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)

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

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, chapter forty-eight-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections three-a, seven and seven-a, article five of said chapter be repealed; that section one, article two, chapter five-d of said code be amended and reenacted; that section five-d, article ten, chapter eleven of said code be amended and reenacted; that section three, article two-e, chapter sixteen of said code be amended and reenacted; that section eighteen-b, article five of said chapter be amended and reenacted; that section two, article five-b of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section thirteen; that section two, article twenty-one, chapter twenty-nine of said code be amended and reenacted; that section twenty-seven-a, article twenty-two of said chapter be amended and reenacted; that sections fifteen-a and fifteen-b, article two, chapter forty-eight of said code be amended and reenacted; that said article two be further amended by adding thereto a new section, designated section thirty-seven; that section three, article one, chapter forty-eight-a of said code be amended and reenacted; that said article one be further amended by adding thereto a new section, designated section three-a; that article two of said chapter be amended and reenacted; that article three of said chapter be amended by adding thereto a new section, designated section eleven; that section twenty-two, article four of said chapter be amended and reenacted; that sections one, three and eight, article five of said chapter be
amended and reenacted; that sections one, three, four, five and six, article six of said chapter be amended and reenacted; that sections twelve and thirty-six, article seven of said chapter be amended and reenacted; and that section one, article two, chapter fifty-nine of said 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.

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

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

(2) On the first day of July, one thousand nine hundred ninety-five: Emergency medical services advisory council; commission on charitable organizations; information system advisory commission; West Virginia labor-management council; board of social work examiners; the rural health initiative advisory panel; the marketing and development divisions of the department of agriculture; real estate commission; juvenile facilities review panel; office of water resources; center for professional development; board of architects; state building commission; family law masters system; public employees insurance agency; public employees insurance agency finance board; division of rehabilitation services.

(3) On the first day of July, one thousand nine hundred ninety-six: U.S. geological survey program and whitewater commission within the division of natural resources; state geological and economic survey; workers'
compensation; unemployment compensation; office of judges of workers’ compensation; board of investments.

(4) On the first day of July, one thousand nine hundred ninety-seven: The driver’s licensing advisory board; West Virginia health care cost review authority; governor’s cabinet on children and families; oil and gas conservation commission; child support enforcement division; West Virginia contractors’ licensing board.

(5) On the first day of July, one thousand nine hundred ninety-eight: State lottery commission; the following divisions or programs of the department of agriculture: Meat inspection program and soil conservation committee; women’s commission; state board of risk and insurance management; board of examiners of land surveyors; commission on uniform state laws; council of finance and administration; forest management review commission; West Virginia’s membership in the interstate commission on the Potomac River basin; legislative oversight commission on education accountability; board of examiners in counseling; board of examiners in speech pathology and audiology.

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

(7) On the first day of July, two thousand: Family protection services board; environmental quality board; West Virginia’s membership in the Ohio river valley water sanitation commission; ethics commission; oil and gas inspectors’ examining board; veterans’ council; West Virginia’s membership in the southern regional education 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.

(a) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any such agency or board, are hereby transferred to and incorporated in and shall be administered as a part of the department of administration:

1. Building commission provided for in article six, chapter five of this code;
2. Public employees insurance agency and public employees insurance agency advisory board provided for in article sixteen, chapter five of this code;
3. Council of finance and administration provided for in article one, chapter five-a of this code;
4. Employee suggestion award board provided for in article one-a, chapter five-a of this code;
5. Governor's mansion advisory committee provided for in article five, chapter five-a of this code;
6. Commission on uniform state laws provided for in article one-a, chapter twenty-nine of this code;
7. Education and state employees grievance board provided for in article twenty-nine, chapter eighteen of this code and article six-a, chapter twenty-nine of this code;
8. Board of risk and insurance management provided for in article twelve, chapter twenty-nine of this code;
9. Boundary commission provided for in article twenty-three, chapter twenty-nine of this code;
10. Public defender services provided for in article twenty-one, chapter twenty-nine of this code;
(11) Division of personnel provided for in article six, chapter twenty-nine of this code;

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

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

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

(b) The department of commerce, labor and environmental resources and the office of secretary of the department of commerce, labor and environmental resources are hereby abolished. For purposes of administrative support and liaison with the office of the governor, the following agencies and boards, including all allied, advisory and affiliated entities shall be grouped under three bureaus as follows:

(1) Bureau of commerce:

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

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

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

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

(i) Board of coal mine health and safety and coal mine safety and technical review committee provided for in article six, chapter twenty-two-a of this code;
(ii) Board of miner training, education and certification provided for in article seven, chapter twenty-two-a of this code; and

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

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

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

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

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

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

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

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

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

(3) Bureau of environment:

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

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

(C) Environmental quality board, or its successor board, provided for in article three, chapter twenty-two-
(D) Division of environmental protection provided for in article one, chapter twenty-two of this code;

(E) Surface mine board of review provided for in article four, chapter twenty-two-b of this code;

(F) Oil and gas inspectors' examining board provided for in article seven, chapter twenty-two-c of this code;

(G) Shallow gas well review board provided for in article eight, chapter twenty-two-c of this code; and

(H) Oil and gas conservation commission provided for in article nine, chapter twenty-two-c of this code.

(c) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any such agency or board, are hereby transferred to and incorporated in and shall be administered as a part of the department of education and the arts:

(1) Library commission provided for in article one, chapter ten of this code;

(2) Educational broadcasting authority provided for in article five, chapter ten of this code;

(3) University of West Virginia board of trustees provided for in article two, chapter eighteen-b of this code;

(4) Board of directors of the state college system provided for in article three, chapter eighteen-b of this code;

(5) Joint commission for vocational-technical-occupational education provided for in article three-a, chapter eighteen-b of this code;

(6) Division of culture and history provided for in article one, chapter twenty-nine of this code; and
(7) Division of rehabilitation services provided for in section two, article ten-a, chapter eighteen of this code.

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

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

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

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

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

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

(6) Commission on aging provided for in article fourteen, chapter twenty-nine of this code;

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

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

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

(e) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any such agency or board, are hereby transferred to and incorporated in and shall be administered as a part of the department of military affairs and public safety:
(1) Adjutant general's department provided for in article one-a, chapter fifteen of this code;

(2) Armory board provided for in article six, chapter fifteen of this code;

(3) Military awards board provided for in article one-g, chapter fifteen of this code;

(4) Division of public safety provided for in article two, chapter fifteen of this code;

(5) Office of emergency services and disaster recovery board provided for in article five, chapter fifteen of this code and emergency response commission provided for in article five-a of said chapter;

(6) Sheriffs' bureau provided for in article eight, chapter fifteen of this code;

(7) Division of corrections provided for in chapter twenty-five of this code;

(8) Fire commission provided for in article three, chapter twenty-nine of this code;

(9) Regional jail and correctional facility authority provided for in article twenty, chapter thirty-one of this code;

(10) Board of probation and parole provided for in article twelve, chapter sixty-two of this code; and

(11) Division of veterans' affairs and veterans' council provided for in article one, chapter nine-a of this code.

(f) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any such agency or board, are hereby transferred to and incorporated in and shall be administered as a part of the department of tax and revenue:

(1) Tax division provided for in article one, chapter eleven of this code;
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(2) Appraisal control and review commission provided for in article one-a, chapter eleven of this code;
(3) Racing commission provided for in article twenty-three, chapter nineteen of this code;
(4) Lottery commission and position of lottery director provided for in article twenty-two, chapter twenty-nine of this code;
(5) Agency of insurance commissioner provided for in article two, chapter thirty-three of this code;
(6) Office of alcohol beverage control commissioner provided for in article sixteen, chapter eleven of this code and article two, chapter sixty of this code;
(7) Division of professional and occupational licenses which may be hereafter created by the Legislature;
(8) Board of banking and financial institutions provided for in article three, chapter thirty-one-a of this code;
(9) Lending and credit rate board provided for in chapter forty-seven-a of this code;
(10) Division of banking provided for in article two, chapter thirty-one-a of this code; and
(11) The child support enforcement division as designated in chapter forty-eight-a of this code.

(g) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any such agency or board, are hereby transferred to and incorporated in and shall be administered as a part of the department of transportation:
(1) Road commission provided for in article two, chapter seventeen of this code;
(2) Division of highways provided for in article two-a, chapter seventeen of this code;
(3) Parkways, economic development and tourism authority provided for in article sixteen-a, chapter seventeen of this code;

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

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

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

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

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

(h) Except for such powers, authority and duties as have been delegated to the secretaries of the departments by the provisions of section two of this article, the existence of the position of administrator and of the agency and the powers, authority and duties of each administrator and agency shall not be affected by the enactment of this chapter.

(i) Except for such powers, authority and duties as have been delegated to the secretaries of the departments by the provisions of section two of this article, the existence, powers, authority and duties of boards and the membership, terms and qualifications of members of such boards shall not be affected by the enactment of this chapter and all boards which are appellate bodies or were otherwise established to be independent decision makers shall not have their appellate or independent decision-making status affected by the enactment of this chapter.

