to the family (without  
54 requiring any formal reapplication and without the  
55 imposition of any application fee) on the same basis as in  
56 the case of other obligees who are not receiving assis-  
57 tance from the department of health and human re-  
58 sources.

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

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

76 (A) Be paid by the child support enforcement division  
77 to the appropriate administrative unit of the department

78 of health and human resources to the extent necessary to  
79 reimburse the department for foster care maintenance  
80 payments made with respect to the child during such  
81 period (with appropriate reimbursement of the federal  
82 government to the extent of its participation in financ-  
83 ing);

84 (B) Be paid to the appropriate administrative unit of  
85 the department of health and human resources to the  
86 extent that the amounts collected exceed the foster care  
87 maintenance payments made with respect to the child  
88 during such period but do not exceed the amounts  
89 required by a court order to be paid as support on behalf  
90 of the child during such period; and the department of  
91 health and human resources may use the payments in the  
92 manner it determines will serve the best interests of the  
93 child, including setting such payments aside for the  
94 child's future needs or making all or a part thereof  
95 available to the person responsible for meeting the  
96 child's day-to-day needs; 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) of  
101 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 the  
104 federal government to the extent of its participation in  
105 the financing), for any past foster care maintenance  
106 payments, or payments of aid to families with dependent  
107 children which were made with respect to the child (and  
108 with respect to which past collections have not previ-  
109 ously been retained);

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

115 this subsection.

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

121 (e) The commission shall establish bonding require-  
122 ments for employees of the child support enforcement  
123 division who receive, disburse, handle or have access to  
124 cash.

125 (f) The director shall maintain methods of administra-  
126 tion which are designed to assure that employees of the  
127 child support enforcement division or any persons  
128 employed pursuant to a contract who are responsible for  
129 handling cash receipts do not participate in accounting  
130 or operating functions which would permit them to  
131 conceal in the accounting records the misuse of cash  
132 receipts: *Provided*, That the director may provide for  
133 exceptions to this requirement in the case of sparsely  
134 populated areas in this state where the hiring of unrea-  
135 sonable additional staff in the local office would other-  
136 wise be necessary.

137 (g) No penalty or fee may be collected by or distributed  
138 to a recipient of child support enforcement division  
139 services from the state treasury or from the child support  
140 enforcement fund when child support is not distributed  
141 to the recipient in accordance with the time frames  
142 established herein.

**§48A-2-25. Payment of support to the child support enforce-  
ment division.**

1 All support payments owed to an obligee who is an  
2 applicant for or recipient of the services of the child  
3 support enforcement division shall be paid to the child  
4 support enforcement division. Any other obligee owed  
5 a duty of support under the terms of a support order  
6 entered by a court of competent jurisdiction may request

7 that the support payments be made to the child support  
8 enforcement division. In such case, the child support  
9 enforcement division shall proceed to receive and  
10 disburse such support payments to or on behalf of the  
11 obligee as provided by law.

**§48A-2-26. Authorization for data processing and retrieval system.**

1 In accordance with an initial and annually updated  
2 advance data processing planning document approved by  
3 the secretary of the federal department of health and  
4 human services, the child support enforcement division  
5 may establish an automatic data processing and retrieval  
6 system designed effectively and efficiently to assist the  
7 director in carrying out the provisions of this chapter.

**§48A-2-27. Obtaining support from federal tax refunds.**

1 The commission shall, by legislative rule promulgated  
2 pursuant to chapter twenty-nine-a of this code, place in  
3 effect procedures necessary for the child support en-  
4 forcement division to obtain payment of past due sup-  
5 port from federal tax refunds from overpayments made  
6 to the secretary of the treasury of the United States. The  
7 child support enforcement division shall take all steps  
8 necessary to implement and utilize such procedures.

**§48A-2-28. Obtaining support from state income tax refunds.**

1 (a) The tax commissioner shall establish procedures  
2 necessary for the child support enforcement division to  
3 obtain payment of past due support from state income  
4 tax refunds from overpayment made to the tax commis-  
5 sioner pursuant to the provisions of article twenty-one,  
6 chapter eleven of this code.

7 (b) The commission shall, by legislative rule promul-  
8 gated pursuant to chapter twenty-nine-a of this code,  
9 establish procedures necessary for the child support  
10 enforcement division to enforce a support order through  
11 a notice to the tax commissioner which will cause any



12 refund of state income tax which would otherwise be  
13 payable to an obligor to be reduced by the amount of  
14 overdue support owed by such obligor.

15 (1) Such legislative rule shall, at a minimum, prescribe:

16 (A) The time or times at which the child support  
17 enforcement division shall serve on the obligor or submit  
18 to the tax commissioner notices of past due support;

19 (B) The manner in which such notices shall be served  
20 on the obligor or submitted to the tax commissioner;

21 (C) The necessary information which shall be contained  
22 in or accompany the notices;

23 (D) The amount of the fee to be paid to the tax commis-  
24 sioner for the full cost of applying the procedure where-  
25 by past due support is obtained from state income tax  
26 refunds; and

27 (E) Circumstances when the child support enforcement  
28 division may deduct a twenty-five dollar fee from the  
29 obligor's state income tax refund. Such rule may not  
30 require that an applicant who is a recipient of assistance  
31 from the department of human services in the form of  
32 aid to families with dependent children.

33 (2) Withholding from state income tax refunds may not  
34 be pursued unless the child support enforcement division  
35 has examined the obligor's pattern of payment of sup-  
36 port and the obligee's likelihood of successfully pursuing  
37 other enforcement actions, and has determined that the  
38 amount of past due support which will be owed, at the  
39 time the withholding is to be made, will be one hundred  
40 dollars or more. In determining whether the amount of  
41 past due support will be one hundred dollars or more,  
42 the child support enforcement division shall consider  
43 the amount of all unpaid past due support, including  
44 that which may have accrued prior to the time that the  
45 child support enforcement division first agreed to  
46 enforce the support order.

47 (c) The director of the child support enforcement  
48 division shall enter into agreements with the secretary of  
49 the treasury and the tax commissioner, and other appro-  
50 priate governmental agencies, to secure information  
51 relating to the social security number or numbers and  
52 the address or addresses of any obligor, in order to  
53 provide notice between such agencies to aid the child  
54 support enforcement division in requesting state income  
55 tax deductions, and to aid the tax commissioner in  
56 enforcing such deductions. In each such case, the tax  
57 commissioner, in processing the state income tax deduc-  
58 tion, shall notify the child support enforcement division  
59 of the obligor's home address and social security number  
60 or numbers. The child support enforcement division  
61 shall provide this information to any other state involved  
62 in processing the support order.

63 (d) For the purposes of this section, "past due support"  
64 means the amount of unpaid past due support owed  
65 under the terms of a support order to or on behalf of a  
66 child, or to or on behalf of a minor child and the parent  
67 with whom the child is living, regardless of whether the  
68 amount has been reduced to judgment or not.

69 (e) The child support enforcement division may, under  
70 the provisions of this section, enforce the collection of  
71 past due support on behalf of a child who has reached  
72 the age of majority.

