

SB 752

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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1998



ENROLLED

SENATE BILL NO. 752

(By Senator WOOTON, ET AL)



PASSED MARCH 14, 1998

In Effect 90 Days From Passage

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SENATE OF WEST VIRGINIA

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Senate Bill No. 752

(BY SENATORS WOOTON, BALL, BOWMAN, DITTMAR,
HUNTER, KESSLER, OLIVERIO, ROSS, SCHOONOVER,
SNYDER, WHITE, DEEM AND KIMBLE)

[Passed March 14, 1998; in effect ninety days from passage.]

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

reenact sections one, two, three, four and five, article five of said chapter; to further amend said article by adding thereto two new sections, designated sections four-a and seven; to amend and reenact sections one and four, article six of said chapter; and to amend and reenact section twelve, article one, chapter fifty-seven of said code, all relating to child support and authorizing the state registrar of vital statistics to offer voluntary paternity establishment services; providing for parent education classes for parents of minor children when the parents are involved in actions for divorce, paternity, custody or separate maintenance; authorizing the child support enforcement division to file a motion for modification of a child support order; transferring health care coverage for a child to a health plan offered by the obligated parent's new employer; defining "support order"; establishing who may use and what information may be requested from the state and federal parent locator services; establishing the time for disbursement of child support collections; authorizing the child support enforcement division to redirect support payments administratively where someone other than the custodial parent has physical custody; specifying the conditions under which the child support enforcement division may obtain consumer credit reports; providing for submission of information by parties to support proceedings to the state case registry; allowing enforcement of subpoenas issued by out-of-state agencies administering certain programs for child support enforcement; providing for development of a data match system with financial institutions for obtaining information regarding obligor depositors and for immunity from liability for financial institutions supplying such information; reporting of information regarding employment and income by an employer and specifying who has access to such information; providing for an administrative review and adjustment of child support orders which differ from the child support guidelines; prohibiting the release of information on the whereabouts of a protected party or child; providing the child support enforcement division and

certain out-of-state agencies access to records of public and private entities for purposes of child support enforcement; recording social security numbers in certain family matters; providing procedures for administrative enforcement of child support orders through writs of execution, suggestions or suggestee executions on personal property; withholding from income of amounts payable as support; creating liens against real property for overdue child support; providing for release of real property liens upon satisfaction of the overdue support obligation; providing procedures for enforcing liens on real property for overdue child support; authorizing the circuit court to order one found in contempt for violating a child support order to work or to pay support in accordance with a plan approved by the child support enforcement division; authorizing the child support enforcement division to increase monthly support payments to secure overdue child support; restating that there is no right to trial by jury in a paternity proceeding; issuing temporary child support in paternity actions in cases of clear and convincing evidence of paternity; providing for admission into evidence of bills for testing as prima facie evidence in a paternity case without third-party testimony; and requiring full faith and credit be given to records and proceedings in other jurisdictions in conformity with federal law.

Be it enacted by the Legislature of West Virginia:

That section five, article five, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections fifteen and fifteen-a, article two, chapter forty-eight of said code be amended and reenacted; that said article be further amended by adding thereto a new section, designated section ten-b; that section thirty, article one-a, chapter forty-eight-a of said code be amended and reenacted; that section nine, article one-b of said chapter be amended and reenacted; that sections twenty-two, twenty-four, thirty-one, thirty-two, thirty-three, thirty-three-a, thirty-four, thirty-five, forty and forty-one, article two of said chapter be amended and reenacted; that said article be

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

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5. VITAL STATISTICS.

§16-5-5. Duties of state registrar of vital statistics; enforcement of article.

1 (a) The state registrar of vital statistics shall:

2 (1) Administer and enforce the provisions of this article
3 and all other applicable laws of this state and all lawful
4 rules and regulations adopted and promulgated thereun-
5 der;

6 (2) Direct and supervise the statewide system of vital
7 statistics and the operation of the division of vital statis-
8 tics, and act as custodian of its records;

9 (3) Direct, supervise and control the activities of local
10 registrars and the activities of public officers in relation
11 to the operation of the vital statistics system and provide
12 them with the postage necessary for them to carry out
13 their duties under this article;

14 (4) Prescribe, provide and distribute, subject to the rules
15 and regulations promulgated by the board of health, all
16 forms necessary to carry out the provisions of this article
17 and of the rules and regulations adopted and promulgated
18 thereunder;

19 (5) Prepare and publish annual reports of vital statistics
20 of this state, and such other reports as may be required by
21 the director of the state health department; and

22 (6) Offer voluntary paternity establishment services.

23 (b) The state registrar of vital statistics may delegate
24 such functions and duties as are hereby vested in him or
25 her to officers and employees of the division of vital
26 statistics and to local registrars as the state registrar may
27 deem necessary or expedient.

28 (c) The state registrar, either personally or by a duly
29 delegated representative, shall have authority to investi-
30 gate cases of irregularity or violation of law arising under
31 the provisions of this article, and all local registrars,
32 deputy local registrars and subregistrars shall aid him or
33 her, upon request, in such investigations. When he or she
34 shall deem it necessary, he or she shall report cases of
35 violation of any of the provisions of this article to the
36 prosecuting attorney of the county, with a statement of
37 the facts and circumstances. When any such case is
38 reported to him or her by the state registrar, the prosecut-
39 ing attorney shall forthwith initiate and promptly prose-
40 cute the necessary court proceedings against the person or
41 corporation responsible for the alleged violation of law.
42 Upon request of the state registrar, the attorney general
43 shall assist in the enforcement of the provisions of this
44 article.

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 2. DIVORCE, ANNULMENT AND SEPARATE MAINTENANCE.

§48-2-10b. Parent education classes.

1 (a) A circuit court, or a judge thereof, may, by adminis-
2 trative rule or order, and with the approval of the supreme
3 court of appeals, designate an organization or agency to
4 establish and operate education programs designed for
5 parents who have filed an action for divorce, paternity,
6 support or separate maintenance and who have minor
7 children. The education programs shall be designed to
8 instruct and educate parents about the effects of divorce
9 and custody disputes on their children and to teach

10 parents ways to help their children and minimize their
11 trauma.

12 (b) The circuit court may issue an order requiring parties
13 to an action for divorce, paternity, custody or separate
14 maintenance to attend parental education classes estab-
15 lished pursuant to subsection (a) of this section and may,
16 by order, establish sanctions for failure to attend.

17 (c) The circuit court may require that each person
18 attending a parental education class pay a fee, not to
19 exceed twenty-five dollars, to the clerk of such court to
20 defray the cost of materials and of hiring teachers:
21 *Provided*, That where it is determined that a party is
22 indigent and unable to pay for such classes, the court shall
23 waive the payment of the fee for such party. The clerk of
24 the circuit court shall, on or before the tenth day of each
25 month, transmit all fees collected under this subsection to
26 the state treasurer for deposit in the state treasury to the
27 credit of special revenue fund to be know as the "parental
28 education fund", which is hereby created. All moneys
29 collected and received under this subsection and paid into
30 the state treasury and credited to the "parental education
31 fund" shall be used by the administrative office of the
32 supreme court of appeals solely for reimbursing the
33 provider of parental education classes for the costs of
34 materials and of providing such classes. Such moneys
35 shall not be treated by the auditor and treasurer as part of
36 the general revenue of the state.

37 (d) The administrative office of the supreme court of
38 appeals shall submit a report to the joint committee on
39 government and finance summarizing the effectiveness of
40 any program of parent education no later than two years
41 from the initiation of the program.

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

1 (a) Upon ordering a divorce or granting a decree of

2 separate maintenance, the court may require either party
3 to pay alimony in the form of periodic installments, or a
4 lump sum, or both, for the maintenance of the other party.
5 Payments of alimony are to be ordinarily made from a
6 party's income, but when the income is not sufficient to
7 adequately provide for those payments, the court may,
8 upon specific findings set forth in the order, order the
9 party required to make those payments to make them from
10 the corpus of his or her separate estate. An award of
11 alimony shall not be disproportionate to a party's ability
12 to pay as disclosed by the evidence before the court.