(j) Any department previously transferred to and incorporated in a department created in section two, article one of this chapter by prior enactment of this section in chapter three, acts of the Legislature, first
extraordinary session, one thousand nine hundred eighty-nine, and subsequent amendments thereto, shall henceforth be read, construed and understood to mean a division of the appropriate department so created. Wherever elsewhere in this code, in any act, in general or other law, in any rule or regulation, or in any ordinance, resolution or order, reference is made to any department transferred to and incorporated in a department created in section two, article one of this chapter, such reference shall henceforth be read, construed and understood to mean a division of the appropriate department so created, and any such reference elsewhere to a division of a department so transferred and incorporated shall henceforth be read, construed and understood to mean a section of the appropriate division of the department so created.

(k) When an agency, board or commission is transferred under a bureau or agency other than a department headed by a secretary pursuant to this section, that transfer shall be construed to be solely for purposes of administrative support and liaison with the office of the governor, a department secretary or a bureau. The bureaus created by the Legislature upon the abolishment of the department of commerce, labor and environmental resources in the year one thousand nine hundred ninety-four shall be headed by a commissioner or other statutory officer of an agency within that bureau. Nothing in this section shall be construed to extend the powers of department secretaries under section two of this article to any person other than a department secretary and nothing herein shall be construed to limit or abridge the statutory powers and duties of statutory commissioners or officers pursuant to this code. Upon the abolishment of the office of secretary of the department of commerce, labor and environmental resources, the governor may appoint a statutory officer serving functions formerly within that department to a position which was filled by the secretary ex officio.
CHAPTER 11. TAXATION.
ARTICLE 10. PROCEDURE AND ADMINISTRATION.

§11-10-5d. Confidentiality and disclosure of returns and return information.

(a) General rule. — Except when required in an official investigation by the tax commissioner into the amount of tax due under any article administered under this article or in any proceeding in which the tax commissioner is a party before a court of competent jurisdiction to collect or ascertain the amount of such tax and except as provided in subsections (d) through (n) of this section, it shall be unlawful for any officer or employee of this state to divulge or make known in any manner the tax return, or any part thereof, of any person or disclose information concerning the personal affairs of any individual or the business of any single firm or corporation, or disclose the amount of income, or any particulars set forth or disclosed in any report, declaration or return required to be filed with the tax commissioner by any article of this chapter imposing any tax administered under this article or by any rule or regulation of the tax commissioner issued thereunder, or disclosed in any audit or investigation conducted under this article.

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

(1) Background file document. — The term “background file document”, with respect to a written determination, includes the request for that written determination, any written material submitted in support of the request and any communication (written or otherwise) between the state tax department and any person outside the state tax department in connection with the written determination received before issuance of the written determination.

(2) Disclosure. — The term “disclosure” means the making known to any person in any manner whatsoever a return or return information.
(3) Inspection. — The terms “inspection” and “inspected” mean any examination of a return or return information.

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

(5) Return information. — The term “return information” means:

(A) A taxpayer's identity; the nature, source or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments or tax payments, whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, or any other data received by, recorded by, prepared by, furnished to or collected by the tax commissioner with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) or by any person under the provisions of this article (or any article of this chapter administered under this article) for any tax, additions to tax, penalty, interest, fine, forfeiture or other imposition or offense; and

(B) Any part of any written determination or any background file document relating to such written determination. “Return information” does not include, however, data in a form which cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer. Nothing in the preceding sentence,
or in any other provision of this code, shall be construed
to require the disclosure of standards used or to be used
for the selection of returns for examination or data used
or to be used for determining such standards.

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

(A) The administration, management, conduct, direction and supervision of the execution and application of the tax laws or related statutes of this state and the development and formulation of state tax policy relating to existing or proposed state tax laws, and related statutes of this state; and

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

(7) Taxpayer identity. — The term “taxpayer identity” means the name of a person with respect to whom a return is filed, his mailing address, his taxpayer identifying number or a combination thereof.

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

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

(c) Criminal penalty. — Any officer or employee (or former officer or employee) of this state who violates this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars or imprisoned for not more than one year, or both, together with costs of prosecution.
(d) Disclosure to designee of taxpayer. — Any person protected by the provisions of this article may, in writing, waive the secrecy provisions of this section for such purpose and such period as he shall therein state. The tax commissioner may, subject to such requirements and conditions as he may prescribe, thereupon release to designated recipients such taxpayer's return or other particulars filed under the provisions of the tax articles administered under the provisions of this article, but only to the extent necessary to comply with a request for information or assistance made by the taxpayer to such other person. However, return information shall not be disclosed to such person or persons if the tax commissioner determines that such disclosure would seriously impair administration of this state's tax laws.

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

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

(A) Preparation for any judicial or administrative proceeding pertaining to the enforcement of a specifically designated state or federal criminal statute to which this state, the United States or such agency is or may be a party;

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

(C) Any state or federal grand jury proceeding pertain-
ing to enforcement of such a criminal statute to which 
this state, the United States or such agency is or may be 
a party.

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

(2) Application of order. — Any United States attorney, 
any special prosecutor appointed under Section 593 of 
Title 28, United States Code, or any attorney in charge of 
a United States justice department criminal division 
organized crime strike force established pursuant to 
Section 510 of Title 28, United States Code, may author­
ize an application to a circuit court judge or magistrate, 
as appropriate, for the order referred to in subdivision 
(1) of this subsection. Any prosecuting attorney of this 
state may authorize an application to a circuit court 
judge of this state for the order referred to in subdivision 
(1) of this subsection. Upon such application, such judge 
or magistrate may grant such order if he determines on 
the basis of the facts submitted by the applicant that:

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

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

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

(3) The tax commissioner shall not disclose any return 
or return information under subdivision (1) of this 
subsection if he determines and certifies to the court that 
such disclosure would identify a confidential informant 
or seriously impair a civil or criminal tax investigation.
(f) Disclosure to person having a material interest. — The tax commissioner may, pursuant to legislative regulations promulgated by him, and upon such terms as he may require, disclose a return or return information to a person having a material interest therein: Provided, That such disclosure shall only be made if the tax commissioner determines, in his discretion, that such disclosure would not seriously impair administration of this state's tax laws.

(g) Statistical use. — This section shall not be construed to prohibit the publication or release of statistics so classified as to prevent the identification of particular returns and the items thereof.

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

(i) Reciprocal exchange. — The tax commissioner may, pursuant to written agreement, permit the proper officer of the United States, or the District of Columbia or any other state, or any political subdivision of this state, or his authorized representative, who is charged by law with responsibility for administration of a similar tax, to inspect reports, declarations or returns filed with the tax commissioner or may furnish to such officer or representative a copy of any such document, provided such other jurisdiction grants substantially similar privileges to the tax commissioner or to the attorney general of this state. Such disclosure shall be only for the purpose of, and only to the extent necessary in, the administration of tax laws: Provided, That such information shall not be disclosed to the extent that the tax commissioner determines that such disclosure would identify a confidential
informant or seriously impair any civil or criminal tax investigation.

(j) Inspection of business and occupation tax returns by municipalities. — The tax commissioner shall, upon the written request of the mayor of any West Virginia municipality having a business and occupation tax or privilege tax, allow the duly authorized agent of such municipality to inspect and make copies of the state business and occupation tax return filed by taxpayers of such municipality. Such inspection or copying shall only be for the purposes of securing information for municipal tax purposes and shall only be allowed if such municipality allows the tax commissioner the right to inspect or make copies of the municipal business and occupation tax returns of such municipality.

(k) Release of administrative decisions. — The tax commissioner shall release to the public his administrative decisions, or a summary thereof: Provided, That unless the taxpayer appeals the administrative decision to circuit court or waives in writing his rights to confidentiality, any identifying characteristics or facts about the taxpayer shall be omitted or modified to such an extent so as to not disclose the name or identity of the taxpayer.

(l) Release of taxpayer information. —

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

(A) Who have a current business registration certificate.

(B) Who are licensed employment agencies.

(C) Who are licensed collection agencies.

(D) Who are licensed to sell drug paraphernalia.
(E) Who are distributors of gasoline or special fuel.
(F) Who are contractors.
(G) Who are transient vendors.
(H) Who are authorized by law to issue a sales or use tax exemption certificate.
(I) Who are required by law to collect sales or use taxes.
(J) Who are foreign vendors authorized to collect use tax.
(K) Whose business registration certificate has been suspended or canceled or not renewed by the tax commissioner.
(L) Against whom a tax lien has been recorded under section twelve of this article (including any particulars stated in the recorded lien).
(M) Against whom criminal warrants have been issued for a criminal violation of this state's tax laws.
(N) Who have been convicted of a criminal violation of this state's tax laws.

Disclosure of return information to child support enforcement division.

1. **State return information.** — The tax commissioner may, upon written request, disclose to the child support enforcement division created by article two, chapter forty-eight-a of this code:

(A) Available return information from the master files of the tax department relating to the social security account number, address, filing status, amounts and nature of income and the number of dependents reported on any return filed by, or with respect to, any individual with respect to whom child support obligations are sought to be enforced; and
Available state return information reflected on any state return filed by, or with respect to any individual described in paragraph (A) of this subdivision, relating to the amount of such individual's gross income, but only if such information is not reasonably available from any other source.