73 (f) The legislative rule promulgated by the commission  
74 pursuant to the provisions of this section and pursuant  
75 to chapter twenty-nine-a of this code, shall, at a mini-  
76 mum, provide that prior to notifying the tax commis-  
77 sioner of past due support, a notice to the obligor as  
78 prescribed under subsection (a) of this section shall:

79 (1) Notify the obligor that a withholding will be made  
80 from any refund otherwise payable to such obligor;

81 (2) Instruct the obligor of the steps which may be taken  
82 to contest the determination of the child support en-

83 enforcement division that past due support is owed or the  
84 amount of the past due support; and

85 (3) Provide information with respect to the procedures  
86 to be followed, in the case of a joint return, to protect the  
87 share of the refund which may be payable to another  
88 person.

89 (g) If the child support enforcement division is notified  
90 by the tax commissioner that the refund from which  
91 withholding is proposed to be made is based upon a joint  
92 return, and if the past due support which is involved has  
93 not been assigned to the department of human services,  
94 the child support enforcement division may delay  
95 distribution of the amount withheld until such time as  
96 the tax commissioner notifies the child support enforce-  
97 ment division that the other person filing the joint return  
98 has received his or her proper share of the refund, but  
99 such delay shall not exceed six months.

100 (h) In any case in which an amount is withheld by the  
101 tax commissioner under the provisions of this section  
102 and paid to the child support enforcement division, if the  
103 child support enforcement division subsequently deter-  
104 mines that the amount certified as past due was in excess  
105 of the amount actually owed at the time the amount  
106 withheld is to be distributed, the agency shall pay the  
107 excess amount withheld to the obligor thought to have  
108 owed the past due support, or, in the case of amounts  
109 withheld on the basis of a joint return, jointly to the  
110 parties filing such return.

111 (i) The commission shall, by legislative rule promul-  
112 gated pursuant to chapter twenty-nine-a, structure the  
113 time and method by which all amounts received by the  
114 child support enforcement division, as payments of past  
115 due support from state income tax refunds, are distrib-  
116 uted. In a case where an obligee is an applicant for the  
117 services of the child support enforcement division, but is  
118 not a current recipient of assistance from the department  
119 of human services in the form of aid to families with

120 dependent children, such method of distribution shall  
121 give priority to the obligee and the family of the obligee  
122 by paying such amounts to the obligee first rather than  
123 using them first to reimburse the department of human  
124 services.

**§48A-2-29. Obtaining support from unemployment compensation benefits.**

1 (a) The director shall determine on a periodic basis  
2 whether individuals receiving unemployment compensa-  
3 tion owe child support obligations which are being  
4 enforced or have been requested to be enforced by the  
5 child support enforcement division. If an individual is  
6 receiving such compensation and owes any such child  
7 support obligation which is not being met, the child  
8 support enforcement division shall enter into an agree-  
9 ment with such individual to have specified amounts  
10 withheld otherwise payable to such individual, and shall  
11 submit a copy of such agreement to the bureau of  
12 employment programs. In the absence of such agree-  
13 ment, the child support enforcement division shall bring  
14 legal process to require the withholding of amounts from  
15 such compensation.

16 (b) The secretary shall enter into a written agreement  
17 with the bureau of employment programs for the purpose  
18 of withholding unemployment compensation from  
19 individuals with unmet support obligations being  
20 enforced by the child support enforcement division. The  
21 child support enforcement division shall agree only to a  
22 withholding program that it expects to be cost effective,  
23 and, as to reimbursement, shall agree only to reimburse  
24 the bureau of employment programs for its actual,  
25 incremental costs of providing services to the child  
26 support enforcement division.

27 (c) The commission shall promulgate a procedural rule  
28 for selecting cases to pursue through the withholding of  
29 unemployment compensation for support purposes. This  
30 rule shall be designed to ensure maximum case selection

31 and minimal discretion in the selection process.

32 (d) The director shall, not less than annually, provide  
33 a receipt to an individual who requests a receipt for the  
34 support paid through the withholding of unemployment  
35 compensation, if receipts are not provided through other  
36 means.

37 (e) The director shall, through direct contact with the  
38 bureau of employment programs, process cases through  
39 the bureau of employment programs in this state, and  
40 shall process cases through support enforcement agen-  
41 cies in other states. The director shall receive all  
42 amounts withheld by the bureau of employment pro-  
43 grams in this state, forwarding any amounts withheld on  
44 behalf of support enforcement agencies in other states to  
45 those agencies.

46 (f) At least one time per year, the commission shall  
47 review and document program operations, including case  
48 selection criteria established under subsection (c) of this  
49 section, and the costs of the withholding process versus  
50 the amounts collected and, as necessary, modify proce-  
51 dures and renegotiate the services provided by the  
52 bureau of employment programs to improve program  
53 and cost effectiveness.

54 (g) For the purposes of this section:

55 (1) "Legal process" means a writ, order, summons or  
56 other similar process in the nature of garnishment  
57 which is issued by a court of competent jurisdiction or  
58 by an authorized official pursuant to an order to such  
59 court or pursuant to state or local law.

60 (2) "Unemployment compensation" means any com-  
61 pensation under state unemployment compensation law  
62 (including amounts payable in accordance with agree-  
63 ments under any federal unemployment compensation  
64 law). It includes extended benefits, unemployment  
65 compensation for federal employees, unemployment  
66 compensation for ex-servicemen, trade readjustment

67 allowances, disaster unemployment assistance, and  
68 payments under the Federal Redwood National Park  
69 Expansion Act.

**§48A-2-30. Statements of account.**

1 The child support enforcement division shall provide  
2 annual statements of their account to each obligor and  
3 obligee without charge. Additional statements of  
4 account shall be provided at a fee of five dollars, unless  
5 such fee is waived pursuant to a rule promulgated by the  
6 commission. Statements provided under this subsection  
7 are in addition to statements provided for judicial  
8 hearings. The director shall establish procedures  
9 whereby an obligor or obligee can contest or correct a  
10 statement of account.

**§48A-2-31. Providing information to consumer reporting agencies.**

1 (a) For purposes of this section, the term “consumer  
2 reporting agency” means any person who, for monetary  
3 fees, dues, or on a cooperative nonprofit basis, regularly  
4 engages, in whole or in part, in the practice of assem-  
5 bling or evaluating consumer credit information or other  
6 information on consumers for the purpose of furnishing  
7 consumer reports to third parties.

8 (b) The commission shall propose and adopt a proce-  
9 dural rule in accordance with the provisions of sections  
10 four and eight, article three, chapter twenty-nine of this  
11 code, establishing procedures whereby information  
12 regarding the amount of overdue support owed by an  
13 obligor residing in this state will be made available by  
14 the child support enforcement division to any consumer  
15 reporting agency, upon the request of such consumer  
16 reporting agency.

17 (c) (1) When the amount of any overdue support is  
18 equal to or less than the amount of arrearage which  
19 would cause the mailing of a notice as provided for in  
20 subsection (b), section three, article five of this chapter,

21 information regarding such amount may not be made  
22 available;

23 (2) When the amount of any overdue support exceeds  
24 the amount of arrearage which would cause the mailing  
25 of a notice as provided for in subsection (b), section  
26 three, article five of this chapter, information regarding  
27 such amount shall be made available.