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

17 (1) The court may provide for the custody of minor
18 children of the parties, subject to such rights of visitation,
19 both in and out of the residence of the custodial parent or
20 other person or persons having custody, as may be appro-
21 priate under the circumstances. In every action where
22 visitation is awarded, the court shall specify a schedule for
23 visitation by the noncustodial parent: *Provided*, That
24 with respect to any existing order which provided for
25 visitation but which does not provide a specific schedule
26 for visitation by the noncustodial parent, upon motion of
27 any party, notice of hearing and hearing, the court shall
28 issue an order which provides a specific schedule of
29 visitation by the noncustodial parent;

30 (2) When the action involves a minor child or children,
31 the court shall require either party to pay child support in
32 the form of periodic installments for the maintenance of
33 the minor children of the parties in accordance with
34 support guidelines promulgated pursuant to article one-b,
35 chapter forty-eight-a of this code. Payments of child
36 support are to be ordinarily made from a party's income,
37 but in cases when the income is not sufficient to ade-

38 quately provide for those payments, the court may, upon
39 specific findings set forth in the order, order the party
40 required to make those payments to make them from the
41 corpus of his or her separate estate;

42 (3) When the action involves a minor child or children,
43 the court shall provide for medical support for any minor
44 children in accordance with section fifteen-a of this
45 article;

46 (4) As an incident to requiring the payment of alimony
47 or child support, the court may order either party to
48 continue in effect existing policies of insurance covering
49 the costs of health care and hospitalization of the other
50 party: *Provided*, That if the other party is no longer
51 eligible to be covered by such insurance because of the
52 granting of an annulment or divorce, the court may
53 require a party to substitute such insurance with a new
54 policy to cover the other party or may consider the
55 prospective cost of such insurance in awarding alimony to
56 be paid in periodic installments. Payments made to an
57 insurer pursuant to this subdivision, either directly or by
58 a deduction from wages, shall be deemed to be alimony or
59 installment payments for the distribution of marital
60 property, in such proportion as the court shall direct:
61 *Provided, however*, That if the court does not set forth in
62 the order that a portion of such payments is to be deemed
63 installment payments for the distribution of marital
64 property, then all such payments made pursuant to this
65 subdivision shall be deemed to be alimony: *Provided*
66 *further*, That the designation of insurance coverage as
67 alimony under the provisions of this subdivision shall not,
68 in and of itself, give rise to a subsequent modification of
69 the order to provide for alimony other than insurance for
70 covering the costs of health care and hospitalization;

71 (5) The court may grant the exclusive use and occupancy
72 of the marital home to one of the parties, together with all
73 or a portion of the household goods, furniture and furnish-

74 ings reasonably necessary for such use and occupancy.
75 Such use and occupancy shall be for a definite period,
76 ending at a specific time set forth in the order, subject to
77 modification upon the petition of either party. Except in
78 extraordinary cases supported by specific findings set
79 forth in the order granting relief, a grant of the exclusive
80 use and occupancy of the marital home shall be limited to
81 those situations when such use and occupancy is reason-
82 ably necessary to accommodate the rearing of minor
83 children of the parties. The court may require payments
84 to third parties in the form of home loan installments,
85 land contract payments, rent, property taxes and insur-
86 ance coverage if the amount of such coverage is reduced to
87 a fixed monetary amount set forth in the court's order.
88 When such third party payments are ordered, the court
89 shall specify whether such payments or portions of
90 payments are alimony, child support, a partial distribu-
91 tion of marital property or an allocation of marital debt:
92 *Provided*, That if the court does not set forth in the order
93 that a portion of such payments is to be deemed child
94 support or installment payments for the distribution of
95 marital property, then all such payments made pursuant
96 to this subdivision shall be deemed to be alimony. When
97 such third party payments are ordered, the court shall
98 specify whether such payments or portions of payments
99 are alimony, child support, a partial distribution of
100 marital property or an allocation of marital debt. If the
101 payments are not designated in an order and the parties
102 have waived any right to receive alimony, the court may
103 designate the payments upon motion by any party.
104 Nothing contained in this subdivision shall abrogate an
105 existing contract between either of the parties and a third
106 party or affect the rights and liabilities of either party or
107 a third party under the terms of such contract;

108 . (6) As an incident to requiring the payment of alimony,
109 the court may grant the exclusive use and possession of
110 one or more motor vehicles to either of the parties. The

111 court may require payments to third parties in the form of
112 automobile loan installments or insurance coverage if
113 available at reasonable rates, and any such payments
114 made pursuant to this subdivision for the benefit of the
115 other party shall be deemed to be alimony or installment
116 payments for the distribution of marital property, as the
117 court may direct. Nothing contained in this subdivision
118 shall abrogate an existing contract between either of the
119 parties and a third party or affect the rights and liabilities
120 of either party or a third party under the terms of such
121 contract;

122 (7) When the pleadings include a specific request for
123 specific property or raise issues concerning the equitable
124 division of marital property as defined in section one of
125 this article, the court shall order such relief as may be
126 required to effect a just and equitable distribution of the
127 property and to protect the equitable interests of the
128 parties therein;

129 (8) Unless a contrary disposition is ordered pursuant to
130 other provisions of this section, then upon the motion of
131 either party, the court may compel the other party to
132 deliver to the moving party any of his or her separate
133 estate which may be in the possession or control of the
134 respondent party and may make such further order as is
135 necessary to prevent either party from interfering with the
136 separate estate of the other;

137 (9) When allegations of abuse have been proven, the
138 court shall enjoin the offending party from molesting or
139 interfering with the other, or otherwise imposing any
140 restraint on the personal liberty of the other or interfering
141 with the custodial or visitation rights of the other. Such
142 order may permanently enjoin the offending party from
143 entering the school, business or place of employment of
144 the other for the purpose of molesting or harassing the
145 other; or from contacting the other, in person or by
146 telephone, for the purpose of harassment or threats; or

147 from harassing or verbally abusing the other in a public
148 place;

149 (10) The court may order either party to take necessary
150 steps to transfer utility accounts and other accounts for
151 recurring expenses from the name of one party into the
152 name of the other party or from the joint names of the
153 parties into the name of one party. Nothing contained in
154 this subdivision shall affect the liability of the parties for
155 indebtedness on any such account incurred before the
156 transfer of such account.

157 (c) When an annulment or divorce is denied, the court
158 shall retain jurisdiction of the case and may order all or
159 any portion of the relief provided for in subsections (a)
160 and (b) of this section which has been demanded or prayed
161 for in the pleadings.

162 (d) When a divorce or annulment is granted in this state
163 upon constructive service of process and personal jurisdic-
164 tion is thereafter obtained of the defendant in such case,
165 the court may order all or any portion of the relief pro-
166 vided for in subsections (a) and (b) of this section which
167 has been demanded or prayed for in the pleadings.

168 (e) After the entry of an order pursuant to the provisions
169 of this section, the court may revise the order concerning
170 the maintenance of the parties and enter a new order
171 concerning the same, as the circumstances of the parties
172 may require.

173 The court may also from time to time afterward, upon
174 motion of either of the parties and upon proper service,
175 revise such order to grant relief pursuant to subdivision
176 (9), subsection (b) of this section, and enter a new order
177 concerning the same, as the circumstances of the parties
178 and the benefit of children may require. The court may
179 also from time to time afterward, upon the motion of
180 either of the parties or other proper person having actual
181 or legal custody of the minor child or children of the

182 parties, revise or alter the order concerning the custody
183 and support of the children, and make a new order
184 concerning the same, issuing it forthwith, as the circum-
185 stances of the parents or other proper person or persons
186 and the benefit of the children may require: *Provided,*
187 That all orders modifying child support shall be in confor-
188 mance with the requirements of support guidelines
189 promulgated pursuant to article one-b, chapter
190 forty-eight-a of this code: *Provided, however,* That an
191 order providing for child support payments may be
192 revised or altered for the reason, inter alia, that the
193 existing order provides for child support payments in an
194 amount that is less than eighty-five percent or more than
195 one hundred fifteen percent of the amount that would be
196 required to be paid under the child support guidelines
197 promulgated pursuant to the provisions of said section:
198 *Provided further,* That the child support enforcement
199 division may review a child support order and, if appro-
200 priate, file a motion with the circuit court for modification
201 of the child support order pursuant to the provisions of
202 section thirty-five, article two, chapter forty-eight-a of
203 this code.

204 In granting relief under this subsection, the court may,
205 when other means are not conveniently available, alter
206 any prior order of the court with respect to the distribu-
207 tion of marital property, if such property is still held by
208 the parties, and if necessary to give effect to a modifica-
209 tion of alimony, child support or child custody or neces-
210 sary to avoid an inequitable or unjust result which would
211 be caused by the manner in which the modification will
212 affect the prior distribution of marital property.