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

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

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

The court, upon receiving the list or lists, shall direct the jury commission of the appropriate county to merge the names and addresses with other lists used in compiling a master list of residents of the county from which prospective jurors are to be chosen. Immediately after the master list is compiled, the jury commission shall cause the list provided by the tax commissioner and all copies thereof to be destroyed and shall certify to the circuit court and to the tax commissioner that the lists have been destroyed.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 2E. BIRTHING CENTERS.

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

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

ARTICLE 5. VITAL STATISTICS.

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

(a) A social security account number obtained in accordance with the provisions of this article with respect to the filing of: (1) A certificate of birth; (2) an
application for a delayed registration of birth; (3) a judicial order establishing a record of birth; (4) an adoption order or decree; or (5) a certificate of paternity shall not be transmitted to a clerk of the county commission. Such social security account number shall not appear upon the public record of the register of births or upon any certificate of birth registration issued by the state registrar, local registrar, county clerk or other issuing authority, if any. Such social security account numbers shall be made available by the state registrar to the child support enforcement division created by article forty-eight-a upon the request of the division, to be used solely in connection with the enforcement of child support orders.

(b) A parent who desires not to furnish a social security account number as required by the provisions of this article or article six, chapter forty-eight-a of this code shall file with the person responsible for obtaining personal data from the parent, a request that he or she not be required to furnish such number. The request shall be made on a form prescribed by the state registrar of vital statistics or in a substantially similar instrument and shall set forth the reasons that the parent declines or is unable to furnish such number. Supplies of a form for the request shall be made available to hospitals, circuit clerks and other persons responsible for obtaining personal data from parents, and shall be provided to any parent who states that he or she desires not to be required to furnish such number. A request, when received, shall be transmitted in the same manner as a record of a social security account number. The board of health shall promulgate legislative rules in accordance with the provisions of chapter twenty-nine-a of this code which shall establish the procedural means and substantive criteria by which the state registrar may determine whether there exists good cause for not requiring the furnishing of such number. In proposing the promulgation of such rules, the board of health shall give due
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consideration to related regulations prescribed by the secretary of health and human services of the United States.

ARTICLE 5B. HOSPITALS AND SIMILAR INSTITUTIONS.

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

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

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

Every applicant shall, in addition, submit satisfactory evidence of his ability to comply with the minimum standards and with all rules and regulations lawfully promulgated. Every applicant shall further submit satisfactory evidence that he has implemented the paternity program created pursuant to section thirteen of this article.
§16-5B-13. Hospital-based paternity program.

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

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

3 (1) Information regarding the establishment of paternity;

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

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

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

7 (1) Information regarding the establishment of paternity;

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

9 (3) The telephone contact number for the child support enforcement division that a parent may call for further information regarding the establishment of paternity.
(d) The child support enforcement division shall notify the state department of health of any failure of any hospital or birthing center to conform with the requirements of this section.

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

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 21. PUBLIC DEFENDER SERVICES.


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

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

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

(3) "Legal representation": The provision of any legal services or legal assistance consistent with the purposes and provisions of this article;
(4) "Private practice of law": The provision of legal representation by a public defender or assistant public defender to a client who is not entitled to receive legal representation under the provisions of this article, but does not include, among other activities, teaching;

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

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

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

(8) "Public defender office": An office operated by a public defender corporation to provide legal representation under the provisions of this article.

ARTICLE 22. STATE LOTTERY ACT.

§29-22-27a. Payment of prizes to the child support enforcement division.

(a) Upon notification by the child support enforcement division created by article two, chapter forty-eight-a of this code that a person entitled to a prize or any winning ticket is delinquent in the payment of child support or spousal support, the director shall forward to said child support enforcement division such portion of any prize
distributed directly from the state lottery office and that is available to pay all or any portion of the delinquent support payment.

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

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 2. DIVORCE, ANNULMENT AND SEPARATE MAINTENANCE.

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

(a) For the purposes of this section:

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

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

(3) "Insurance coverage" means coverage for medical, dental, including orthodontic, optical, psychological, psychiatric or other health care service.

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

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

(6) "Insurer" means any company, health maintenance organization, self-funded group, multiple employer welfare arrangement, hospital or medical services corporation, trust, group health plan, as defined in 29
U.S.C. §1167, Section 607(1) of the Employee Retirement Income Security Act of 1974 or other entity which provides insurance coverage or offers a service benefit plan.

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

(1) The court shall order either parent or both parents to provide insurance coverage for a child, if such insurance coverage is available to that parent on a group basis through an employer or through an employee's union. If similar insurance coverage is available to both parents, the court shall order the child to be insured under the insurance coverage which provides more comprehensive benefits. If such insurance coverage is not available at the time of the entry of the order, the order shall require that if such coverage thereafter becomes available to either party, that party shall promptly notify the other party of the availability of insurance coverage for the child.

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

(3) Based upon the respective ability of the parents to pay, the court may order either parent or both parents to be liable for reasonable and necessary medical care for a child. The court shall specify the proportion of the medical care for which each party shall be responsible.
(4) If insurance coverage is available, the court shall also determine the amount of the annual deductible on insurance coverage which is attributable to the children and designate the proportion of the deductible which each party shall pay.

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

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

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

1. The name of the insurer;
2. The policy number;
3. An insurance card;
4. The address to which all claims should be mailed;
5. A description of any restrictions on usage, such as prior approval for hospital admission, and the manner in which to obtain such approval;
6. A description of all deductibles; and
7. Five copies of claim forms.
(e) The custodian for the child shall send the insurer or the obligated parent's employer the children's address and notice that the custodian will be submitting claims on behalf of the children. Upon receipt of such notice, or an order for insurance coverage under this section, the obligated parent's employer, multi-employer trust or union shall, upon the request of the custodian for the child, release information on the coverage for the children, including the name of the insurer.

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

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

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

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

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

(2) If more than one plan is offered by the employer, multi-employer trust or union, the child shall be enrolled in the same plan as the obligated parent at a reasonable cost.
(3) Insurance coverage for the child which is ordered pursuant to the provisions of this section shall not be terminated except as provided in subsection (j) of this section.

(h) Where a parent is required by a court or administrative order to provide health coverage, which is available through an employer doing business in this state, the employer is required:

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

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

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

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

(B) The child is or will be enrolled in comparable coverage which will take effect no later than the effective date of disenrollment; or

(C) The employer has eliminated family health coverage for all of its employees;

(4) To withhold from the employee's compensation the employee's share, if any, of premiums for health coverage and to pay this amount to the insurer: Provided, That the amount so withheld may not exceed the maximum amount permitted to be withheld under 15 U.S.C. §1673, Section 303(b) of the Consumer Credit Protection Act.
The signature of the custodian for the child shall constitute a valid authorization to the insurer for the purposes of processing an insurance payment to the provider of medical care for the child.

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

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

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

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

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

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

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

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

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

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

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

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

(m) Proof of failure to maintain court ordered insurance coverage for the child constitutes a showing of substantial change in circumstances or increased need
pursuant to section fifteen of this article, and provides a basis for modification of the child support order.

§48-2-15b. Withholding from income.

(a) Every order entered or modified under the provisions of this article, not described in subsection (d) of this section, which requires the payment of child support or spousal support shall include a provision for automatic withholding from income of the obligor, in order to facilitate income withholding as a means of collecting support.

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

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

(2) The order shall also provide that income withholding will begin immediately upon the occurrence of any of
the following:

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

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

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

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

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

(d) The supreme court of appeals shall make available to the circuit courts standard language to be included in all such orders, so as to conform such orders to the applicable requirements of state and federal law regarding the withholding from income of amounts payable as support.
(e) Every support order entered by a circuit court of this state prior to the effective date of this section shall be considered to provide for an order of income withholding, by operation of law, which complies with the provisions of this section, notwithstanding the fact that such support order does not in fact provide for such order of withholding.

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

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

§48-2-37. Calculation of interest.

If an obligation to pay interest arises under this chapter and the rate is not specified, the rate is that specified in section thirty-one, article six, chapter fifty-six of this code. On or after the effective date of this section, interest shall accrue only upon the outstanding principal of such obligation. This section shall be construed to permit the accumulation of simple interest, and may not be construed to permit the compounding of interest. Interest which has accrued on unpaid installments accruing before the effective date of this section may not be modified by any court, irrespective of whether such installment accrued simple or compound interest: Provided, That unpaid installments upon which interest was compounded before the effective date of this section shall accrue only simple interest thereon on and after the effective date of this section.
CHAPTER 48A. ENFORCEMENT OF FAMILY OBLIGATIONS.

ARTICLE 1. GENERAL PROVISIONS.