28 (d) The procedural rule proposed and adopted shall  
29 provide that any information with respect to an obligor  
30 shall be made available only after notice has been sent to  
31 such obligor of the proposed action, and such obligor has  
32 been given a reasonable opportunity to contest the  
33 accuracy of such information.

34 (e) The procedural rule proposed and adopted shall  
35 afford the obligor with procedural due process prior to  
36 making information available with respect to the obligor.

37 (f) The information made available to the requesting  
38 consumer reporting agency regarding overdue support  
39 may be in the same form as information submitted to the  
40 secretary of the treasury of the United States.

41 (g) The child support enforcement division may impose  
42 a fee for furnishing such information, not to exceed the  
43 actual cost thereof.

**§48A-2-32. Establishment of central registry.**

1 The child support enforcement division shall establish  
2 and maintain a central registry of child support orders.  
3 All orders in cases when any party receives any service  
4 provided by the child support enforcement division shall  
5 be included in the registry. Any other support order  
6 shall be included upon the request of any party. The  
7 child support enforcement division, upon receipt of any  
8 information regarding a new hire provided pursuant to  
9 section three, article five of this chapter shall compare  
10 information received to determine if the new hire's  
11 income is subject to wage withholding and notify the

12 employer pursuant to that section.

**§48A-2-33. Subpoenas.**

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

**§48A-2-34. Employment and income reporting.**

1 (a) Except as provided in subsections (b) and (c) of this  
2 section, all employers doing business in the state of West  
3 Virginia shall report to the child support enforcement  
4 division:

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 who  
9 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 a  
15 continuous six-month period; or

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



18 (c) The commission may establish additional exemp-  
19 tions to reduce unnecessary or burdensome reporting  
20 through promulgation of a legislative rule pursuant to  
21 chapter twenty-nine-a of this code.

22 (d) Employers shall report by mailing to the child  
23 support enforcement division a copy of the employee's  
24 W-4 form. However, an employer may transmit such  
25 information through another means if approved in  
26 writing by the child support enforcement division prior  
27 to the transmittal.

28 (e) Employers shall submit a report within fourteen  
29 days of the date of the hiring, rehiring or return to work  
30 of the employee. The report shall include the employee's  
31 name, address, social security number and date of birth  
32 and the employer's name and address, any different  
33 address of the payroll office and the employer's federal  
34 tax identification number.

35 (f) An employer of an obligor shall provide to the child  
36 support enforcement division, upon its written request,  
37 information regarding the obligor's employment, wages  
38 or salary, medical insurance and location of employment.

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

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

**§48A-2-35. Investigations of support orders; notice and hear-  
ing upon modifications; petition for change.**

1 (a) Every three years after the entry of a final judgment  
2 containing a child support order has been entered in a  
3 domestic relations matter, the child support enforcement  
4 division shall, examine the records and conduct any

5 investigation considered necessary to determine whether  
6 the child support amount should be increased or de-  
7 creased in view of a temporary or permanent change in  
8 physical custody of the child which the court has not  
9 ordered, increased need of the child or changed financial  
10 conditions.

11 (b) Upon the written request by an obligee or obligor,  
12 the child support enforcement division shall examine the  
13 record and conduct any investigation considered neces-  
14 sary to determine whether the child support amount  
15 should be increased or decreased in view of a temporary  
16 or permanent change in physical custody of the child  
17 which the court has not ordered, increased need of the  
18 child or other financial conditions.

19 (c) Notwithstanding the requirements imposed by this  
20 section, the child support enforcement division is not  
21 required to review the matter when:

22 (1) The child is being supported, in whole or in part, by  
23 assistance payments from the division of human services,  
24 the child support enforcement division has determined  
25 that such a review would not be in the best interests of  
26 the child and neither parent has requested a review; or

27 (2) Neither parent has requested a review.

28 (d) The child support enforcement division shall notify  
29 both parents of their right to request a review of a child  
30 support order, and shall give each parent at least thirty  
31 days' notice before commencing any review, and shall  
32 further notify each parent, upon completion of a review,  
33 of the results of the review, whether of a proposal to  
34 petition to seek modification or of a proposal that there  
35 should be no change.

36 (e) When the result of the review is a proposal to  
37 petition to seek modification, then each parent shall be  
38 given thirty days' notice of the hearing on the petition,  
39 the notice to be directed to the last known address of  
40 each party by first class mail.

41 When the result of the review is a proposal that there  
42 be no change, then any parent disagreeing with that  
43 proposal may, within thirty days of the notice of the  
44 results of the review, file with the court a petition for  
45 modification setting forth in full the grounds therefor.

46 (f) The child support enforcement division shall  
47 petition the court for modification of the amount of a  
48 child support order if modification is determined to be  
49 necessary under subsection (a) of this section. A written  
50 report and recommendation shall accompany the peti-  
51 tion.

52 (g) As used in this section, "changed financial condi-  
53 tions" means increases or decreases in the resources  
54 available to either party from any source. Changed  
55 financial conditions includes, but is not limited to, the  
56 application for or receipt of any form of public assis-  
57 tance payments, unemployment compensation and  
58 workers' compensation.

**§48A-2-36. Adoption of form to identify payments.**

1 The commission shall recommend to the secretary a  
2 form for the purpose of identification of child support  
3 payments which shall include, at a minimum, any  
4 amount of child support obligation paid under an income  
5 withholding order, the name and address of the payee,  
6 and the availability of health insurance. The form may  
7 include other information needed to ensure the proper  
8 credit and distribution of such payments. The secretary  
9 shall adopt any revised form no later than the first day  
10 of July, one thousand nine hundred ninety-six, which  
11 shall include all information listed herein. Following the  
12 adoption of such form, the commission shall promulgate  
13 such legislative rules pursuant to chapter twenty-nine-a  
14 as may be necessary to ensure that all information  
15 provided on the form is correct. This rule shall consti-  
16 tute an emergency rule within the meaning of section  
17 fifteen, article three, chapter twenty-nine-a of this code.

**48A-2-37. Billing for fees and costs.**

1 (a) When any filing, copying or other service is pro-  
2 vided to the child support enforcement division, the state  
3 or county official or the clerk of any court providing  
4 such fee for a charge, shall bill the child support en-  
5 forcement division monthly.

6 (b) When any filing, copying or other service is pro-  
7 vided to a person, agency or entity who is providing  
8 services for the child support enforcement division  
9 pursuant to a contract, the state or county official or the  
10 clerk of any court providing such fee for a charge, shall  
11 bill the entity, agency, person or child support enforce-  
12 ment division monthly, in accord with the terms of the  
13 contract. The child support enforcement division shall  
14 provide the relevant terms of such agreement to those  
15 officials upon implementation of any agreement.