213 (f) When a separation agreement is the basis for an
214 award of alimony, the court, in approving the agreement,
215 shall examine the agreement to ascertain whether it
216 clearly provides for alimony to continue beyond the death
217 of the payor party or to cease in such event. When ali-
218 mony is to be paid pursuant to the terms of a separation

219 agreement which does not state whether the payment of
220 alimony is to continue beyond the death of the payor party
221 or is to cease, or when the parties have not entered into a
222 separation agreement and alimony is to be awarded, the
223 court shall specifically state as a part of its order whether
224 such payments of alimony are to be continued beyond the
225 death of the payor party or cease.

226 (g) When a separation agreement is the basis for an
227 award of alimony, the court, in approving the agreement,
228 shall examine the agreement to ascertain whether it
229 clearly provides for alimony to continue beyond the
230 remarriage of the payee party or to cease in such event.
231 When alimony is to be paid pursuant to the terms of a
232 separation agreement which does not state whether the
233 payment of alimony is to continue beyond the remarriage
234 of the payee party or is to cease, or when the parties have
235 not entered into a separation agreement and alimony is to
236 be awarded, the court shall specifically state as a part of
237 its order whether such payments of alimony are to be
238 continued beyond the remarriage of the payee party or
239 cease.

240 (h) In addition to the disclosure requirements set forth
241 in section thirty-three of this article, the court may order
242 accounts to be taken as to all or any part of marital
243 property or the separate estates of the parties and may
244 direct that the accounts be taken as of the date of the
245 marriage, the date upon which the parties separated or
246 any other time in assisting the court in the determination
247 and equitable division of property.

248 (i) In determining whether alimony is to be awarded, or
249 in determining the amount of alimony, if any, to be
250 awarded under the provisions of this section, the court
251 shall consider and compare the fault or misconduct of
252 either or both of the parties and the effect of such fault or
253 misconduct as a contributing factor to the deterioration of
254 the marital relationship. However, alimony shall not be

255 awarded when both parties prove grounds for divorce and
256 are denied a divorce, nor shall an award of alimony under
257 the provisions of this section be ordered which directs the
258 payment of alimony to a party determined to be at fault,
259 when, as a grounds granting the divorce, such party is
260 determined by the court:

261 (1) To have committed adultery; or

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

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

267 (j) Whenever under the terms of this section or section
268 thirteen of this article a court enters an order requiring
269 the payment of alimony or child support, if the court
270 anticipates the payment of such alimony or child support
271 or any portion thereof to be paid out of "disposable retired
272 or retainer pay" as that term is defined in 10 U.S.C. §1408,
273 relating to members or former members of the uniformed
274 services of the United States, the court shall specifically
275 provide for the payment of an amount, expressed in
276 dollars or as a percentage of disposable retired or retainer
277 pay, from the disposable retired or retainer pay of the
278 payor party to the payee party.

279 (k) Any order which provides for the custody or support
280 of a minor child shall include:

281 (1) The name of the custodian;

282 (2) The amount of the support payments;

283 (3) The date the first payment is due;

284 (4) The frequency of the support payments;

285 (5) The event or events which trigger termination of the
286 support obligation;

- 287 (6) A provision regarding wage withholding;
- 288 (7) The address where payments shall be sent;
- 289 (8) A provision for medical support; and
- 290 (9) When child support guidelines are not followed, a
291 specific written finding pursuant to section fourteen,
292 article one-b, chapter forty-eight-a of this code.
- 293 (1) (1) Unless the best interests of the child require
294 otherwise, every final order and every modification order
295 which provides for the custody of a minor child of the
296 parties shall also provide for the following:
- 297 (A) The custodial parent shall be required to authorize
298 school authorities in the school in which the child is
299 enrolled to release to the noncustodial parent copies of
300 any and all information concerning the child which would
301 otherwise be properly released to the custodial parent;
- 302 (B) The custodial parent shall be required, promptly
303 after receipt, to transmit to the noncustodial parent a copy
304 of the child's grades or report card and copies of any other
305 reports reflecting the status or progress of the child;
- 306 (C) The custodial parent shall be required, when practi-
307 cable, to arrange appointments for parent-teacher confer-
308 ences at a time when the noncustodial parent can be
309 present;
- 310 (D) The custodial parent shall be required to authorize
311 medical providers to release to the noncustodial parent
312 copies of any and all information concerning medical care
313 provided to the child which would otherwise be properly
314 released to the custodial parent;
- 315 (E) The custodial parent shall be required to promptly
316 inform the noncustodial parent of any illness of the child
317 which requires medical attention; or, if the child is in the
318 actual physical custody of the noncustodial parent during
319 a period of visitation, the noncustodial parent shall be

320 required to promptly inform the custodial parent of any
321 illness of the child which requires medical attention;

322 (F) The custodial parent shall be required to consult
323 with the noncustodial parent prior to any elective surgery
324 being performed on the child; and in the event emergency
325 medical procedures are undertaken for the child which
326 require the parental consent of either parent, if time
327 permits, the other parent shall be consulted, or if time
328 does not permit such consultation, the other parent shall
329 be promptly informed of such emergency medical proce-
330 dures: *Provided*, That the same duty to inform the
331 custodial parent applies to the noncustodial parent in the
332 event that the emergency medical procedures are required
333 while the child is in the physical custody of the
334 noncustodial parent during a period of visitation: *Pro-*
335 *vided, however*, That nothing contained herein shall be
336 deemed to alter or amend the law of this state as it
337 otherwise pertains to physicians or health care facilities
338 obtaining parental consent prior to providing medical care
339 or performing medical procedures.

340 (2) In the event a custodial parent shall fail or refuse to
341 authorize the release of school or medical records as
342 provided for by subdivision (1) of this subsection, then
343 upon the ex parte application of the noncustodial parent,
344 the family law master shall prepare an order for entry by
345 the circuit court which appoints the family law master as
346 a special commissioner authorized to execute a consent for
347 the release of such records and direct it to the appropriate
348 school authorities or medical providers.

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

1 (a) For the purposes of this section:

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

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

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

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

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

18 (6) "Insurer" means any company, health maintenance
19 organization, self-funded group, multiple employer
20 welfare arrangement, hospital or medical services corpo-
21 ration, trust, group health plan, as defined in 29 U.S.C.
22 §1167, Section 607(1) of the Employee Retirement Income
23 Security Act of 1974 or other entity which provides
24 insurance coverage or offers a service benefit plan.

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

33 (1) The court shall order either parent or both parents to
34 provide insurance coverage for a child, if such insurance
35 coverage is available to that parent on a group basis
36 through an employer or through an employee's union. If
37 similar insurance coverage is available to both parents,
38 the court shall order the child to be insured under the
39 insurance coverage which provides more comprehensive
40 benefits. If such insurance coverage is not available at the

41 time of the entry of the order, the order shall require that
42 if such coverage thereafter becomes available to either
43 party, that party shall promptly notify the other party of
44 the availability of insurance coverage for the child.

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

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

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

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

70 (c) The cost of insurance coverage shall be considered by
71 the court in applying the child support guidelines pro-
72 vided for in article one-b, chapter forty-eight-a of this
73 code.

74 (d) Within thirty days after the entry of an order requir-
75 ing the obligated parent to provide insurance coverage for

76 the children, that parent shall submit to the custodian for
77 the child written proof that the insurance has been
78 obtained or that an application for insurance has been
79 made. Such proof of insurance coverage shall consist of,
80 at a minimum:

- 81 (1) The name of the insurer;
- 82 (2) The policy number;
- 83 (3) An insurance card;
- 84 (4) The address to which all claims should be mailed;
- 85 (5) A description of any restrictions on usage, such as
86 prior approval for hospital admission, and the manner in
87 which to obtain such approval;
- 88 (6) A description of all deductibles; and
- 89 (7) Five copies of claim forms.

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

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

- 102 (1) The obligated parent, within thirty days of receiving
103 effective notice of the court order, fails to provide to the
104 custodian for the child written proof that the insurance
105 has been obtained or that an application for insurance has
106 been made;
- 107 (2) The custodian for the child serves written notice by

108 mail at the obligated parent's last known address of
109 intention to enforce the order requiring insurance cover-
110 age for the child; and

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

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

120 (2) If more than one plan is offered by the employer,
121 multiemployer trust or union, the child shall be enrolled
122 in the same plan as the obligated parent at a reasonable
123 cost.

124 (3) Insurance coverage for the child which is ordered
125 pursuant to the provisions of this section shall not be
126 terminated except as provided in subsection (k) of this
127 section.