As used in this chapter:

1. "Automatic data processing and retrieval system" means a computerized data processing system designed to do the following:

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

      (i) Identifiable correlation factors (such as social security numbers, names, dates of birth, home addresses and mailing addresses of any individual with respect to whom support obligations are sought to be established or enforced and with respect to any person to whom such support obligations are owing) to assure sufficient compatibility among the systems of different jurisdictions to permit periodic screening to determine whether such individual is paying or is obligated to pay support in more than one jurisdiction;

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

      (iii) Maintaining the data necessary to meet applicable federal reporting requirements on a timely basis; and

      (iv) Delinquency and enforcement activities;

   (B) To control, account for and monitor the collection and distribution of support payments (both interstate and intrastate) the determination, collection and distribution of incentive payments (both interstate and intrastate), and the maintenance of accounts receivable on all amounts owed, collected and distributed;
(C) To control, account for and monitor the costs of all services rendered, either directly or by exchanging information with state agencies responsible for maintaining financial management and expenditure information;

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

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

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

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

(2) "Chief judge" means the following:

(A) The circuit judge in a judicial circuit having only one circuit judge; or

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

(3) "Child advocate office" and "child support enforcement division" mean the agency created under the provisions of article two of this chapter, or any public or private entity or agency contracting to provide a service. The "child advocate office" or "child support enforcement division" is that agency intended by the Legislature to be the single and separate organizational unit of
state government administering programs of child and
spousal support enforcement and meeting the staffing
and organizational requirements of the secretary of the
federal department of health and human services.

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

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

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

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

(8) "Director" means any person appointed pursuant to
section thirteen, article two of this chapter, who directs
all child support establishment and enforcement services
for the child support enforcement division.
(9) "Domestic relations matter" means any circuit court proceeding involving child custody, child visitation, child support or alimony.

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

(11) "Employer" means any individual, sole proprietorship, partnership, association, public or private corporation, the United States or any federal agency, this state or any political subdivision of this state, any other state or a political subdivision of another state and any other legal entity which hires and pays an individual for his services.

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

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

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

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

(C) Any amount of money which is owing to the obligor as a debt from an individual, partnership, association,
(14) "Individual entitled to support enforcement services under the provisions of this chapter and the provisions of Title IV-D of the federal Social Security Act" means:

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

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

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

(B) An individual who has applied for or is receiving services from the child support enforcement division and who is an adult or an emancipated minor whose spouse or former spouse has been ordered by a court of competent jurisdiction to pay spousal support to the individual, whether such support is denominated alimony or separate maintenance, or is identified by some other terminology, thus establishing a support obligation with respect to such spouse, when the obligor required to pay such spousal support is not meeting the obligation, or has not met such obligation in the past; or

(C) Any individual who is an obligee in a support order, entered by a court of competent jurisdiction after the thirty-first day of December, one thousand nine hundred ninety-three.
(15) "Master" or "family law master" means a person appointed to such position under the provisions of section one, article four of this chapter.

(16) "Obligee" means:
(A) An individual to whom a duty of support is or is alleged to be owed or in whose favor a support order has been issued or a judgment determining parentage has been rendered;
(B) A state or political subdivision to which the rights under a duty of support or support order have been assigned or which has independent claims based on financial assistance provided to an individual obligee; or
(C) An individual seeking a judgment determining parentage of the individual's child.

(17) "Obligor" means an individual or the estate of a decedent:
(A) Who owes or is alleged to owe a duty of support;
(B) Who is alleged, but has not been adjudicated, to be a parent of a child; or
(C) Who is liable under a support order.

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

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

(20) "Secretary" means the secretary of the department in which the child support enforcement division is
located according to section forty-two, article two of this chapter.

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

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

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

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

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

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

§48A-1-3a. Calculation of interest.

(a) If an obligation to pay interest arises under this chapter and the rate is not specified, the rate is that specified in section thirty-one, article six, chapter fifty-six of this code. Interest shall accrue only upon the outstanding principal of such obligation. On and after
the effective date of this section, this section shall be
construed to permit the accumulation of simple interest,
and may not be construed to permit the compounding of
interest. Interest which has accrued on unpaid install-
ments accruing before the effective date of this section
may not be modified by any court, irrespective of
whether such installment accrued simple or compound
interest: Provided, That unpaid installments upon which
interest was compounded before the effective date of this
section shall accrue only simple interest thereon on and
after the effective date of this section.

ARTICLE 2. WEST VIRGINIA SUPPORT ENFORCEMENT COMMISSION;
CHILD SUPPORT ENFORCEMENT DIVISION; ESTAB-
LISHMENT AND ORGANIZATION.

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

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

The commission is a part-time commission whose
members make policy and have such other powers and
perform such other duties as specified in this chapter or
set forth in legislative rules promulgated by the commis-
sion. The ministerial duties of the commission shall be
administered and carried out by the director of the child
support enforcement division, with the assistance of such
staff of the department of health and human resources as secretary may assign.

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

While the commission is self-sustaining and independent, it, its members, its employees and the director are subject to article nine-a of chapter six, chapter six-b, chapter twenty-nine-a, and chapter twenty-nine-b of this code.

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

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

(1) One member is to be the secretary of the department of health and human resources;

(2) One member is to be the secretary of the department of tax and revenue;

(3) One member is to be the secretary of the department of administration;

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

(5) One member is to be a person experienced as a public administrator in the supervision and regulation of a governmental agency;
(6) One member is to be an employer experienced in withholding support payments from the earnings of obligors;

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

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

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

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

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

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

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

(3) Two members shall be appointed for terms ending on the thirtieth day of June, one thousand nine hundred ninety-nine.
(b) After the initial appointments made pursuant to the provisions of subdivisions (1), (2) and (3), subsection (a) of this section, members appointed by the governor shall thereafter be appointed or reappointed for terms of office which end on the thirtieth day of June in the fourth year following the expiration date of the previous term or terms.

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

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


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


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

Following the term of the initial chairman, thereafter the chairman shall be elected by the commission from among its members, and the member so elected shall: (1) Serve as chairman for a term of two years and until his or her successor shall have been elected; or (2) shall serve in such capacity throughout his or her service as a member of the commission, whichever period is shorter. In the event that a successor chairman is not elected by the commission members within ninety calendar days after the expiration of a chairman's term, a vacancy shall
be deemed to exist, and the governor shall designate a chairman from among the members of the commission. A member may not serve more than two consecutive terms as chairman.

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

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

(b) Each member of the commission shall be reimbursed for all actual and necessary expenses and disbursements involved in the execution of official duties.

§48A-2-7. Meeting requirements.

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

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

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

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

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


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

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

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

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

(c) To serve as a clearinghouse for information;

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

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

§48A-2-10. General powers of support enforcement commission.

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

(1) To establish and maintain procedures under which expedited processes, administrative or judicial, are in effect for obtaining and enforcing support orders and
establishing paternity according to this chapter;

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

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

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

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

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

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

(8) To cooperate with judicial organizations and the private bar to provide training to persons involved in the establishment and enforcement of child support orders;
(9) To study the issues involving retroactive and reimbursement child support payments which are ordered following the establishment of paternity and to make a recommendation to the Legislature on or before the first day of December, one thousand nine hundred ninety-five, regarding any statutory or regulatory action which should be implemented to ensure that fathers are not ordered to pay retroactive or reimbursement child support or medical expenses when such payments would be unconscionable or inequitable given the totality of the circumstances arising from the facts of a given case; and

(10) To promulgate such further legislative rules pursuant to chapter twenty-nine-a of this code which may aid the child support enforcement division in the establishment and enforcement of child support orders. In addition to the specific designation of such rules that constitute emergency rules within the meaning of section fifteen, article three, chapter twenty-nine-a of this code, the commission may promulgate other rules as emergency rules when such rule is necessary to ensure that the state is awarded federal funds for the actions described in the rule or when the promulgation of such rule is necessary to prevent substantial harm to the public interest by insuring that child support is timely collected and disbursed.


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

(1) Prescribing the methods and forms of proposal that a prospective contractor shall follow and complete before consideration of a proposal by the commission, which rules shall require such plans as shall assure the commission that the proposal conforms with the requirements of this chapter and all applicable federal statutes and regulations;
(2) Prescribing standards and guidelines for contractors providing professional services to ensure the maintenance of the highest quality of service and professional standards, the preservation of the attorney-client relationship, and the protection of the integrity of the adversarial process from any impairment in furnishing legal representation;

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

(4) Prescribing standards and guidelines for contractors providing professional services to ensure that appropriate training and support services are provided to employees of the contractor who are engaged in activities to obtain and enforce support orders and establish paternity according to this chapter;

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

(6) Providing for a minimum uniform standard of accounting methods, procedures and forms; a uniform code of accounts and accounting classifications; and other standard operating procedures, as may be necessary to assure consistency, comparability, and effective disclosure of all financial information by a contractor
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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.

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

1. Be appointed by the secretary;
2. Serve at the will and pleasure of the secretary;
3. Serve on a full-time basis and shall not engage in any other profession or occupation, including the holding of a political office in the state either by election or appointment, while serving as director;
4. Be a lawyer licensed by, and in good standing with, the West Virginia state bar; and
5. Have responsible administrative experience, possess management skills, and have knowledge of the law as it relates to domestic relations and the establishment and enforcement of support obligations.

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

(b) The duties of the director shall include the following:

1. To direct and administer the daily operations of the commission;
2. To administer the child support enforcement fund created pursuant to section eighteen of this article;
3. To keep the records and papers of the commission, including a record of each proceeding;
4. To prepare, issue and submit reports of the commission; and
5. To perform any other duty that the commission
(c) All payments to the director as compensation shall be made from the child support enforcement fund. The director is entitled to:

(1) A reasonable and competitive compensation package to be established by the secretary; and

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


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

(b) The secretary may transfer employees and resources of the department to the child support enforcement division as may be necessary to fulfill the duties and responsibilities of the division under this chapter: Provided, That the secretary may not transfer employees of other divisions and agencies within the department to the child support enforcement division without a prior finding that the office or position held by the employee may be eliminated and until the office or position is, in fact, eliminated. On the first day of July, one thousand nine hundred ninety-five, the secretary shall transfer and allocate to the division all functions, offices, personnel and equipment of the child advocate office previously created within the division of human services by the prior enactment of section one of this article.