16 (c) A state or county official and the clerk of any court  
17 who charges a deposit, library fee, filing fee for filing  
18 and copying documents or their service, if the filing,  
19 copying or services is for the child support enforcement  
20 division or for a person, entity or agency providing  
21 services pursuant to a contract as described in this  
22 article, shall bill the child support enforcement division  
23 monthly or the person, entity or agency providing such  
24 services monthly, in accord with the terms of any con-  
25 tract.

**§48A-2-38. Acceptance of federal purposes; compliance with federal requirements and standards.**

1 (a) The state assents to the purposes of the federal laws  
2 regarding child support and establishment of paternity  
3 and agrees to accept federal appropriations and other  
4 forms of assistance made under or pursuant thereto, and  
5 authorizes the receipt of such appropriations into the  
6 state treasury and the receipt of other forms of assis-  
7 tance by the child support enforcement division for  
8 expenditure, disbursement, and distribution by the

9 division in accordance with the provisions of this chap-  
10 ter and the conditions imposed by applicable federal  
11 laws, rules, and regulations.

12 (b) Insofar as such actions are consistent with the laws  
13 of this state granting authority to the division and the  
14 director, the division shall comply with such require-  
15 ments and standards as the secretary of the federal  
16 department of health and human services may have  
17 determined, as of the effective date of this section, to be  
18 necessary for the establishment of an effective program  
19 for locating obligors, establishing paternity, obtaining  
20 support orders, and collecting support payments.

**§48A-2-39. Publicizing child support enforcement services.**

1 The child support enforcement division shall regularly  
2 and frequently publicize, through public service an-  
3 nouncements, the availability of child support enforce-  
4 ment services under the provisions of this chapter and  
5 otherwise, including information as to any application  
6 fees for such services and a toll-free telephone number  
7 and a postal address at which further information may  
8 be obtained.

**§48A-2-40. Access to records, confidentiality.**

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

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

9 (2) The phone number, address, employer and other  
10 information regarding the location of the obligor, the  
11 obligee and the child shall only be disclosed: (A) Upon  
12 his or her written consent, to the person whom the  
13 consent designates; or (B) notwithstanding subdivision

14 (3), to the obligee, the obligor, the child or the caretaker  
15 or representative of the child, upon order of a court if the  
16 court finds that the disclosure is for a bona fide purpose,  
17 is not contrary to the best interest of a child and does not  
18 compromise the safety of any party: *Provided*, That the  
19 identity and location of the employer may be disclosed  
20 on the letters, notices and pleadings of the division as  
21 necessary and convenient for the determination of  
22 support amounts and the establishment, investigation,  
23 modification, enforcement, collection and distribution of  
24 support.

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

48 (4) Information in specific cases may be released as is  
49 necessary or to determine the identity, location, employ-  
50 ment, income and assets of an obligor.

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

60 (b) Any person who willfully violates this section shall  
61 be guilty of a misdemeanor, and, upon conviction there-  
62 of, shall be fined not less than one hundred nor more  
63 than one thousand dollars, or confined in jail not more  
64 than six months, or both fined and imprisoned.

**§48A-2-41. 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 support enforcement division  
4 shall cooperate with the division in the location of  
5 parents who have abandoned and deserted children and  
6 shall provide the division with all available pertinent  
7 information concerning the location, income and prop-  
8 erty of those parents.

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

**§48A-2-42. Authorization for transfer of functions, offices,**

**and equipment of the support enforcement  
commission and the child support enforce-  
ment division.**

1 The governor may, by executive order, transfer and  
2 reallocate all of the functions, offices and equipment of  
3 the commission and the child support enforcement  
4 division to the department of tax and revenue or the  
5 department of administration, with such transfer and  
6 reallocation to take effect on the first day of December,  
7 one thousand nine hundred ninety-five. The authority to  
8 make transfers and reallocations by executive order as  
9 provided for in this section shall expire on the first day  
10 of December, one thousand nine hundred ninety-five.

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

**§48A-3-11. Repeal of article.**

1 All procedures and requirements established in the  
2 previous enactment of sections one, two, three, seven and  
3 eight of this article shall continue in effect until the  
4 promulgation of an emergency rule by the commission  
5 regarding the duties of child support enforcement  
6 division, their salary and their location throughout the  
7 state. Upon promulgation of this rule and the filing of  
8 such rule with the secretary of state in accord with  
9 section fifteen, article three, chapter twenty-nine-a of  
10 this code, this article and any rule promulgated pursuant  
11 to those sections of this article shall be repealed.

**ARTICLE 4. PROCEEDING BEFORE A MASTER.**

**§48A-4-22. Budget of the family law master system.**

1 The budget for the payment of the salaries and benefits  
2 of the family law masters and clerical and secretarial  
3 assistants shall be included in the appropriation for the  
4 supreme court of appeals. The family law master admin-  
5 istration fund is hereby created and shall be a special  
6 account in the state treasury. The fund shall operate as  
7 a special fund administered by the state auditor which  
8 shall be appropriated by line item by the Legislature for



9 payment of administrative expenses of the family law  
10 master system. All agencies or entities receiving federal  
11 matching funds for the services of family law masters  
12 and their staff, including, but not limited to, the director  
13 of the child support enforcement division and the  
14 secretary of the department of health and human re-  
15 sources, shall enter into an agreement with the adminis-  
16 trative office of the supreme court of appeals whereby all  
17 federal matching funds paid to and received by said  
18 agencies or entities for the activities by family law  
19 masters and staff of the program shall be paid into the  
20 family law master administration fund. Said agreement  
21 shall provide for advance payments into the fund by such  
22 agencies, from available federal funds pursuant to Title  
23 IV-D of the Social Security Act and in accordance with  
24 federal regulations.

**ARTICLE 5. REMEDIES FOR THE ENFORCEMENT OF SUPPORT OBLIGA-  
TIONS 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 guard-  
6 ian 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 by  
10 the obligor has not been entered by a court of competent  
11 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 make  
19 provision for the support of the child by the obligor;

20 (2) A primary caretaker of a child;

21 (3) A guardian of the property of a child or the commit-  
22 tee for a child; or

23 (4) The child support enforcement division, on behalf  
24 of the state, when the department of health and human  
25 resources is providing assistance on behalf of the child in  
26 the form of aid to families with dependent children, and  
27 an assignment of any right to support has been assigned  
28 to the department or any other case wherein a party has  
29 applied for child support enforcement services from the  
30 child support enforcement division.

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

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

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

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

**§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 child support enforcement division in  
4 accordance with the provisions of sections fifteen-a or  
5 fifteen-b, article two, chapter forty-eight of this code.  
6 Every support order heretofore or hereafter entered by  
7 a circuit court or a magistrate of this state and every  
8 support order entered by a court of competent jurisdic-  
9 tion of another state shall be considered to provide for  
10 an order of income withholding in accordance with the  
11 provisions of section fifteen-a or fifteen-b, article two,  
12 chapter forty-eight of this code, notwithstanding the fact  
13 that such support order does not in fact provide for such  
14 an order of withholding.