128 (h) Where a parent is required by a court or administra-
129 tive order to provide health coverage, which is available
130 through an employer doing business in this state, the
131 employer is required:

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

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

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

142 evidence that:

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

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

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

150 (4) To withhold from the employee's compensation the
151 employee's share, if any, of premiums for health coverage
152 and to pay this amount to the insurer: *Provided*, That the
153 amount so withheld may not exceed the maximum amount
154 permitted to be withheld under 15 U.S.C. §1673, Section
155 303(b) of the Consumer Credit Protection Act.

156 (i) (1) The signature of the custodian for the child shall
157 constitute a valid authorization to the insurer for the
158 purposes of processing an insurance payment to the
159 provider of medical care for the child.

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

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

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

175 (j) Where an obligated parent changes employment, and
176 the new employer provides the obligated parent's health
177 care coverage, the child support enforcement division
178 shall transfer to the new employer notice of the obligated
179 parent's duty to provide health care coverage. Unless
180 contested by the obligated parent in writing and in
181 accordance with section eight, article five, chapter forty-
182 eight-a of this code, the notice shall operate to enroll the
183 child in the new employer's health care plan.

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

194 (l) A child of an obligated parent shall remain eligible
195 for insurance coverage until the child is emancipated or
196 until the insurer under the terms of the applicable insur-
197 ance policy terminates said child from coverage, which-
198 ever is later in time, or until further order of the court.

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

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

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

210 provide the required coverage;

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

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

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

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

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

CHAPTER 48A. ENFORCEMENT OF FAMILY OBLIGATIONS.

ARTICLE 1A. DEFINITIONS.

§48A-1A-30. Support order.

1 (a) For cases being enforced pursuant to Title IV-D of
 2 the Social Security Act, "support order" means a judg-
 3 ment, decree or order, whether temporary, final, or subject
 4 to modification, issued by a court or an administrative

5 agency of competent jurisdiction, for the support and
6 maintenance of a child, including a child who has attained
7 the age of majority under the law of the issuing state, or a
8 child and the parent with whom the child is living, which
9 provides for monetary support, health care, arrearage or
10 reimbursements, and which may include related costs and
11 fees, interest and penalties, income withholding,
12 attorneys' fees and other relief.

13 (b) For all other cases, "support order" means an order
14 as defined in subsection (a) of this section and, in addition,
15 an order for the support and maintenance of a spouse or
16 former spouse.

ARTICLE 1B. GUIDELINES FOR CHILD SUPPORT AWARDS.

§48A-1B-9. Adjustment for obligor's social security benefits sent directly to the child; receipt by child of supplemental security income.

1 (a) If a proportion of the obligor's social security benefit
2 is paid directly to the custodian of his or her dependents
3 who are the subject of the child support order, the follow-
4 ing adjustment shall be made. The total amount of the
5 social security benefit which includes the amounts paid to
6 the obligor and the obligee shall be counted as gross
7 income to the obligor. In turn, the child support order will
8 be calculated as described in section six of this article. To
9 arrive at the final child support amount, however, the
10 amount of the social security benefits sent directly to the
11 child's household will be subtracted from the child
12 support order. If the child support order amount results
13 in a negative amount it shall be set at zero.

14 (b) If a child is a recipient of disability payments as
15 supplemental security income for aged, blind and dis-
16 abled, under the provisions of 42 U.S.C. § 1382, *et seq.*,
17 and if support furnished by an obligor would be consid-
18 ered unearned income that renders the child ineligible for
19 disability payments or medical benefits, no child support
20 order shall be entered for that child. If a support order is

21 entered for the child's siblings or other persons in the
22 household, the child shall be excluded from the calcula-
23 tion of support, and the amount of support for the child
24 shall be set at zero.

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

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

1 (a) The child support enforcement division shall estab-
2 lish a parent locator service to locate individuals for the
3 purposes of establishing parentage and of establishing,
4 modifying or enforcing child support obligations, utilizing
5 all sources of information and available records and the
6 parent locator service in the federal department of health
7 and human services. For purposes of obtaining informa-
8 tion from the parent locator service, any person, agency or
9 entity providing services to the child support enforcement
10 division pursuant to a contract that includes a provision
11 to ensure that the confidentiality of information is main-
12 tained shall be deemed to be an agent of the child support
13 enforcement division.

14 (b) Upon entering into an agreement with the secretary
15 of the federal department of health and human services
16 for the use of that department's parent locator service, the
17 child support enforcement division shall accept and
18 transmit to the secretary of the federal department of
19 health and human services requests from authorized
20 persons for information with regard to the whereabouts of
21 a noncustodial obligor to be furnished by such federal
22 parent locator service. For purposes of this subsection,
23 "authorized persons" means: (1) An attorney or agent of
24 the child support enforcement division; (2) a family law
25 master or circuit judge or any agent thereof; or (3) a
26 resident parent, legal guardian, attorney or agent for a
27 child. The child support enforcement division shall charge
28 a reasonable fee sufficient to cover the costs to the state
29 and to the federal department of health and human

30 services incurred by reason of such requests, and shall
31 transfer to that department from time to time, so much of
32 the fees collected as are attributable to the costs incurred
33 by that department.

34 (c) The information obtained by the child support
35 enforcement division from the federal parent locator
36 service shall be used for, but not limited to, the following
37 purposes:

38 (1) Establishing parentage and establishing, setting the
39 amount of, modifying or enforcing child support obliga-
40 tions;

41 (2) Obtaining and transmitting information to any
42 family law master or circuit court or agent thereof or to an
43 attorney or employee of the United States or of any state
44 responsible for enforcing any federal or state law with
45 respect to the unlawful taking or restraint of a child or
46 making or enforcing a child custody or visitation determi-
47 nation.

48 (d) The child support enforcement division may request
49 from the federal parent locator service information:

50 (1) About, or which will facilitate the discovery of
51 information about, the location of any individual: (A) Who
52 is under an obligation to pay child support; (B) against
53 whom such an obligation is sought; or (C) to whom such
54 an obligation is owed, including the individual's social
55 security number, or numbers, most recent address, and the
56 name, address and employer identification number of the
57 individual's employer;

58 (2) Concerning the individual's wages or other income
59 from, and benefits of, employment, including rights to or
60 enrollment in group health care coverage; and

61 (3) Concerning the type, status, location and amount of
62 any assets of, or debts owed by or to, any such individual.

63 (e) A circuit court shall have jurisdiction to hear and

64 determine, upon a petition by an authorized person, as
65 defined in subsection (b) of this section, whether the
66 release of information from the federal parent locator
67 service to that person could be harmful to the custodial
68 parent or the child.

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

1 (a) Amounts collected as child or spousal support by the
2 child support enforcement division shall be distributed
3 within two business days after receipt from the employer
4 or other source of periodic income. Such amounts shall,
5 except as otherwise provided under the provisions of
6 subsection (c) of this section, be distributed as follows:

7 (1) Any amounts which are collected periodically which
8 represent monthly support payments shall be paid by the
9 child support enforcement division to the appropriate
10 administrative unit of the department of health and
11 human resources to reimburse it for assistance payments
12 to the family during that period (with appropriate reim-
13 bursement of the federal government to the extent of its
14 participation in the financing);

15 (2) Amounts in excess of amounts required to reimburse
16 the department of health and human resources under
17 subdivision (1) of this subsection and not in excess of the
18 amount required to be paid during such period to the
19 family by a court order shall be paid to the obligee; and

20 (3) Amounts in excess of amounts required to be distrib-
21 uted under subdivisions (1) and (2) of this subsection shall
22 be: (A) Paid by the child support enforcement division to
23 the appropriate administrative unit of the department of
24 health and human resources (with appropriate reimburse-
25 ment of the federal government to the extent of its partici-
26 pation in the financing) as reimbursement for any past
27 assistance payments made to the family for which the
28 department has not been reimbursed; or (B) if no assis-
29 tance payments have been made by the department which

30 have not been repaid, such amounts shall be paid to the
31 obligee.

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

48 (2) So much of any amounts of support so collected shall
49 be paid, first, to the obligee until all past due support
50 owed to the family by the obligor has been paid. After all
51 arrearages owing to the family have been paid, any
52 amounts of support collected which are in excess of the
53 required support payments shall be distributed in the
54 manner provided by paragraphs (A) and (B), subdivision
55 (3), subsection (a) of this section with respect to excess
56 amounts described in said subsection.