(c) The director, if he or she deems such action necessary, may hire legal counsel for the division, notwithstanding the provisions of section two, article three, chapter five of this code or any other code provision to the contrary, or may request the attorney general to appoint assistant attorneys general who shall perform such duties as may be required by the division. The
attorney general, in pursuance of such request, may
select and appoint assistant attorneys general, to serve
during the will and pleasure of the attorney general, and
such assistants shall be paid out of any funds allocated
and appropriated to the child support enforcement fund.

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

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

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

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

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

(1) To undertake directly, or by contract, activities to
obtain and enforce support orders and establish patern-
ity;

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

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

(4) To contract for professional services with any
person, firm, partnership, professional corporation,
association or other legal entity to provide representa-
tion for the division and the state in administrative or
(5) To ensure that activities of a contractor under a contract for professional services are carried out in a manner consistent with attorneys' professional responsibilities as established in the rules of professional conduct as promulgated by the supreme court of appeals;

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

(7) To ensure the compliance of contractors and their employees with the provisions of this chapter and legislative rules promulgated pursuant to this chapter, and to terminate, after notice and hearing, the contractual relationship between the division and a contractor who fails to comply;

(8) To require a contractor to take appropriate remedial or disciplinary action against any employee who has violated or caused the contractor to violate the provisions of this chapter, in accordance with procedures prescribed in legislative rules promulgated by the commission;

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

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

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

(12) If the child support enforcement division is transferred to the department of tax and revenue pursuant to section forty-two of this article, the director of the child support enforcement division may exercise any power available to him or her as director, or to the tax
commissioner, in order to accomplish the purposes of this chapter, including, but not limited to, the powers associated with gaining access to all information gained and maintained by the department of tax and revenue in the collection of taxes, and any and all powers to levy, through distraint or seizure by any means, upon all property or rights to property without the need to obtain a separate court order for the attachment; and

(13) To exercise such other powers as may be necessary to effectuate the provisions of this chapter.

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

(a) The commission shall, by legislative rule promulgated pursuant to chapter twenty-nine-a of this code, establish guidelines for child support award amounts so as to ensure greater uniformity by those persons who make child support recommendations and enter child support orders and to increase predictability for parents, children and other persons who are directly affected by child support orders. There shall be a rebuttable presumption, in any proceeding before a family law master or circuit court judge for the award of child support, that the amount of the award which would result from the application of such guidelines is the correct amount of child support to be awarded. A written finding or specific finding on the record that the application of the guidelines would be unjust or inappropriate in a particular case shall be sufficient to rebut the presumption in that case. The guidelines shall not be followed:

(1) When the child support award proposed to be made pursuant to the guidelines has been disclosed to the parties and each party has made a knowing and intelligent waiver of said amount, and the support obligors have entered into an agreement which provides for the custody and support of the child or children of the parties; or

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

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

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

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

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

(f) In determining the child support obligation of a parent whose employment income consists, in part, of compensation for overtime hours worked, the guidelines shall provide for a child support order which includes a consideration of such overtime compensation, balancing the interest of children to share in the resources of such parent with the interest of the parent in not being penalized for accepting overtime work. Any formula which is used to compute anticipated overtime compensation shall allow for the irregular nature of such compensation.

(g) In determining the child support obligation of a parent whose employment income consists of compensation for seasonal employment, the guidelines shall provide for discretionary use of alternative payment schedules which may vary the periodic amounts required to be paid.

(h) The guidelines promulgated shall provide that in determining the child support obligation of a parent whose support obligation extends to the children of more than one family, the guidelines shall be structured so as to equitably provide for all children to whom the obligor owes a duty of support. The commission, in promulgating guidelines in conformity to this section, shall formulate a policy regarding whether a remarried parent's spouse's income affects a support obligation, and a policy regarding the consideration to be given to the costs of multiple family child raising obligations, other than the costs for those children for whom the support action was brought. The policy of the commission shall be declared explicitly in the guidelines, and if it is the
policy of the commission that the amount of support ordered should be altered because of a consideration of these factors, then the formula for calculating the alteration under the guidelines shall be explicitly stated.

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

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

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

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

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

(4) That expenditures on children vary according to the number of children in the family, and as the number of children in the family increases, the expenditures for the children as a group increase and the expenditures on each individual child decrease; so that due to increasing
economies of scale and the increased sharing of resources among family members, spending will not increase in direct proportion to the number of children; and

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

(k) Prior to the first day of May, one thousand nine hundred ninety-six, the commission shall review the guidelines and propose a legislative rule for promulgation in accordance with the provisions of article three, chapter twenty-nine of this code to amend and update the guidelines required by this section. Such proposed rule shall include, but not be limited to, provisions which specifically address the requirements set forth in subsections (f), (g) and (h) of this section. In preparing such legislative rule to be proposed for promulgation, the commission is directed to study the feasibility and desirability of basing support guidelines on an income shares formula. Notwithstanding the provisions of this section to the contrary, the commission may, in its discretion, propose for promulgation support guidelines based on an income shares formula. In preparing such legislative rule to be proposed for promulgation, the commission is directed to study the feasibility and desirability of limiting the maximum amount to be paid as child support in cases involving a parent or parents with high incomes, and to also study the possible alternative disposition of available income to an educational trust or other investment through which the child or children hold the beneficial interest, and the commission may, in its discretion, propose for promulgation support guidelines which address these issues.

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

§48A-2-18. Creation of child support enforcement fund;
purpose; funding; disbursements.

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

(b) Moneys in the special revenue account shall be
appropriated to the department and used exclusively, in
accordance with appropriations by the Legislature, to
pay costs, fees and expenses incurred, or to be incurred
for the following purpose: the provision of child support
services authorized pursuant to Title VI, Part D of the
Social Security Act and any further duty as set forth in
this chapter, including, but not limited to, the duties
assigned to the division by virtue of its being designated
as the single and separate organizational unit within this
state to administer the state plan for child and spousal
support according to section twelve of this article.
(c) Any balance remaining in the special revenue account at the end of any state fiscal year shall not revert to the general revenue fund but shall remain in the special revenue account and shall be used solely in a manner consistent with this section: Provided, That for the three succeeding fiscal years after the effective date of this section, any appropriation made to the special revenue account from general revenue shall be repaid to the general revenue fund from moneys available in the special revenue account.

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


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

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

(c) Fees imposed by state and federal tax agencies for
collection of overdue support shall be imposed on the person for whom these services are provided. Upon written notice to the obligee the child support enforcement division shall assess a fee of twenty-five dollars to any person not receiving public assistance for each successful federal tax interception. The fee shall be withheld prior to the assistance for each successful federal tax interception. The fee shall be withheld prior to the release of the funds received from each interception and deposited in the child support enforcement fund established pursuant to section eighteen of this article.

(d) In any action brought by the child support enforcement division, the family law master shall order that the obligor shall pay attorney fees for the services of the attorney representing the child support enforcement division in an amount calculated at a rate similar to the rate paid to court appointed attorneys paid pursuant to section thirteen-a, article twenty-one, chapter twenty-nine of this code, and all court costs associated with the action: Provided, That no such award shall be made when the family law master or circuit judge finds that the award of attorneys fees would create a substantial financial hardship on the obligor or when the obligor is a recipient of public assistance. Further, the child support enforcement division may not collect such fees until the obligor is current in the payment of child support. No court may order the child support enforcement division to pay attorney’s fees to any party in any action brought pursuant to this chapter or chapter forty-eight of this code.

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

(f) The commission shall, by legislative rule promul-
gated pursuant to chapter twenty-nine-a of this code, describe the circumstances under which fees charged by the child support enforcement division may be modified or waived, and such rule shall provide for the waiver of any fee, in whole or in part, when such fee would otherwise be required to be paid under the provisions of this chapter. Further, such rule shall initially be promulgated as an emergency rule pursuant to section fifteen, article three, chapter twenty-nine-a of this code.

§48A-2-20. Contracts for services.

(a) Contracts with persons, firms, partnerships, corporations, associations or other legal entities to provide services to the child support enforcement division shall, at a minimum:

1. Provide for the employment and training of personnel necessary to perform the services;
2. Provide that any federal incentive payment that is payable shall be payable to the fund established pursuant to section eighteen of this article;
3. Delegate responsibility that is consistent with the rules promulgated pursuant to this article;
4. Include any and all provisions required by state or federal law and specifically include terms regarding cancellation and renewal of the contract;
5. Provide for the assessment of penalties for the failure to fully or timely provide services included in the agreement;
6. Prohibit the assignment of the contract or the subcontracting of services to be provided under the contract without first obtaining the express written approval of the director;
7. Provide that the contractor consents to performance audits of its operations by the performance evaluation and research division, legislative auditor's
office of the West Virginia Legislature; and

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

(b) Prior to entering into such agreement, the director shall provide all proposals to the members of the commission who may review and comment on those proposals.