15 (b) When immediate income withholding is not re-  
16 quired due to the findings required by subsection (c),  
17 article two, section fifteen-b, article two, chapter forty-  
18 eight of this code, the child support enforcement division  
19 shall mail a notice to the obligor pursuant to this section  
20 when the support payments required by the order are in  
21 arrears in an amount equal to:

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

24 (2) Four weeks' support, if the order requires support  
25 to be paid in weekly or biweekly installments; or

26 (3) Two biweekly installments, if biweekly payments  
27 are provided.

28 (c) When notice required by subsection (b) of this  
29 section is appropriate, the child support enforcement  
30 division shall determine the time for a meeting between  
31 the obligor and the child support enforcement division  
32 and the time for a hearing before the family law master,  
33 and shall then set forth in such notice the times and  
34 places at which the meeting and hearing will be held if

35 withholding is contested. The meeting and hearing may  
36 be scheduled on the same date, but in no case shall the  
37 meeting with the child support enforcement division be  
38 scheduled less than fifteen days after the date the notice  
39 is mailed nor shall the hearing before the master be  
40 scheduled more than twenty-one days after the date the  
41 notice is mailed. The child support enforcement division  
42 shall send such notice by first class mail to the delin-  
43 quent obligor. The notice shall inform the delinquent  
44 obligor of the following:

45 (1) The amount owed;

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

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

55 (4) That the withholding will apply to the obligor's  
56 present source of income and to any future source of  
57 income;

58 (5) That any action by the obligor to purposefully  
59 minimize his or her income will result in the enforcement  
60 of support being based upon potential and not just actual  
61 earnings;

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

64 (7) That if the obligor fails to appear at the meeting,  
65 withholding will automatically occur as described in the  
66 notice;

67 (8) That a mistake of fact exists only when there is an  
68 error in the amount of current or overdue support  
69 claimed in the notice, or there is a mistake as to the

70 identity of the obligor;

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

76 (10) That if the obligor contests the withholding, in  
77 writing, a meeting with the child support enforcement  
78 division will be held at a time and place set forth in the  
79 notice, for the purpose of attempting to settle any issues  
80 which are contested, and that a hearing before the family  
81 law master cannot be held until after the meeting with  
82 the child support enforcement division occurs;

83 (11) That if the meeting with the child support enforce-  
84 ment division fails to resolve the issues being contested,  
85 a hearing before the family law master shall be held at a  
86 time and place set forth in the notice, and that following  
87 such hearing, the master will make a recommended order  
88 to the circuit court;

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

95 (13) That if, while the withholding is being contested,  
96 it is determined that the obligor is in arrears in an  
97 amount equal to or greater than one month's support  
98 obligation, but the amount of the arrearage is disputed,  
99 then income withholding for the current payment of  
100 support will be instituted, and may not be stayed pend-  
101 ing a final determination as to the amount of arrearage  
102 due.

103 (d) Withholding shall occur when the support order  
104 provides for immediate income withholding, or if imme-  
105 diate income withholding is not so provided, and the

106 withholding is contested, then after entry of the master's  
107 recommended order by the circuit court. When with-  
108 holding is ordered or otherwise required, the source of  
109 income shall withhold so much of the obligor's income  
110 as is necessary to comply with the order authorizing such  
111 withholding, up to the maximum amount permitted  
112 under applicable law. Such withholding, unless other-  
113 wise terminated under the provisions of this section,  
114 shall apply to any subsequent source of income or any  
115 subsequent period of time during which income is  
116 received by the obligor.

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

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

132 (2) When none of the withholding is for amounts which  
133 came due prior to such twelve-week period, then:

134 (A) When the obligor is supporting another spouse or  
135 dependent child other than the spouse or child for whom  
136 the proposed withholding is being sought, the amount  
137 withheld may not exceed fifty percent of the obligor's  
138 disposable earnings for that week; and

139 (B) When the obligor is not supporting another spouse  
140 or dependent child as described in paragraph (A) of this  
141 subdivision, the amount withheld may not exceed sixty

142 percent of the obligor's disposable earnings for that  
143 week.

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

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

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

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

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

168 (6) When an obligor acts so as to purposefully minimize  
169 his or her income and to thereby circumvent the provi-  
170 sions of this section which provide for withholding from  
171 income of amounts payable as support, the amount to be  
172 withheld as support payments may be based upon the  
173 obligor's potential earnings rather than his or her actual  
174 earnings, and such obligor may not rely upon the per-  
175 centage limitations set forth in this subsection which  
176 limit the amount to be withheld from disposable earn-  
177 ings.

178 (f) The source of income of any obligor who is subject  
179 to withholding, upon being given notice of withholding,  
180 shall withhold from such obligor's income the amount  
181 specified by the notice and pay such amount to the child  
182 support enforcement division for distribution. The  
183 notice given to the source of income shall contain only  
184 such information as may be necessary for the source of  
185 income to comply with the withholding order. Such  
186 notice to the source of income shall include, at a mini-  
187 mum, the following:

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

196 (2) That the source of income shall send the amount to  
197 be withheld from the obligor's income along with such  
198 identifying information as may be required by the child  
199 support enforcement division to the child support  
200 enforcement division the same day that the obligor is  
201 paid;

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

207 (4) That withholding is binding on the source of income  
208 until further notice by the child support enforcement  
209 division or until the source of income notifies the child  
210 support enforcement division of a termination of the  
211 obligor's employment in accordance with the provisions  
212 of subsection (f) of this section;

213 (5) That the source of income is subject to a fine for



214 discharging an obligor from employment, refusing to  
215 employ, or taking disciplinary action against any obligor  
216 because of the withholding;

217 (6) That when the source of income fails to withhold  
218 income in accordance with the provisions of the notice,  
219 the source of income is liable for the accumulated  
220 amount the source of income should have withheld from  
221 the obligor's income;

222 (7) That the withholding under the provisions of this  
223 section shall have priority over any other legal process  
224 under the laws of this state against the same income, and  
225 shall be effective despite any exemption that might  
226 otherwise be applicable to the same income;

227 (8) That when an employer has more than one em-  
228 ployee who is an obligor who is subject to wage with-  
229 holding from income under the provisions of this code,  
230 the employer may combine all withheld payment to the  
231 child support enforcement division when the employer  
232 properly identifies each payment with the information  
233 listed in this section. A source of income is liable to an  
234 obligee, including the state of West Virginia or the  
235 department of health and human resources where  
236 appropriate, for any amount which the source of income  
237 fails to identify with the information required by this  
238 section and is therefore not received by the obligee;

239 (9) That the source of income shall implement with-  
240 holding no later than the first pay period or first date for  
241 payment of income that occurs after fourteen days  
242 following the date the notice to the source of income was  
243 mailed; and

244 (10) That the source of income shall notify the child  
245 support enforcement division promptly when the obligor  
246 terminates his or her employment or otherwise ceases  
247 receiving income from the source of income, and shall  
248 provide the obligor's last known address and the name  
249 and address of the obligor's new source of income, if

250 known.

251 (g) The commission shall, by administrative rule,  
252 establish procedures for promptly refunding to obligors  
253 amounts which have been improperly withheld under the  
254 provisions of this section.