57 (c) Notwithstanding the preceding provisions of this
58 section, amounts collected by the child support enforce-
59 ment division as child support for months in any period on
60 behalf of a child for whom the department of health and
61 human resources is making foster care maintenance
62 payments shall:

63 (1) Be paid by the child support enforcement division to
64 the appropriate administrative unit of the department of
65 health and human resources to the extent necessary to

66 reimburse the department for foster care maintenance
67 payments made with respect to the child during such
68 period (with appropriate reimbursement of the federal
69 government to the extent of its participation in financing);

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

83 (3) Be paid to the appropriate administrative unit of the
84 department of health and human resources if any portion
85 of the amounts collected remains after making the pay-
86 ments required under paragraphs (1) and (2) of this
87 subsection, to the extent that such portion is necessary to
88 reimburse the department of health and human resources
89 (with appropriate reimbursement to the federal govern-
90 ment to the extent of its participation in the financing),
91 for any past foster care maintenance payments or pay-
92 ments of aid to families with dependent children or
93 temporary assistance to needy families which were made
94 with respect to the child (and with respect to which past
95 collections have not previously been retained);

96 (d) The commission shall establish bonding requirements
97 for employees of the child support enforcement division
98 who receive, disburse, handle or have access to cash.

99 (e) The director shall maintain methods of administra-
100 tion which are designed to assure that employees of the
101 child support enforcement division or any persons em-

102 ployed pursuant to a contract who are responsible for
103 handling cash receipts do not participate in accounting or
104 operating functions which would permit them to conceal
105 in the accounting records the misuse of cash receipts:
106 *Provided*, That the director may provide for exceptions to
107 this requirement in the case of sparsely populated areas in
108 this state where the hiring of unreasonable additional
109 staff in the local office would otherwise be necessary.

110 (f) No penalty or fee may be collected by or distributed
111 to a recipient of child support enforcement division
112 services from the state treasury or from the child support
113 enforcement fund when child support is not distributed to
114 the recipient in accordance with the time frames estab-
115 lished herein.

116 (g) For purposes of this section, "business day" means a
117 day on which state offices are open for regular business.

**§48A-2-24a. Amounts collected as support to be disbursed to
person having custody; procedure for redirecting
disbursement of payments where physical cus-
tody transferred to a person other than the
custodial parent.**

1 (a) Any payment required to be made under the provi-
2 sions of section twenty-four of this article to a family shall
3 be made to the resident parent, legal guardian or care-
4 taker relative having custody of or responsibility for the
5 child or children.

6 (b) Where physical custody of the child has been trans-
7 ferred from the custodial parent to another person, the
8 child support enforcement division may redirect disburse-
9 ment of support payments to such other person, on behalf
10 of the child, in the following circumstances:

11 (1) Where the noncustodial parent has physical custody
12 of the child, excluding visitation, upon filing with the
13 child support enforcement division:

14 (A) An affidavit attesting that the noncustodial parent
15 has obtained physical custody of the child, describing the
16 circumstances under which the transfer of physical
17 custody took place, and stating that he or she anticipates
18 that his or her physical custody of the child will continue
19 for the foreseeable future; and

20 (B) Documentary proof that the noncustodial parent has
21 instituted proceedings in circuit court for a modification
22 of legal custody.

23 (2) Where a person other than the custodial or
24 noncustodial parent has physical custody of the child,
25 excluding visitation, filing with the child support enforce-
26 ment division:

27 (A) An affidavit attesting that the person has obtained
28 physical custody of the child, describing the circumstances
29 under which the transfer of physical custody took place,
30 and stating that he or she anticipates that his or her
31 physical custody of the child will continue for the foresee-
32 able future; and

33 (B) Documentary proof that the person claiming physi-
34 cal custody is currently the person responsible for the
35 child by producing at least one of the following:

36 (i) School records demonstrating that school authorities
37 consider the person claiming physical custody the adult
38 responsible for the child;

39 (ii) Medical records demonstrating that the person
40 claiming physical custody is empowered to make medical
41 decisions on behalf of the child;

42 (iii) Documents from another public assistance agency
43 showing that the person claiming physical custody is
44 currently receiving other public assistance on behalf of the
45 child;

46 (iv) A notarized statement from the custodial parent
47 attesting to the fact that he or she has transferred physical

48 custody to the person;

49 (v) A verifiable order of a court of competent jurisdic-
50 tion transferring physical or legal custody to the person;

51 (vi) Documentation that the person claiming physical
52 custody has filed a petition in circuit court to be ap-
53 pointed the child's guardian;

54 (vii) Documentation that the child, if over the age of
55 fourteen, has instituted proceedings in circuit court to
56 have the person claiming physical custody nominated as
57 his or her guardian; or

58 (viii) Any other official documents of a federal, state or
59 local agency or governing body demonstrating that the
60 person currently has physical custody of the child and has
61 taken action indicating that he or she anticipates such
62 physical custody to continue in the foreseeable future.

63 (c) The child support enforcement division shall mail, by
64 first class mail, a copy of the affidavit and supporting
65 documentary evidence required under subsection (b) of
66 this section, to the circuit court which issued the support
67 order being enforced by child support enforcement
68 division and to the parties to the order, at their last known
69 addresses, together with a written notice stating that any
70 party has ten days to object to the redirection of support
71 payments by filing an affidavit and evidence showing that
72 the person seeking redirection of the payments does not
73 have physical custody of the child. If no objection is
74 received by the child support enforcement division by the
75 end of the ten-day period, the division may order pay-
76 ments redirected to the person claiming physical custody
77 for the benefit of the child. If a responsive affidavit and
78 supporting evidence is filed within the ten-day period and,
79 in the opinion of the child support enforcement division,
80 either disproves the claim of the person seeking redirec-
81 tion of support payments or raises a genuine issue of fact
82 as to whether the person has actual physical custody of

83 the child, the child support enforcement division shall
84 continue to forward support payments to the custodial
85 parent. Any person who disagrees with the determination
86 of the child support enforcement division may petition the
87 circuit court for modification of the child support order.

88 (d) Any person who files a false affidavit pursuant to
89 this section shall be guilty of false swearing and, upon
90 conviction thereof, shall be punished as provided by law
91 for such offense.

§48A-2-31. Providing information to consumer reporting agencies; requesting consumer credit reports for child support purposes.

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

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

17 (1) The procedural rule adopted by the commission shall
18 provide that any information with respect to an obligor
19 shall be made available only after notice has been sent to
20 the obligor of the proposed action, and such obligor has
21 been given a reasonable opportunity to contest the accu-
22 racy of the information.

23 (2) The procedural rule adopted shall afford the obligor

24 with procedural due process prior to making information
25 available with respect to the obligor.

26 (c) The information made available to a consumer
27 reporting agency regarding overdue support may only be
28 made available to an entity that has furnished evidence
29 satisfactory to the division that the entity is a consumer
30 reporting agency as defined in subsection (a) of this
31 section.

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

35 (e) The head of the child support enforcement division,
36 or her or his designee, may request a consumer reporting
37 agency to prepare and furnish to the child support en-
38 forcement division a consumer report for purposes relat-
39 ing to child support, by certifying to the consumer report-
40 ing agency that:

41 (1) The consumer report is needed for the purpose of
42 establishing an individual's capacity to make child
43 support payments or determining the appropriate level of
44 such payments in order to set an initial or modified child
45 support award;

46 (2) The paternity of the child of the individual has been
47 established or acknowledged by the individual in accor-
48 dance with state law;

49 (3) The individual whose report is being requested has
50 been given at least ten days' prior notice of such request
51 by certified mail to his or her last known address that such
52 report is being requested; and

53 (4) The consumer report will be kept confidential, will
54 be used solely for a purpose described in subdivision (1) of
55 this subsection and will not be used in connection with
56 any other civil, administrative or criminal proceeding or
57 for any other purpose.

§48A-2-32. Central state case registry.

1 (a) The child support enforcement division shall estab-
2 lish and maintain a central state case registry of child
3 support orders. All orders in cases when any party
4 receives any service provided by the child support enforce-
5 ment division shall be included in the registry. Any other
6 support order entered or modified in this state on or after
7 the first day of October, one thousand nine hundred
8 ninety-eight, shall be included in the registry. The child
9 support enforcement division, upon receipt of any infor-
10 mation regarding a new hire provided pursuant to section
11 thirty-four of this article shall compare information
12 received to determine if the new hire's income is subject to
13 wage withholding and notify the employer pursuant to
14 that section.