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

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

(e) Any agreement entered into pursuant to this section may include a provision relating to the loan of equipment in the possession of the child support enforcement division.


(a) Attorneys employed by the child support enforcement division may represent this state or another state in an action brought under the authority of federal law of this chapter.

(b) An attorney employed by the child support enforcement division or employed by a person or agency or
entity pursuant to a contract with the child support
enforcement division represents the interest of the state
or the division and not the interest of any other party.
The child support enforcement division shall, at the time
an application for child support services is made, inform
the applicant that any attorney who provides services for
the child support enforcement division is the attorney for
the State of West Virginia and that the attorney provid-
ing those services does not provide legal representation
to the applicant.

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


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

(b) Upon entering into an agreement with the secretary
of the federal department of health and human services
for the use of that department's parent locator service,
the child support enforcement division shall accept and
transmit to the secretary of the department of health and
human services requests for information to be furnished
by such federal parent locator service to authorized
persons. The child support enforcement division shall
charge a reasonable fee sufficient to cover the costs to
the state and to the federal department of health and
human services incurred by reason of such requests, and
shall transfer to that department from time to time, so much of the fees collected as are attributable to the costs 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 cooperate with any other state in the following:

(1) In establishing paternity;
(2) In locating an obligor residing temporarily or permanently in this state, against whom any action is being taken for the establishment of paternity or the enforcement of child and spousal support;
(3) In securing compliance by an obligor residing temporarily or permanently in this state, with an order issued by a court of competent jurisdiction against such obligor for the support and maintenance of a child or children or the parent of such child or children; and
(4) In carrying out other functions necessary to a program of child and spousal support enforcement.

(b) The commission shall, by legislative rule, establish procedures necessary to extend the child support enforcement division's system of withholding under section three, article five of this chapter so that such system may include withholding from income derived within this state in cases where the applicable support orders were issued in other states, in order to assure that child support owed by obligors in this state or any other state will be collected without regard to the residence of the child for whom the support is payable or the residence 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 the child support enforcement division shall be distributed within ten days of receipt, except as otherwise
specifically provided in this chapter. Such amounts shall, except as otherwise provided under the provisions of subsection (c) of this section, be distributed as follows:

(1) The first fifty dollars of such amounts as are collected periodically which represent monthly support payments shall be paid to the obligee without affecting the eligibility of such person's family for assistance from the department of health and human resources or decreasing any amount otherwise payable as assistance to such family during such month;

(2) Such amounts as are collected periodically which are in excess of any amount paid to the family under subdivision (1) of this subsection and which represent monthly support payments shall be paid by the child support enforcement division to the appropriate administrative unit of the department of health and human resources to reimburse it for assistance payments to the family during such period (with appropriate reimbursement of the federal government to the extent of its participation in the financing);

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

(4) Such amounts as are in excess of amounts required to be distributed under subdivisions (1), (2) and (3) of this subsection shall be: (A) Paid by the child support enforcement division to the appropriate administrative unit of the department of health and human resources (with appropriate reimbursement of the federal government to the extent of its participation in the financing) as reimbursement for any past assistance payments made to the family for which the department has not been reimbursed; or (B) if no assistance payments have been made by the department which have not been repaid,
such amounts shall be paid to the obligee.

(b) (1) Whenever a family for whom support payments have been collected and distributed under the provisions of this chapter ceases to receive assistance from the department of health and human resources, the child support enforcement division shall provide notice to the family of their rights with regard to a continuation of services. Unless notified by the family that services are no longer desired, the child support enforcement division shall continue to collect amounts of support payments which represent monthly support payments from the obligor and pay any amount so collected, which represents monthly support payments, to the family (without requiring any formal reapplication and without the imposition of any application fee) on the same basis as in the case of other obligees who are not receiving assistance from the department of health and human resources.

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

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

(A) Be paid by the child support enforcement division to the appropriate administrative unit of the department
of health and human resources to the extent necessary to
reimburse the department for foster care maintenance
payments made with respect to the child during such
period (with appropriate reimbursement of the federal
government to the extent of its participation in financ-
ing);

(B) Be paid to the appropriate administrative unit of
the department of health and human resources to the
extent that the amounts collected exceed the foster care
maintenance payments made with respect to the child
during such period but do not exceed the amounts
required by a court order to be paid as support on behalf
of the child during such period; and the department of
health and human resources may use the payments in the
manner it determines will serve the best interests of the
child, including setting such payments aside for the
child's future needs or making all or a part thereof
available to the person responsible for meeting the
child's day-to-day needs; and

(C) Be paid to the appropriate administrative unit of
the department of health and human resources if any
portion of the amounts collected remains after making
the payments required under paragraphs (A) and (B) of
this subdivision, to the extent that such portion is
necessary to reimburse the department of health and
human resources (with appropriate reimbursement to the
federal government to the extent of its participation in
the financing), for any past foster care maintenance
payments, or payments of aid to families with dependent
children which were made with respect to the child (and
with respect to which past collections have not previ-
ously been retained);

(2) Any balance of the amounts required to be paid
under the provisions of subdivision (1) of this section
shall be paid to the appropriate administrative unit of
the department of health and human resources, for use
by the department in accordance with paragraph (B) of
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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
that the support payments be made to the child support
enforcement division. In such case, the child support
enforcement division shall proceed to receive and
disburse such support payments to or on behalf of the
obligee as provided by law.

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

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

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

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


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

(b) The commission shall, by legislative rule promul-
gated pursuant to chapter twenty-nine-a of this code,
establish procedures necessary for the child support
enforcement division to enforce a support order through
a notice to the tax commissioner which will cause any
refund of state income tax which would otherwise be payable to an obligor to be reduced by the amount of overdue support owed by such obligor.

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

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

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

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

(D) The amount of the fee to be paid to the tax commissioner for the full cost of applying the procedure whereby past due support is obtained from state income tax refunds; and

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

(2) Withholding from state income tax refunds may not be pursued unless the child support enforcement division has examined the obligor's pattern of payment of support and the obligee's likelihood of successfully pursuing other enforcement actions, and has determined that the amount of past due support which will be owed, at the time the withholding is to be made, will be one hundred dollars or more. In determining whether the amount of past due support will be one hundred dollars or more, the child support enforcement division shall consider the amount of all unpaid past due support, including that which may have accrued prior to the time that the child support enforcement division first agreed to enforce the support order.
(c) The director of the child support enforcement division shall enter into agreements with the secretary of the treasury and the tax commissioner, and other appropriate governmental agencies, to secure information relating to the social security number or numbers and the address or addresses of any obligor, in order to provide notice between such agencies to aid the child support enforcement division in requesting state income tax deductions, and to aid the tax commissioner in enforcing such deductions. In each such case, the tax commissioner, in processing the state income tax deduction, shall notify the child support enforcement division of the obligor's home address and social security number or numbers. The child support enforcement division shall provide this information to any other state involved in processing the support order.

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

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

(f) The legislative rule promulgated by the commission pursuant to the provisions of this section and pursuant to chapter twenty-nine-a of this code, shall, at a minimum, provide that prior to notifying the tax commissioner of past due support, a notice to the obligor as prescribed under subsection (a) of this section shall:

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

(2) Instruct the obligor of the steps which may be taken to contest the determination of the child support en-
(3) Provide information with respect to the procedures to be followed, in the case of a joint return, to protect the share of the refund which may be payable to another person.

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

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

(i) The commission shall, by legislative rule promulgated pursuant to chapter twenty-nine-a, structure the time and method by which all amounts received by the child support enforcement division, as payments of past due support from state income tax refunds, are distributed. In a case where an obligee is an applicant for the services of the child support enforcement division, but is not a current recipient of assistance from the department of human services in the form of aid to families with
dependent children, such method of distribution shall give priority to the obligee and the family of the obligee by paying such amounts to the obligee first rather than using them first to reimburse the department of human services.

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

(a) The director shall determine on a periodic basis whether individuals receiving unemployment compensation owe child support obligations which are being enforced or have been requested to be enforced by the child support enforcement division. If an individual is receiving such compensation and owes any such child support obligation which is not being met, the child support enforcement division shall enter into an agreement with such individual to have specified amounts withheld otherwise payable to such individual, and shall submit a copy of such agreement to the bureau of employment programs. In the absence of such agreement, the child support enforcement division shall bring legal process to require the withholding of amounts from such compensation.

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

(c) The commission shall promulgate a procedural rule for selecting cases to pursue through the withholding of unemployment compensation for support purposes. This rule shall be designed to ensure maximum case selection
and minimal discretion in the selection process.

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

(e) The director shall, through direct contact with the bureau of employment programs, process cases through the bureau of employment programs in this state, and shall process cases through support enforcement agencies in other states. The director shall receive all amounts withheld by the bureau of employment programs in this state, forwarding any amounts withheld on behalf of support enforcement agencies in other states to those agencies.

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

(g) For the purposes of this section:

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

2. "Unemployment compensation" means any compensation under state unemployment compensation law (including amounts payable in accordance with agreements under any federal unemployment compensation law). It includes extended benefits, unemployment compensation for federal employees, unemployment compensation for ex-servicemen, trade readjustment
allowances, disaster unemployment assistance, and payments under the Federal Redwood National Park Expansion Act.