255 (h) After implementation in accordance with the  
256 provisions of subsection (k) of this section, a source of  
257 income shall send the amount to be withheld from the  
258 obligor's income to the child support enforcement  
259 division and shall notify the child support enforcement  
260 division of the date of withholding, the same date that  
261 the obligor is paid.

262 (i) In addition to any amounts payable as support  
263 withheld from the obligor's income, the source of income  
264 may deduct a fee, not to exceed one dollar, for adminis-  
265 trative costs incurred by the source of income, for each  
266 withholding.

267 (j) Withholding of amounts payable as support under  
268 the provisions of this section is binding on the source of  
269 income until further notice by the child support enforce-  
270 ment division or until the source of income notifies the  
271 child support enforcement division of a termination of  
272 the obligor's employment in accordance with the provi-  
273 sions of subsection (1) of this section.

274 (k) Every source of income who receives a notice of  
275 withholding under the provisions of this section shall  
276 implement withholding no later than the first pay period  
277 or first date for the payment of income which occurs  
278 after fourteen days following the date the notice to the  
279 source of income was mailed.

280 (l) A source of income who employs or otherwise pays  
281 income to an obligor who is subject to withholding under  
282 the provisions of this section shall notify the child  
283 support enforcement division promptly when the obligor  
284 terminates employment or otherwise ceases receiving  
285 income from the source of income, and shall provide the

286 child support enforcement division with the obligor's  
287 last known address and the name and address of the  
288 obligor's new source of income, if known.

289 (m) When an employer has more than one employee  
290 who is an obligor who is subject to wage withholding  
291 from income for amounts payable as support, the em-  
292 ployer may combine all withheld payments to the child  
293 support enforcement division when the employer prop-  
294 erly identifies each payment with the information listed  
295 in this section. A source of income is liable to an obligee,  
296 including the state of West Virginia or the department of  
297 health and human resources where appropriate, for any  
298 amount which the source of income fails to identify in  
299 accordance with this section and is therefore not re-  
300 ceived by the obligee.

301 (n) A source of income is liable to an obligee, including  
302 the state of West Virginia or the department of health  
303 and human resources where appropriate, for any amount  
304 which the source of income fails to withhold from  
305 income due an obligor following receipt by such source  
306 of income of proper notice under subsection (f) of this  
307 section: *Provided*, That a source of income shall not be  
308 required to vary the normal pay and disbursement cycles  
309 in order to comply with the provisions of this section.

310 (o) Any source of income who knowingly and willfully  
311 conceals the fact that the source of income is paying  
312 income to an obligor, with the intent to avoid withhold-  
313 ing from the obligor's income of amounts payable as  
314 support, is guilty of a misdemeanor, and, upon convic-  
315 tion thereof, shall be fined not more than one hundred  
316 dollars.

317 (p) When the child support enforcement division makes  
318 a written request to a source of income to provide  
319 information as to whether the source of income has paid  
320 income to a specific obligor, within the preceding sixty-  
321 day period, the source of income shall, within fourteen  
322 days thereafter, respond to such request, itemizing all

323 such income, if any, paid to the obligor during such  
324 sixty-day period. A source of income shall not be liable,  
325 civilly or criminally, for providing such information in  
326 good faith.

327 (q) Support collection under the provisions of this  
328 section shall have priority over any other legal process  
329 under the laws of this state against the same income, and  
330 shall be effective despite any exemption that might  
331 otherwise be applicable to the same income.

332 (r) Any source of income who discharges from employ-  
333 ment, refuses to employ, or takes disciplinary action  
334 against any obligor subject to income withholding  
335 required by this section because of the existence of such  
336 withholding and the obligations or additional obligations  
337 which it imposes on the source of income, shall be guilty  
338 of a misdemeanor, and, upon conviction thereof, shall be  
339 fined not less than five hundred dollars nor more than  
340 one thousand dollars.

**§48A-5-8. Procedures before the child support enforcement  
division.**

1 (a) In any case arising under the provisions of this  
2 article wherein a notice is served upon a person requir-  
3 ing him or her to notify the child support enforcement  
4 division if the person is contesting action proposed to be  
5 taken against him:

6 (1) If the person so notified does not submit written  
7 reasons for contesting the action within the time set to  
8 contest the proposed action, and does not request a  
9 meeting with the child support enforcement division,  
10 then the child support enforcement division shall pro-  
11 ceed with the proposed action; or

12 (2) If the person so notified does submit written  
13 reasons for contesting the action within the time set to  
14 contest the proposed action, and requests a meeting with  
15 the child support enforcement division, then the child  
16 support enforcement division shall schedule a meeting at

17 the earliest practicable time with the person and attempt  
18 to resolve the matter informally.

19 (b) If the matter cannot be resolved informally, the  
20 child support enforcement division shall make a deter-  
21 mination as to whether the proposed action is proper and  
22 should actually occur.

23 (c) The determination of the child support enforcement  
24 division shall be made within forty-five days from the  
25 date of the notice which first apprised the person of the  
26 proposed action. Upon making the determination, the  
27 child support enforcement division shall inform the  
28 parties as to whether or not the proposed action will  
29 occur, and, if it is to occur, of the date on which it is to  
30 begin, and in the case of withholding from income, shall  
31 furnish the obligor with the information contained in  
32 any notice given to an employer under the provisions of  
33 subsection (h), section three of this article with respect  
34 to such withholding.

#### ARTICLE 6. ESTABLISHMENT OF PATERNITY.

##### §48A-6-1. Paternity proceedings.

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 child resides: *Provided*, That if  
5 such venue creates a hardship for the parties, or either of  
6 them, or if judicial economy requires, the court may  
7 transfer the action to the county where either of the  
8 parties resides.

9 (b) A "paternity proceeding" is a summary proceeding,  
10 equitable in nature and within the domestic relations  
11 jurisdiction of the courts, wherein a circuit court upon  
12 the petition of the state or another proper party may  
13 intervene to determine and protect the respective  
14 personal rights of a child for whom paternity has not  
15 been lawfully established, of the mother of the child and  
16 of the putative father of the child.

17 (c) The sufficiency of the statement of the material  
18 allegations in the complaint set forth as grounds for  
19 relief and the grant or denial of the relief prayed for in  
20 a particular case shall rest in the sound discretion of the  
21 court, to be exercised by the court according to the  
22 circumstances and exigencies of the case, having due  
23 regard for precedent and the provisions of the statutory  
24 law of this state.

25 (d) A decree or order made and entered by a court in a  
26 paternity proceeding shall include a determination of the  
27 filial relationship, if any, which exists between a child  
28 and his or her putative father, and, if such relationship  
29 is established, shall resolve dependent claims arising  
30 from family rights and obligations attendant to such  
31 filial relationship.