15 (b) Each party to a child support proceeding shall, upon
16 entry of an order awarding or modifying child support,
17 complete and file with the clerk of the circuit court issuing
18 the order a form, to be promulgated by the administrative
19 office of the supreme court of appeals, listing information
20 concerning the location and identity of a party including,
21 but not limited to: The party's social security number,
22 residential and mailing address, telephone number and
23 driver's license number; the child's name, birth date and
24 social security number; and the party's employer's name,
25 address and telephone number. The clerk shall promptly
26 forward all such information to the state case registry.
27 The parties are required to notify the state case registry of
28 any change in the information contained on the form, and
29 every order for support shall so state. All information
30 provided to the state case registry shall be subject to the
31 privacy and confidentiality safeguards contained in
32 section forty of this article.

33 (c) In any subsequent child support enforcement action
34 between the parties, there shall be a presumption that the
35 requirements for notice and service of process have been

36 met upon a showing that the child support enforcement
37 division has made a diligent effort to ascertain the loca-
38 tion of a party by delivery of written notice by certified
39 mail, return receipt requested, to the most recent employer
40 or residential mailing address filed with the state case
41 registry pursuant to subsection (b) of this section.

§48A-2-33. Subpoenas.

1 In order to obtain financial and medical insurance or
2 other information pursuant to the establishment, enforce-
3 ment and modification provisions set forth in this chapter
4 or chapter forty-eight of this code, the child support
5 enforcement division or any out-of-state agency adminis-
6 tering a program under Title IV-D of the Social Security
7 Act may serve, by certified mail or personal service, an
8 administrative subpoena on any person, corporation,
9 partnership, financial institution, labor organization or
10 state agency, for an appearance or for production of
11 financial or medical insurance or other information. In
12 case of disobedience to the subpoena, the child support
13 enforcement division may invoke the aid of any circuit
14 court in requiring the appearance or production of records
15 and financial documents. The child support enforcement
16 division may assess a civil penalty of no more than one
17 hundred dollars for the failure of any person, corporation,
18 financial institution, labor organization or state agency to
19 comply with requirements of this section.

**§48A-2-33a. Liability for financial institutions providing
financial records to the child support enforce-
ment division; agreements for data match
system; encumbrance or surrender of assets.**

1 (a) Notwithstanding any other provision of this code, a
2 financial institution shall not be liable under the law of
3 this state to any person for:

4 (1) Disclosing any financial record of an individual to
5 the child support enforcement division in response to a

6 subpoena issued by the division pursuant to section thirty-
7 three of this article;

8 (2) Disclosing any financial record of an individual to
9 the child support enforcement division pursuant to the
10 terms of an agreement with such financial institution
11 pursuant to subsection (f) of this section;

12 (3) Encumbering or surrendering assets held by such
13 financial institution in response to a notice of lien or levy
14 issued by the child support enforcement division as
15 provided in subsection (g) of this section; or

16 (4) For any other action taken in good faith to comply
17 with the requirements of this section.

18 (b) The child support enforcement division, after obtain-
19 ing a financial record of an individual from a financial
20 institution, may disclose such financial record only for the
21 purpose of, and to the extent necessary in, establishing,
22 modifying or enforcing a child support obligation of such
23 individual.

24 (c) The civil liability of a person who knowingly, or by
25 reason of negligence, discloses a financial record of an
26 individual in violation of subsection (b) of this section is
27 governed by the provisions of federal law as set forth in 42
28 U.S.C. §669A.

29 (d) For purposes of this section the term "financial
30 institution" means:

31 (1) Any bank or savings association;

32 (2) A person who is an institution-affiliated party, as
33 that term is defined in the Federal Deposit Insurance Act,
34 12 U.S.C. §1813(u);

35 (3) Any federal credit union or state-chartered credit
36 union, including an institution-affiliated party of a credit
37 union; and

38 (4) Any benefit association, insurance company, safe

39 deposit company, money-market mutual fund, or similar
40 entity authorized to do business in this state.

41 (e) For purposes of this section, the term "financial
42 record" means an original of, a copy of, or information
43 known to have been derived from, any record held by a
44 financial institution pertaining to a customer's relation-
45 ship with the financial institution.

46 (f) Notwithstanding any provision of this code to the
47 contrary, the child support enforcement division shall
48 enter into agreements with financial institutions doing
49 business in the state to develop and operate, in coordina-
50 tion with such financial institutions, a data match system,
51 using automated data exchanges, to the maximum extent
52 feasible, in which each financial institution is required to
53 provide for each calendar quarter the name, record
54 address, social security number or other taxpayer identifi-
55 cation number, and other identifying information for each
56 obligor, as defined in section twenty-three, article one-a
57 of this chapter, who maintains an account at such institu-
58 tion and who owes past due support. The child support
59 enforcement division will identify to the financial institu-
60 tion an obligor who owes past due support by his or her
61 name and social security number or other taxpayer
62 identification number. The child support enforcement
63 division, upon written request and proof of actual costs
64 incurred, may pay a reasonable fee to a financial institu-
65 tion for conducting the data match not to exceed the
66 actual costs incurred by such financial institution.

67 (g) The financial institution, in response to a notice of a
68 lien or levy, shall encumber or surrender, as the case may
69 be, assets held by such institution on behalf of any
70 noncustodial parent who is subject to a lien for child
71 support.

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

1 (a) For purposes of this section:

2 (1) "Employee" means an individual who is an "em-
3 ployee" for purposes of federal income tax withholding, as
4 defined in 26 U.S.C. §3401;

5 (2) "Employer" means the person or entity for whom an
6 individual performs or performed any service of whatever
7 nature and who has control of the payment of the individ-
8 ual's wages for performance of such service or services, as
9 defined in 26 U.S.C. §3401;

10 (3) An individual is considered a "new hire" on the first
11 day in which that individual performs services for remun-
12 eration and on which an employer begins to withhold
13 amounts for income tax purposes.

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

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

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

22 (c) Employers are not required to report the hiring,
23 rehiring or return to work of any person who is an em-
24 ployee of a federal or state agency performing intelligence
25 or counterintelligence functions if the head of such agency
26 has determined that reporting could endanger the safety
27 of the employee or compromise an ongoing investigation
28 or intelligence mission.

29 (d) An employer that has employees in states other than
30 this state and that transmits reports magnetically or
31 electronically is not required to report to the child support
32 enforcement division the hiring, rehiring or return to work
33 of any employee if the employer has filed with the secre-
34 tary of the federal department of health and human
35 services, as required by 42 U.S.C. §653A, a written desig-

36 nation of another state in which it has employees as the
37 reporting state.

38 (e) Employers shall report by mailing to the child
39 support enforcement division a copy of the employee's W-
40 4 form; however, an employer may transmit such informa-
41 tion through another means if approved in writing by the
42 child support enforcement division prior to the transmit-
43 tal. The report shall include the employee's name, address
44 and social security number, the employer's name and
45 address, any different address of the payroll office and the
46 employer's federal tax identification number. The em-
47 ployer may report other information, such as date of birth
48 or income information, if desired.

49 (f) Employers shall submit a report within fourteen days
50 of the date of the hiring, rehiring or return to work of the
51 employee. However, if the employer transmits the reports
52 magnetically or electronically by two monthly submis-
53 sions, the reports shall be submitted not less than twelve
54 days nor more than sixteen days apart.

55 (g) An employer shall provide to the child support
56 enforcement division, upon its written request, informa-
57 tion regarding an obligor's employment, wages or salary,
58 medical insurance, and location of employment.

59 (h) Any employer who fails to report in accordance with
60 the provisions of this section shall be assessed a civil
61 penalty of no more than twenty-five dollars per failure. If
62 the failure to report is the result of a conspiracy between
63 the employer and the employee not to supply the required
64 report or to supply a false or incomplete report, the
65 employer shall be assessed a civil penalty of no more than
66 five hundred dollars.

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

70 (j) Uses for the new hire information include, but are not

71 limited to, the following:

72 (1) The state directory of new hires shall furnish the
73 information to the national directory of new hires;

74 (2) The child support enforcement division shall use
75 information received pursuant to this section to locate
76 individuals for purposes of establishing paternity and of
77 establishing, modifying and enforcing child support
78 obligations, and may disclose such information to any
79 agent of the agency that is under contract with the
80 division to carry out such purposes;

81 (3) State agencies responsible for administering a
82 program specified in 42 U.S.C. §1320b-7(b) shall have
83 access to information reported by employers for purposes
84 of verifying eligibility for the program; and

85 (4) The bureau of employment programs shall have
86 access to information reported by employers for purposes
87 of administering employment security and workers'
88 compensation programs.

§48A-2-35. Review and adjustment of child support orders.