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

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

(a) For purposes of this section, the term "consumer reporting agency" means any person who, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages, in whole or in part, in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.

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

(c) (1) When the amount of any overdue support is equal to or less than the amount of arrearage which would cause the mailing of a notice as provided for in subsection (b), section three, article five of this chapter,
information regarding such amount may not be made available;

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

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

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

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

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


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


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

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

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

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

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

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

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

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

(3) Has gross earnings of less than three hundred dollars per month.
(c) The commission may establish additional exemptions to reduce unnecessary or burdensome reporting through promulgation of a legislative rule pursuant to chapter twenty-nine-a of this code.

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

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

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

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

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

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

(a) Every three years after the entry of a final judgment containing a child support order has been entered in a domestic relations matter, the child support enforcement division shall, examine the records and conduct any
investigation considered necessary to determine whether the child support amount should be increased or decreased in view of a temporary or permanent change in physical custody of the child which the court has not ordered, increased need of the child or changed financial conditions.

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

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

1. The child is being supported, in whole or in part, by assistance payments from the division of human services, the child support enforcement division has determined that such a review would not be in the best interests of the child and neither parent has requested a review; or
2. Neither parent has requested a review.

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

(e) When the result of the review is a proposal to petition to seek modification, then each parent shall be given thirty days' notice of the hearing on the petition, the notice to be directed to the last known address of each party by first class mail.
When the result of the review is a proposal that there be no change, then any parent disagreeing with that proposal may, within thirty days of the notice of the results of the review, file with the court a petition for modification setting forth in full the grounds therefor.

(f) The child support enforcement division shall petition the court for modification of the amount of a child support order if modification is determined to be necessary under subsection (a) of this section. A written report and recommendation shall accompany the petition.

(g) As used in this section, "changed financial conditions" means increases or decreases in the resources available to either party from any source. Changed financial conditions includes, but is not limited to, the application for or receipt of any form of public assistance payments, unemployment compensation and workers' compensation.

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

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

(a) When any filing, copying or other service is provided to the child support enforcement division, the state or county official or the clerk of any court providing such fee for a charge, shall bill the child support enforcement division monthly.

(b) When any filing, copying or other service is provided to a person, agency or entity who is providing services for the child support enforcement division pursuant to a contract, the state or county official or the clerk of any court providing such fee for a charge, shall bill the entity, agency, person or child support enforcement division monthly, in accord with the terms of the contract. The child support enforcement division shall provide the relevant terms of such agreement to those officials upon implementation of any agreement.

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

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

(a) The state assents to the purposes of the federal laws regarding child support and establishment of paternity and agrees to accept federal appropriations and other forms of assistance made under or pursuant thereto, and authorizes the receipt of such appropriations into the state treasury and the receipt of other forms of assistance by the child support enforcement division for expenditure, disbursement, and distribution by the
division in accordance with the provisions of this chapter and the conditions imposed by applicable federal laws, rules, and regulations.

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


The child support enforcement division shall regularly and frequently publicize, through public service announcements, the availability of child support enforcement services under the provisions of this chapter and otherwise, including information as to any application fees for such services and a toll-free telephone number and a postal address at which further information may be obtained.


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

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

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

(3) Information and records other than the phone number, address, employer and information regarding the location of the obligor, the obligee and the child shall be disclosed to the obligor, the obligee, the child or the caretaker of the child or his or her duly authorized representative, upon his or her written request: Provided, That when the obligor requests records other than collection and distribution records, financial records relevant to the determination of the amount of support pursuant to the guidelines, or records the obligor has supplied, the division shall mail a notice by first class mail to the last known address of the obligee notifying him or her of the request. The notice shall advise the obligee of his or her right to object to the release of records on the grounds that the records are not relevant to the determination of the amount of support, or the establishment, modification, enforcement, collection or distribution of support. The notice shall also advise the obligee of his or her right to disclosure of records provided in this section in order to determine what records the child support enforcement division may have. In the event of any objection, the division shall determine whether or not the information shall be released.

(4) Information in specific cases may be released as is necessary or to determine the identity, location, employment, income and assets of an obligor.
Information and records may be disclosed to the department of vital statistics, department of employment security, the department of workers' compensation, state tax department and the internal revenue service, or other state or federal agencies or departments as may be necessary or desirable in obtaining any address, employment, wage or benefit information for the purpose of determining the amount of support or establishing, enforcing, collecting and distributing support.

Any person who willfully violates this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred nor more than one thousand dollars, or confined in jail not more than six months, or both fined and imprisoned.


(a) All state, county and municipal agencies, offices and employers receiving a request for information and assistance from the child support enforcement division shall cooperate with the division in the location of parents who have abandoned and deserted children and shall provide the division with all available pertinent information concerning the location, income and property of those parents.

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

§48A-2-42. Authorization for transfer of functions, offices,
and equipment of the support enforcement commission and the child support enforcement division.

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

ARTICLE 3. CHILDREN'S ADVOCATE.

§48A-3-11. Repeal of article.

All procedures and requirements established in the previous enactment of sections one, two, three, seven and eight of this article shall continue in effect until the promulgation of an emergency rule by the commission regarding the duties of child support enforcement division, their salary and their location throughout the state. Upon promulgation of this rule and the filing of such rule with the secretary of state in accord with section fifteen, article three, chapter twenty-nine-a of this code, this article and any rule promulgated pursuant 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.

The budget for the payment of the salaries and benefits of the family law masters and clerical and secretarial assistants shall be included in the appropriation for the supreme court of appeals. The family law master administration fund is hereby created and shall be a special account in the state treasury. The fund shall operate as a special fund administered by the state auditor which shall be appropriated by line item by the Legislature for
payment of administrative expenses of the family law
master system. All agencies or entities receiving federal
matching funds for the services of family law masters
and their staff, including, but not limited to, the director
of the child support enforcement division and the
secretary of the department of health and human re-
sources, shall enter into an agreement with the adminis-
trative office of the supreme court of appeals whereby all
federal matching funds paid to and received by said
agencies or entities for the activities by family law
masters and staff of the program shall be paid into the
family law master administration fund. Said agreement
shall provide for advance payments into the fund by such
agencies, from available federal funds pursuant to Title
IV-D of the Social Security Act and in accordance with
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.

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

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

(2) Such obligor is not the primary caretaker or guard-
ian of the child;

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

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

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

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

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

(2) A primary caretaker of a child;

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

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

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

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

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

(f) At any time after the entry of an order for support, the court may, upon the verified petition of an obligee or the obligor, revise or alter such order, and make a new order, as the altered circumstances or needs of a child, an obligee, or the obligor may render necessary to meet the ends of justice.
§48A-5-3. Withholding from income of amounts payable as support.

(a) The withholding from an obligor's income of amounts payable as spousal or child support shall be enforced by the child support enforcement division in accordance with the provisions of sections fifteen-a or fifteen-b, article two, chapter forty-eight of this code. Every support order heretofore or hereafter entered by a circuit court or a magistrate of this state and every support order entered by a court of competent jurisdiction of another state shall be considered to provide for an order of income withholding in accordance with the provisions of section fifteen-a or fifteen-b, article two, chapter forty-eight of this code, notwithstanding the fact that such support order does not in fact provide for such an order of withholding.

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

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

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

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

(c) When notice required by subsection (b) of this section is appropriate, the child support enforcement division shall determine the time for a meeting between the obligor and the child support enforcement division and the time for a hearing before the family law master, and shall then set forth in such notice the times and places at which the meeting and hearing will be held if
withholding is contested. The meeting and hearing may be scheduled on the same date, but in no case shall the meeting with the child support enforcement division be scheduled less than fifteen days after the date the notice is mailed nor shall the hearing before the master be scheduled more than twenty-one days after the date the notice is mailed. The child support enforcement division shall send such notice by first class mail to the delinquent obligor. The notice shall inform the delinquent obligor of the following:

(1) The amount owed;

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

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

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

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

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

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

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

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

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

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

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

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

(d) Withholding shall occur when the support order provides for immediate income withholding, or if immediate income withholding is not so provided, and the
withholding is contested, then after entry of the master's
recommended order by the circuit court. When with-
holding is ordered or otherwise required, the source of
income shall withhold so much of the obligor's income
as is necessary to comply with the order authorizing such
withholding, up to the maximum amount permitted
under applicable law. Such withholding, unless other-
wise terminated under the provisions of this section,
shall apply to any subsequent source of income or any
subsequent period of time during which income is
received by the obligor.

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

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

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

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

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

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

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

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

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

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

(6) When an obligor acts so as to purposefully minimize his or her income and to thereby circumvent the provisions of this section which provide for withholding from income of amounts payable as support, the amount to be withheld as support payments may be based upon the obligor's potential earnings rather than his or her actual earnings, and such obligor may not rely upon the percentage limitations set forth in this subsection which limit the amount to be withheld from disposable earnings.
(f) The source of income of any obligor who is subject to withholding, upon being given notice of withholding, shall withhold from such obligor's income the amount specified by the notice and pay such amount to the child support enforcement division for distribution. The notice given to the source of income shall contain only such information as may be necessary for the source of income to comply with the withholding order. Such notice to the source of income shall include, at a minimum, the following:

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

2. That the source of income shall send the amount to be withheld from the obligor's income along with such identifying information as may be required by the child support enforcement division to the child support enforcement division the same day that the obligor is paid;

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

4. That withholding is binding on the source of income until further notice by the child support enforcement division or until the source of income notifies the child support enforcement division of a termination of the obligor's employment in accordance with the provisions of subsection (1) of this section;

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

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

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

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

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

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

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

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

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

(j) Withholding of amounts payable as support under the provisions of this section is binding on the source of income until further notice by the child support enforcement division or until the source of income notifies the child support enforcement division of a termination of the obligor's employment in accordance with the provisions of subsection (1) of this section.