32 (e) A paternity proceeding may be brought by any of  
33 the following persons:

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

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

39 (A) The married woman lived separate and apart from  
40 her husband preceding the birth of the child;

41 (B) The married woman did not cohabit with her  
42 husband at any time during such separation and that  
43 such separation has continued without interruption; and

44 (C) The defendant, rather than her husband, is the  
45 father of the child;

46 (3) The state of West Virginia, including the child  
47 support enforcement division defined in article two of  
48 this chapter;

49 (4) Any person who is not the mother of the child, but  
50 who has physical or legal custody of the child;

- 51 (5) The guardian or committee of the child;
- 52 (6) The next friend of the child when the child is a  
53 minor;
- 54 (7) By the child in his own right at any time after the  
55 child's eighteenth birthday but prior to the child's  
56 twenty-first birthday; or
- 57 (8) A man purporting to be the father of a child born  
58 out of wedlock, when there has been no prior judicial  
59 determination of paternity.
- 60 (f) Blood or tissue samples taken pursuant to the  
61 provisions of this article may be ordered to be taken in  
62 such locations as may be convenient for the parties so  
63 long as the integrity of the chain of custody of the  
64 samples can be preserved.
- 65 (g) A person who has sexual intercourse in this state  
66 submits to the jurisdiction of the courts of this state for  
67 a proceeding brought under this article with respect to  
68 a child who may have been conceived by that act of  
69 intercourse. Service of process may be perfected accord-  
70 ing to the rules of civil procedure.
- 71 (h) When the person against whom the proceeding is  
72 brought has failed to plead or otherwise defend the  
73 action after proper service has been obtained, judgment  
74 by default shall be issued by the court as provided by the  
75 rules of civil procedure.

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

- 1 (a) The court may, on its own motion, or shall upon the  
2 motion of any party, order the mother, her child and the  
3 man to submit to blood tests or tissue tests to aid the  
4 court in proving or disproving paternity. Such motion  
5 may be made, upon ten days' written notice to the  
6 mother and alleged father, without the necessity of filing  
7 a complaint. When the tests are ordered, the court shall  
8 direct that the inherited characteristics, including, but

9 not limited to, blood types be determined by appropriate  
10 testing procedures at a hospital, independent medical  
11 institution or independent medical laboratory duly  
12 licensed under the laws of this state, or any other state,  
13 and shall appoint an expert qualified as an examiner of  
14 genetic markers to analyze and interpret the results and  
15 to report to the court. The court shall consider the  
16 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) When the defendant desires to challenge the results  
33 of the blood or tissue tests or the expert's analysis of  
34 inherited characteristics, he shall file a written protest  
35 with the family law master or circuit court within thirty  
36 days of the filing of such test results and serve a copy of  
37 such protest upon the other party. The written protest  
38 shall be filed at least thirty days prior to any hearing  
39 involving the test results. The court, upon reasonable  
40 request of a party, shall order that additional tests be  
41 made by the same laboratory or another laboratory  
42 within thirty days of the entry of the order, at the  
43 expense of the party requesting additional testing. When  
44 the results of the blood or tissue tests or the expert's  
45 analysis which show a statistical probability of paternity



46 of more than ninety-eight percent are confirmed by the  
47 additional testing, then the results are admissible  
48 evidence which is clear and convincing evidence of  
49 paternity. The admission of the evidence creates a  
50 presumption that the defendant is the father.

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

59 (c) When a blood test is ordered pursuant to this  
60 section, the moving party shall initially bear all costs  
61 associated with the blood test unless that party is  
62 determined by the court to be financially unable to pay  
63 those costs. This determination shall be made following  
64 the filing of an affidavit pursuant to section one, article  
65 two, chapter fifty-nine of this code. When the court  
66 finds that the moving party is unable to bear that cost,  
67 the cost shall be borne by the state of West Virginia.  
68 Following the finding that a person is the father based  
69 on the results of a blood test ordered pursuant to this  
70 section, the court shall order that the father be ordered  
71 to reimburse the moving party for the costs of the blood  
72 tests unless the court determines, based upon the factors  
73 set forth in this section, that the father is financially  
74 unable to pay those costs.

#### §48A-6-4. Establishment of paternity and duty of support.

1 (a) When the defendant, by verified responsive plead-  
2 ing, admits that the man is the father of the child and  
3 owes a duty of support, or if after a trial on the merits,  
4 the court shall find, by clear and convincing evidence  
5 that the man is the father of the child, the court shall  
6 order support in accordance with the provisions of this  
7 section.

8 (b) The court shall give full faith and credit to a  
9 determination of paternity made by any other state,  
10 based on the laws of that state, whether established  
11 through voluntary acknowledgement or through admin-  
12 istrative or judicial process.

**§48A-6-5. Representation of parties.**

1 Notwithstanding any provision of this code to the  
2 contrary, no parent in any proceeding brought pursuant  
3 to this article may have counsel appointed for them  
4 according to section two, article twenty-one, chapter  
5 twenty-nine of this code or otherwise receive legal  
6 services provided solely by the state in such action. The  
7 child support enforcement division providing represen-  
8 tation to the state of West Virginia shall solely represent  
9 the state of West Virginia and does not provide any  
10 representation to any party.

**§48A-6-6. Establishing paternity by acknowledgment of  
natural father.**

1 (a) A written, notarized acknowledgment by both the  
2 man and woman that the man is the father of the named  
3 child legally establishes the man as the father of the  
4 child for all purposes and child support may be estab-  
5 lished under the provisions of this chapter. The ac-  
6 knowledgement of paternity is irrevocable from the time  
7 of execution, unless a court of competent jurisdiction  
8 finds that such acknowledgement was obtained by fraud  
9 or duress.

10 (b) The written acknowledgement shall include:

11 (1) Filing instructions;

12 (2) The parents' social security numbers and addresses;  
13 and

14 (3) A statement regarding the rights and obligations of  
15 acknowledging paternity, including but not limited to  
16 the duty to support a child.

17 (c) Failure or refusal to include all information re-  
18 quired by subsection (b) of this section shall not affect  
19 the validity of the written acknowledgement, in the  
20 absence of a finding by a court of competent jurisdiction  
21 that the acknowledgement was obtained by fraud or  
22 duress.

23 (d) The original written acknowledgement should be  
24 filed with the state registrar of vital statistics. Upon  
25 receipt of any acknowledgement executed pursuant to  
26 this section, the registrar shall forward the copy of the  
27 acknowledgement to the child support enforcement  
28 division and the parents, if the address of the parents is  
29 known to the registrar. If a birth certificate for the child  
30 has been previously issued which is incorrect or incom-  
31 plete, a new birth certificate shall be issued.

**ARTICLE 7. REVISED UNIFORM RECIPROCAL ENFORCEMENT OF SUP-  
PORT ACT.**

**§48A-7-12. Child support enforcement division to represent  
the state.**

1 When this state is acting as an initiating state, any  
2 attorney employed by the child support enforcement  
3 division or agency or entity pursuant to article two of  
4 this chapter, represents the interest of the state and not  
5 the interest of any other party. The provision of services  
6 by an attorney under this chapter does not create an  
7 attorney-client relationship between the attorney and  
8 any other party. The child support enforcement division  
9 shall, at the time an application for child support  
10 services is made, inform the applicant that any attorney  
11 who provides services for the child support enforcement  
12 division is the attorney for the state of West Virginia and  
13 that the attorney providing those services does not  
14 provide legal representation to the applicant.