1 (a) Either parent or, if there has been an assignment of
2 support to the department of health and human resources,
3 the child support enforcement division shall have the right
4 to request an administrative review of the child support
5 award in the following circumstances:

6 (1) Where the request for review is received thirty-six
7 months or more after the date of the entry of the order or
8 from the completion of the previous administrative
9 review, whichever is later, the child support enforcement
10 division shall conduct a review to determine whether the
11 amount of the child support award in such order varies
12 from the amount of child support that would be awarded
13 at the time of the review pursuant to the guidelines for
14 child support awards contained in article one-b of this
15 chapter. If the amount of the child support award under

16 the existing order differs by ten percent or more from the
17 amount that would be awarded in accordance with the
18 child support guidelines, the child support enforcement
19 division shall file with the circuit court a motion for
20 modification of the child support order. If the amount of
21 the child support award under the existing order differs
22 by less than ten percent from the amount that would be
23 awarded in accordance with the child support guidelines,
24 the child support enforcement division may, if it deter-
25 mines that such action is in the best interest of the child or
26 otherwise appropriate, file with the circuit court a motion
27 for modification of the child support order.

28 (2) Where the request for review of a child support
29 award is received less than thirty-six months after the
30 date of the entry of the order or from the completion of the
31 previous administrative review, the child support enforce-
32 ment division shall undertake a review of the case only
33 where it is alleged that there has been a substantial
34 change in circumstances. If the child support enforcement
35 division determines that there has been a substantial
36 change in circumstances and if it is in the best interests of
37 the child, the division shall file with the circuit court a
38 motion for modification of the child support order in
39 accordance with the guidelines for child support awards
40 contained in article one-b of this chapter.

41 (b) The child support enforcement division shall notify
42 both parents at least once every three years of their right
43 to request a review of a child support order. The notice
44 may be included in any order granting or modifying a
45 child support award. The child support enforcement
46 division shall give each parent at least thirty days' notice
47 before commencing any review, and shall further notify
48 each parent, upon completion of a review, of the results of
49 the review, whether of a proposal to move for modifica-
50 tion or of a proposal that there should be no change.

51 (c) When the result of the review is a proposal to move

52 for modification of the child support order, each parent
53 shall be given thirty days' notice of the hearing on the
54 motion, the notice to be directed to the last known address
55 of each party by first class mail. When the result of the
56 review is a proposal that there be no change, any parent
57 disagreeing with that proposal may, within thirty days of
58 the notice of the results of the review, file with the court
59 a motion for modification setting forth in full the grounds
60 therefor.

61 (d) For the purposes of this section, a "substantial
62 change in circumstances" includes, but is not limited to, a
63 changed financial condition, a temporary or permanent
64 change in physical custody of the child which the court
65 has not ordered, increased need of the child, or other
66 financial conditions. "Changed financial conditions"
67 means increases or decreases in the resources available to
68 either party from any source. Changed financial condi-
69 tions includes, but is not limited to, the application for or
70 receipt of any form of public assistance payments, unem-
71 ployment compensation and workers' compensation, or a
72 fifteen percent or more variance from the amount of the
73 existing order and the amount of child support that would
74 be awarded according to the child support guidelines.

75 (e) All child support orders shall contain a notice which
76 contains language substantially similar to the following:
77 "The amount of the monthly child support can be modified
78 as provided by law based upon a change in the financial or
79 other circumstances of the parties if those circumstances
80 are among those considered in the child support formula.
81 In order to make the modification a party must file a
82 motion to modify the child support amount. Unless a
83 motion to modify is filed, the child support amount will
84 continue to be due and cannot later be changed retroac-
85 tively even though there has been a change of circum-
86 stances since the entry of the order. Self help forms for
87 modification can be found at the circuit clerk's office."
88 The failure of an order to have such a provision does not

89 alter the effectiveness of the order.

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

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

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

9 (2) Information as to the whereabouts of a party or the
10 child shall not be released to a person against whom a
11 protective order has been entered with respect to such
12 party or child or where the state has reason to believe that
13 the release of the information to the person making the
14 request may result in physical or emotional harm to the
15 party or the child.

16 (3) The phone number, address, employer and other
17 information regarding the location of the obligor, the
18 obligee and the child shall only be disclosed: (A) Upon his
19 or her written consent, to the person whom the consent
20 designates; or (B) notwithstanding subdivision (4) of this
21 subsection, to the obligee, the obligor, the child or the
22 caretaker or representative of the child, upon order of a
23 court if the court finds that the disclosure is for a bona
24 fide purpose, is not contrary to the best interest of a child
25 and does not compromise the safety of any party: *Pro-*
26 *vided,* That the identity and location of the employer may
27 be disclosed on the letters, notices and pleadings of the
28 division as necessary and convenient for the determination
29 of support amounts and the establishment, investigation,
30 modification, enforcement, collection and distribution of
31 support.

32 (4) Information and records other than the phone
33 number, address, employer and information regarding the

34 location of the obligor, the obligee and the child shall be
35 disclosed to the obligor, the obligee, the child or the
36 caretaker of the child or his or her duly authorized
37 representative, upon his or her written request: *Provided,*
38 That when the obligor requests records other than collec-
39 tion and distribution records, financial records relevant to
40 the determination of the amount of support pursuant to
41 the guidelines, or records the obligor has supplied, the
42 division shall mail a notice by first class mail to the last
43 known address of the obligee notifying him or her of the
44 request. The notice shall advise the obligee of his or her
45 right to object to the release of records on the grounds that
46 the records are not relevant to the determination of the
47 amount of support, or the establishment, modification,
48 enforcement, collection or distribution of support. The
49 notice shall also advise the obligee of his or her right to
50 disclosure of records provided in this section in order to
51 determine what records the child support enforcement
52 division may have. In the event of any objection, the
53 division shall determine whether or not the information
54 shall be released.

55 (5) Information in specific cases may be released as is
56 necessary or to determine the identity, location, employ-
57 ment, income and assets of an obligor.

58 (6) Information and records may be disclosed to the
59 bureau of vital statistics, bureau of employment programs,
60 the workers' compensation division, state tax department
61 and the internal revenue service, or other state or federal
62 agencies or departments as may be necessary or desirable
63 in obtaining any address, employment, wage or benefit
64 information for the purpose of determining the amount of
65 support or establishing, enforcing, collecting and distrib-
66 uting support.

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

70 thousand dollars, or confined in jail not more than six
71 months, or both fined and imprisoned.

§48A-2-41. Access to information.

1 (a) All state, county and municipal agencies, offices and
2 employers, including profit, nonprofit and governmental
3 employers, receiving a request for information and
4 assistance from the child support enforcement division or
5 any out-of-state agency administering a program under
6 Title IV-D of the Social Security Act, shall cooperate with
7 the division or with the out-of-state agency in the location
8 of parents who have abandoned and deserted children and
9 shall provide the division or the out-of-state agency with
10 all available pertinent information concerning the loca-
11 tion, income and property of those parents.

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

26 (c) (1) The child support enforcement division shall have
27 access, subject to safeguards on privacy and information
28 security, and to the nonliability of entities that afford such
29 access under this subdivision, to information contained in
30 the following records, including automated access, in the
31 case of records maintained in automated data bases:

32 (A) Records of other state and local government agencies

33 including, but not limited to:

34 (i) Vital statistics, including records of marriage, birth
35 and divorce;

36 (ii) State and local tax and revenue records, including
37 information on residence address, employer, income and
38 assets;

39 (iii) Records concerning real and titled personal prop-
40 erty;

41 (iv) Records of occupational and professional licenses,
42 and records concerning the ownership and control of
43 corporations, partnerships, and other business entities;

44 (v) Employment security records;

45 (vi) Records of agencies administering public assistance
46 programs;

47 (vii) Records of the division of motor vehicles; and

48 (viii) Corrections records.

49 (B) Certain records held by private entities with respect
50 to individuals who owe or are owed support or certain
51 individuals against, or with respect to, whom a support
52 obligation is sought, consisting of:

53 (i) The names and addresses of such individuals and the
54 names and addresses of the employers of such individuals,
55 as appearing in the customer records of public utilities
56 and cable television companies, pursuant to an adminis-
57 trative subpoena authorized by section thirty-three,
58 article two of this chapter; and

59 (ii) Information, including information on assets and
60 liabilities, on such individuals held by financial institu-
61 tions.

62 (2) Out-of-state agencies administering programs under
63 Title IV-D of the Social Security Act shall, without the
64 need for any court order, have the authority to access

65 records in this state by making a request through the child
66 support enforcement division.

67 (d) All federal and state agencies conducting activities
68 under Title IV-D of the Social Security Act shall have
69 access to any system used by this state to locate an
70 individual for purposes relating to motor vehicles or law
71 enforcement.