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

(l) A source of income who employs or otherwise pays income to an obligor who is subject to withholding under the provisions of this section shall notify the child support enforcement division promptly when the obligor terminates employment or otherwise ceases receiving income from the source of income, and shall provide the
child support enforcement division with the obligor's last known address and the name and address of the obligor's new source of income, if known.

(m) When an employer has more than one employee who is an obligor who is subject to wage withholding from income for amounts payable as support, the employer may combine all withheld payments to the child support enforcement division when the employer properly identifies each payment with the information listed in this section. A source of income is liable to an obligee, including the state of West Virginia or the department of health and human resources where appropriate, for any amount which the source of income fails to identify in accordance with this section and is therefore not received by the obligee.

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

(o) Any source of income who knowingly and willfully conceals the fact that the source of income is paying income to an obligor, with the intent to avoid withholding from the obligor's income of amounts payable as support, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one hundred dollars.

(p) When the child support enforcement division makes a written request to a source of income to provide information as to whether the source of income has paid income to a specific obligor, within the preceding sixty-day period, the source of income shall, within fourteen days thereafter, respond to such request, itemizing all
such income, if any, paid to the obligor during such sixty-day period. A source of income shall not be liable, civilly or criminally, for providing such information in good faith.

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

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


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

(1) If the person so notified does not submit written reasons for contesting the action within the time set to contest the proposed action, and does not request a meeting with the child support enforcement division, then the child support enforcement division shall proceed with the proposed action; or

(2) If the person so notified does submit written reasons for contesting the action within the time set to contest the proposed action, and requests a meeting with the child support enforcement division, then the child support enforcement division shall schedule a meeting at
the earliest practicable time with the person and attempt
to resolve the matter informally.

(b) If the matter cannot be resolved informally, the
court shall determine as to whether the proposed action is proper and
should actually occur.

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

ARTICLE 6. ESTABLISHMENT OF PATERNITY.

§48A-6-1. Paternity proceedings.

(a) A civil action to establish the paternity of a child
and to obtain an order of support for the child may be
instituted, by verified complaint, in the circuit court of
the county where the child resides: Provided, That if
such venue creates a hardship for the parties, or either of
them, or if judicial economy requires, the court may
transfer the action to the county where either of the
parties resides.

(b) A “paternity proceeding” is a summary proceeding,
equitable in nature and within the domestic relations
jurisdiction of the courts, wherein a circuit court upon
the petition of the state or another proper party may
intervene to determine and protect the respective
personal rights of a child for whom paternity has not
been lawfully established, of the mother of the child and
of the putative father of the child.
(c) The sufficiency of the statement of the material allegations in the complaint set forth as grounds for relief and the grant or denial of the relief prayed for in a particular case shall rest in the sound discretion of the court, to be exercised by the court according to the circumstances and exigencies of the case, having due regard for precedent and the provisions of the statutory law of this state.

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

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

1. An unmarried woman with physical or legal custody of a child to whom she gave birth;
2. A married woman with physical or legal custody of a child to whom she gave birth, if the complaint alleges that:
   (A) The married woman lived separate and apart from her husband preceding the birth of the child;
   (B) The married woman did not cohabit with her husband at any time during such separation and that such separation has continued without interruption; and
   (C) The defendant, rather than her husband, is the father of the child;
3. The state of West Virginia, including the child support enforcement division defined in article two of this chapter;
4. Any person who is not the mother of the child, but who has physical or legal custody of the child;
(5) The guardian or committee of the child;
(6) The next friend of the child when the child is a minor;
(7) By the child in his own right at any time after the child's eighteenth birthday but prior to the child's twenty-first birthday; or
(8) A man purporting to be the father of a child born out of wedlock, when there has been no prior judicial determination of paternity.

(f) Blood or tissue samples taken pursuant to the provisions of this article may be ordered to be taken in such locations as may be convenient for the parties so long as the integrity of the chain of custody of the samples can be preserved.

(g) A person who has sexual intercourse in this state submits to the jurisdiction of the courts of this state for a proceeding brought under this article with respect to a child who may have been conceived by that act of intercourse. Service of process may be perfected according to the rules of civil procedure.

(h) When the person against whom the proceeding is brought has failed to plead or otherwise defend the action after proper service has been obtained, judgment by default shall be issued by the court as provided by the rules of civil procedure.

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

(a) The court may, on its own motion, or shall upon the motion of any party, order the mother, her child and the man to submit to blood tests or tissue tests to aid the court in proving or disproving paternity. Such motion may be made, upon ten days' written notice to the mother and alleged father, without the necessity of filing a complaint. When the tests are ordered, the court shall direct that the inherited characteristics, including, but
not limited to, blood types be determined by appropriate
testing procedures at a hospital, independent medical
institution or independent medical laboratory duly
licensed under the laws of this state, or any other state,
and shall appoint an expert qualified as an examiner of
genetic markers to analyze and interpret the results and
to report to the court. The court shall consider the
results as follows:

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

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

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

(4) When the defendant desires to challenge the results
of the blood or tissue tests or the expert's analysis of
inherited characteristics, he shall file a written protest
with the family law master or circuit court within thirty
days of the filing of such test results and serve a copy of
such protest upon the other party. The written protest
shall be filed at least thirty days prior to any hearing
involving the test results. The court, upon reasonable
request of a party, shall order that additional tests be
made by the same laboratory or another laboratory
within thirty days of the entry of the order, at the
expense of the party requesting additional testing. When
the results of the blood or tissue tests or the expert's
analysis which show a statistical probability of paternity
of more than ninety-eight percent are confirmed by the additional testing, then the results are admissible evidence which is clear and convincing evidence of paternity. The admission of the evidence creates a presumption that the defendant is the father.

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

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

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

(a) When the defendant, by verified responsive pleading, admits that the man is the father of the child and owes a duty of support, or if after a trial on the merits, the court shall find, by clear and convincing evidence that the man is the father of the child, the court shall order support in accordance with the provisions of this section.
(b) The court shall give full faith and credit to a determination of paternity made by any other state, based on the laws of that state, whether established through voluntary acknowledgement or through administrative or judicial process.

§48A-6-5. Representation of parties.

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

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

(a) A written, notarized acknowledgment by both the man and woman that the man is the father of the named child legally establishes the man as the father of the child for all purposes and child support may be established under the provisions of this chapter. The acknowledgement of paternity is irrevocable from the time of execution, unless a court of competent jurisdiction finds that such acknowledgement was obtained by fraud or duress.

(b) The written acknowledgement shall include:

(1) Filing instructions;

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

(3) A statement regarding the rights and obligations of acknowledging paternity, including but not limited to the duty to support a child.
(c) Failure or refusal to include all information required by subsection (b) of this section shall not affect the validity of the written acknowledgement, in the absence of a finding by a court of competent jurisdiction that the acknowledgement was obtained by fraud or duress.

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

ARTICLE 7. REVISED UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT.

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

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

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

When this state is acting either as a rendering or a
registering state, any attorney employed by the child support enforcement division or agency or entity pursuant to a contract with the division pursuant to article two of this chapter, represents the interest of the state and not the interest of any other party. The provision of services by an attorney under this chapter does not create an attorney-client relationship between the 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.

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

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

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

(3) Upon the filing of an affidavit in accordance with this subsection, seeking an appeal in a civil case from a circuit court to the supreme court of appeals, the supreme court of appeals may direct payment by the administrative office of the supreme court of appeals of the expenses of duplicating the record on appeal after it is transmitted by the clerk of the circuit court. The transcript of proceedings before the circuit court, if the petition for appeal is to be filed with the transcript, shall be provided by the court reporter without cost: Pro-
vided, That actual expenses of the court reporter for
supplies used in preparing the transcript may be paid
when authorized by the director of the administrative
office of the supreme court of appeals.

(b) The supreme court of appeals or the chief justice
thereof shall establish and periodically review and
update financial guidelines for determining the eligibility
of civil litigants to proceed in forma pauperis.

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

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

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

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

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

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

(6) Whether the person has paid or will pay counsel
fees, or whether counsel will be provided by a private
attorney on a contingent fee basis, an attorney pro bono,
a legal services attorney, or some other attorney at no
cost or a reduced cost to the affiant; and

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

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

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

(f) The making of an affidavit subject to inquiry under this section does not in any event give rise to criminal remedies against the affiant nor occasion any civil action against the affiant except for the recovery of costs as in any other case where costs may be recovered and the recovery of the value of services, if any, provided pursuant to this section. A person who has made an affidavit knowing the contents thereof to be false may be prosecuted for false swearing as provided by law.
Enr. S. B. No. 567]

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

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

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

Governor