**§48A-7-36. Attorney for child support enforcement division  
to represent state.**

1 When this state is acting either as a rendering or a

2 registering state, any attorney employed by the child  
3 support enforcement division or agency or entity pursu-  
4 ant to a contract with the division pursuant to article  
5 two of this chapter, represents the interest of the state  
6 and not the interest of any other party. The provision of  
7 services by an attorney under this chapter does not  
8 create an attorney-client relationship between the  
9 attorney and any other party.

**CHAPTER 59. FEES, ALLOWANCES AND COSTS;  
NEWSPAPERS; LEGAL ADVERTISEMENTS.**

**ARTICLE 2. COSTS GENERALLY.**

**§59-2-1. Suits by persons financially unable to pay.**

1 (a) A natural person who is financially unable to pay  
2 the fees or costs attendant to the commencement,  
3 prosecution or defense of any civil action or proceeding,  
4 or an appeal therein, is permitted to proceed without  
5 prepayment in any court of this state, after filing with  
6 the court an affidavit that he or she is financially unable  
7 to pay the fees or costs or give security therefor.

8 (1) The clerk of the court and all other officers of the  
9 court shall issue and serve all process and perform all  
10 duties in such cases.

11 (2) Judgment may be rendered for costs at the conclu-  
12 sion of the action, where otherwise authorized by law,  
13 and be taxable against a losing party who has not been  
14 determined to be financially unable to pay.

15 (3) Upon the filing of an affidavit in accordance with  
16 this subsection, seeking an appeal in a civil case from a  
17 circuit court to the supreme court of appeals, the su-  
18 preme court of appeals may direct payment by the  
19 administrative office of the supreme court of appeals of  
20 the expenses of duplicating the record on appeal after it  
21 is transmitted by the clerk of the circuit court. The  
22 transcript of proceedings before the circuit court, if the  
23 petition for appeal is to be filed with the transcript, shall  
24 be provided by the court reporter without cost: *Pro-*

25 *vided*, That actual expenses of the court reporter for  
26 supplies used in preparing the transcript may be paid  
27 when authorized by the director of the administrative  
28 office of the supreme court of appeals.

29 (b) The supreme court of appeals or the chief justice  
30 thereof shall establish and periodically review and  
31 update financial guidelines for determining the eligibil-  
32 ity of civil litigants to proceed in forma pauperis.

33 (c) The supreme court of appeals shall adopt a financial  
34 affidavit form for use by persons seeking a waiver of  
35 fees, costs or security pursuant to the provisions of this  
36 section. Copies of the form shall be available to the  
37 public in the offices of the clerk of any court of this  
38 state. The affidavit shall state the nature of the action,  
39 defense or appeal and the affiant's belief that he or she  
40 is entitled to redress. The form shall elicit information  
41 from the affiant which will enable the court in which it  
42 is filed to consider the following factors in determining  
43 whether the affiant is financially unable to pay fees,  
44 costs or security:

45 (1) Current income prospects, taking into account  
46 seasonal variations in income;

47 (2) Liquid assets, assets which may provide collateral  
48 to obtain funds and other assets which may be liquidated  
49 to provide funds to pay fees, costs or security;

50 (3) Fixed debts and obligations, including federal, state  
51 and local taxes and medical expenses;

52 (4) Child care, transportation and other expenses  
53 necessary for employment;

54 (5) Age or physical infirmity of resident family mem-  
55 bers;

56 (6) Whether the person has paid or will pay counsel  
57 fees, or whether counsel will be provided by a private  
58 attorney on a contingent fee basis, an attorney pro bono,  
59 a legal services attorney, or some other attorney at no

60 cost or a reduced cost to the affiant; and

61 (7) The consequences for the individual if a waiver of  
62 fees, costs or security is denied.

63 (d) When the information set forth in the affidavit or  
64 the evidence submitted in the action reveals that the  
65 person filing the affidavit is financially able to pay the  
66 fees and costs, the court or the family law master may  
67 order the person to pay the fees and costs in the action.

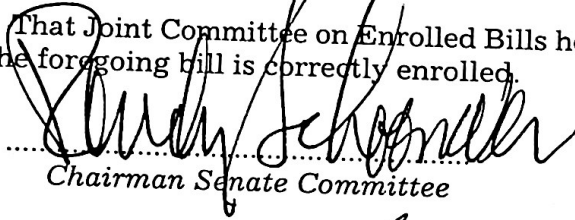
68 (e) No other party in any proceeding may initiate an  
69 inquiry by motion or other pleading or participate in any  
70 proceeding relevant to the issues raised pursuant to this  
71 section.

72 (f) The making of an affidavit subject to inquiry under  
73 this section does not in any event give rise to criminal  
74 remedies against the affiant nor occasion any civil action  
75 against the affiant except for the recovery of costs as in  
76 any other case where costs may be recovered and the  
77 recovery of the value of services, if any, provided pursu-  
78 ant to this section. A person who has made an affidavit  
79 knowing the contents thereof to be false may be prose-  
80 cuted for false swearing as provided by law.

Enr. S. B. No. 567]

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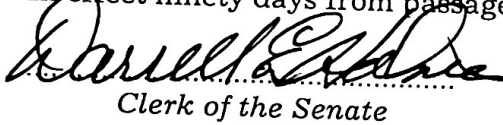
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

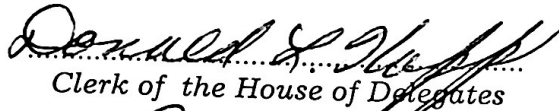
  
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Chairman Senate Committee

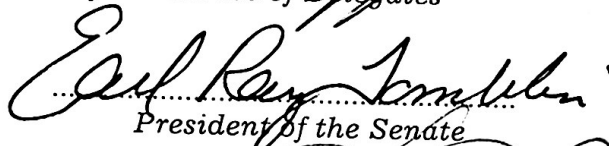
  
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Chairman House Committee

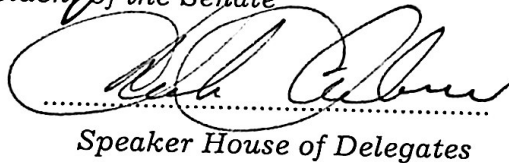
Originated in the Senate.

In effect ninety days from passage.

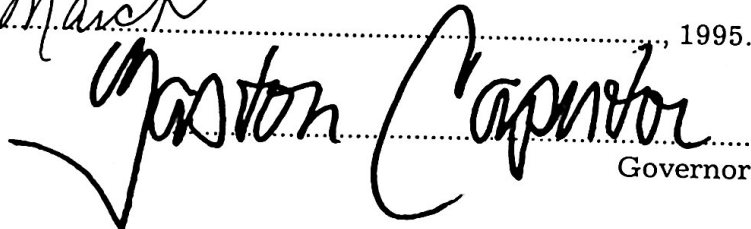
  
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Clerk of the Senate

  
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Clerk of the House of Delegates

  
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President of the Senate

  
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Speaker House of Delegates

The within *is approved*..... this the *24th*.....  
day of *March*....., 1995.

  
.....  
Governor

PRESENTED TO THE

GOVERNOR

Date

3/24/95

Time

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