72 (e) Out-of-state agencies administering programs under
73 Title IV-D of the Social Security Act shall have the
74 authority and right to access and use, for the purpose of
75 establishing or enforcing a support order, the state law-
76 enforcement and motor vehicle data bases.

77 (f) The child support enforcement division and out-of-
78 state agencies administering programs under Title IV-D of
79 the Social Security Act shall have the authority and right
80 to access and use, for the purpose of establishing or
81 enforcing a support order, interstate networks that state
82 law-enforcement agencies and motor vehicle agencies
83 subscribe to or participate in, such as the national law-
84 enforcement telecommunications system (NLETS) and the
85 American association of motor vehicle administrators
86 (AAMVA) networks.

**§48A-2-43. Recording of social security numbers in certain
family matters.**

1 (a) The social security number, if any, of any applicant
2 for a professional license, driver's license, occupational
3 license, recreational license, or marriage license must be
4 recorded on the application for such license.

5 (b) The social security number of any individual who is
6 subject to a divorce decree, support order, or paternity
7 determination or acknowledgment must be placed in the
8 records relating to the matter.

9 (c) For the purposes of subsection (a) of this section, if
10 the licensing authority allows the use of a number other

11 than the social security number on the face of the docu-
12 ment while the social security number is kept on file at the
13 agency, the applicant shall be so advised by such author-
14 ity.

**ARTICLE 5. REMEDIES FOR THE ENFORCEMENT OF SUPPORT OBLIGA-
TIONS AND VISITATION.**

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

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

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

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

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

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

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

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

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

20 (2) A primary caretaker of a child;

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

23 (4) The child support enforcement division, on behalf of
24 the state, when the department of health and human
25 resources is providing assistance on behalf of the child in

26 the form of temporary assistance to needy families, and
27 any right to support has been assigned to the department
28 or in any other case wherein a party has applied for child
29 support enforcement services from the child support
30 enforcement division.

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

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

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

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

**§48A-5-2. Arrearages; liens on personal property; enforcement
through writ of execution, suggestion or
suggetee execution.**

1 (a) The total of any matured, unpaid installments of
2 child support required to be paid by an order entered or
3 modified by a court of competent jurisdiction, or by the
4 order of a magistrate court of this state, shall stand, by
5 operation of law, as a decretal judgment against the
6 obligor owing such support. The amount of unpaid
7 support shall bear interest from the date it accrued, at a
8 rate of ten dollars upon one hundred dollars per annum,

9 and proportionately for a greater or lesser sum, or for a
10 longer or shorter time. A child support order shall not be
11 retroactively modified so as to cancel or alter accrued
12 installments of support. When an obligor is in arrears in
13 the payment of support which is required to be paid by the
14 terms of such order, an obligee may file an abstract of the
15 order giving rise to the support obligation and an "Affida-
16 vit of Accrued Support", setting forth the particulars of
17 such arrearage and requesting a writ of execution, sugges-
18 tion or suggestee execution. The filing of the abstract and
19 affidavit shall give rise, by operation of law, to a lien
20 against personal property of an obligor who resides within
21 this state for overdue support.

22 (b) If the duty of support is based upon an order from
23 another jurisdiction, the obligee shall first register the
24 order in accordance with the provisions of chapter forty-
25 eight-b of this code: *Provided*, That nothing in this
26 subsection shall prevent the child support enforcement
27 division from enforcing foreign orders for support without
28 registration of the order in accordance with the provisions
29 of section five hundred seven, article five, chapter forty-
30 eight-b of this code.

31 (c) The affidavit may be filed with the clerk of the
32 circuit court in the county wherein the obligee or the
33 obligor resides, or where the obligor's source of income is
34 located.

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

38 (e) The affidavit shall:

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

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

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

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

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

51 (f) Upon receipt of the affidavit, the clerk shall issue a
52 writ of execution, suggestion or suggestee execution, and
53 shall mail a copy of the affidavit and a notice of the filing
54 of the affidavit to the obligor, at his last known address.
55 If the child support enforcement division is not acting on
56 behalf of the obligee in filing the affidavit, the clerk shall
57 forward a copy of the affidavit and the notice of the filing
58 to the child support enforcement division.

59 (g) The notice provided for in subsection (f) of this
60 section shall inform the obligor that if he or she desires to
61 contest the affidavit on the grounds that the amount
62 claimed to be in arrears is incorrect or that a writ of
63 execution, suggestion or suggestee execution is not proper
64 because of mistakes of fact, he or she must, within four-
65 teen days of the date of the notice: (1) Inform the child
66 support enforcement division in writing of the reasons
67 why the affidavit is contested and request a meeting with
68 the child support enforcement division; or (2) where a
69 court of this state has jurisdiction over the parties, obtain
70 a date for a hearing before the circuit court or the family
71 law master and mail written notice of such hearing to the
72 obligee and to the child support enforcement division on
73 a form prescribed by the administrative office of the
74 supreme court of appeals and made available through the
75 office of the clerk of the circuit court.

76 (h) Upon being informed by an obligor that he or she
77 desires to contest the affidavit, the child support enforce-
78 ment division shall inform the circuit court of such fact,

79 and the circuit court shall require the obligor to give
80 security, post a bond, or give some other guarantee to
81 secure payment of overdue support.

82 (i) The clerk of the circuit court shall make available
83 form affidavits for use under the provisions of this section.
84 Such form affidavits shall be provided to the clerk by the
85 child support enforcement division. The notice of the
86 filing of an affidavit shall be in a form prescribed by the
87 child support enforcement division.

88 (j) Writs of execution, suggestions or suggestee execu-
89 tions issued pursuant to the provisions of this section shall
90 have priority over any other legal process under the laws
91 of this state against the same income, except for withhold-
92 ing from income of amounts payable as support in accor-
93 dance with the provisions of section three of this article,
94 and shall be effective despite any exemption that might
95 otherwise be applicable to the same income.

96 (k) Notwithstanding any other provision of this code to
97 the contrary, the amount to be withheld from the dispos-
98 able earnings of an obligor pursuant to a suggestee
99 execution in accordance with the provisions of this section
100 shall be the same amount which could properly be with-
101 held in the case of a withholding order under the provi-
102 sions of subsection (e), section three of this article.

103 (l) Any person who files a false affidavit shall be guilty
104 of false swearing and, upon conviction thereof, shall be
105 punished as provided by law for such offense.

106 (m) The provisions of this section apply to support
107 orders issued by an out-of-state court or tribunal, as
108 defined in section one hundred one, article one, chapter
109 forty-eight-b of this code, of any other state.

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

1 (a) The withholding from an obligor's income of

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

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

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

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

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

27 (c) When withholding is required by either subsection (a)
28 or (b) of this section, the child support enforcement
29 division shall send by first class mail or electronic means
30 to the obligor notice that withholding has commenced.
31 The notice shall inform the obligor of the following:

32 (1) The amount owed;

33 (2) That a withholding from the obligor's income of
34 amounts payable as support has commenced;

35 (3) That the amount withheld will be equal to the

36 amount required under the terms of the current support
37 order, plus amounts for any outstanding arrearage;

38 (4) The definition of "gross income" as defined in section
39 nineteen, article one-a of this chapter;

40 (5) That the withholding will apply to the obligor's
41 present source of income and to any future source of
42 income and, therefore, no other notice of withholding will
43 be sent to the obligor. A copy of any new or modified
44 withholding notice will be sent to the obligor at approxi-
45 mately the same time the original is sent to the source of
46 income;

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

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

53 (8) That the obligor may contest the withholding by
54 written request to the child support enforcement division
55 when the obligor has information showing an error in the
56 current or overdue support amount or a mistake as to the
57 identity of the obligor;

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

62 (10) That matters such as lack of visitation, inappropri-
63 ateness of the support award, or changed financial
64 circumstances of the obligee or the obligor will not be
65 considered at any hearing held pursuant to the withhold-
66 ing, but may be raised by the filing of a separate petition
67 in circuit court;

68 (11) That if the obligor contests the withholding, in
69 writing, a meeting with the child support enforcement

70 division will be held at an arranged time and place for the
71 purpose of attempting to settle the contested issues;

72 (12) That if the meeting with the child support enforce-
73 ment division fails to resolve the contested issues, the
74 obligor may petition the circuit court for a resolution; and

75 (13) That while the withholding is being contested
76 through either the child support enforcement division or
77 the court, the income withholding may not be stayed.

78 (d) Withholding shall occur and the notice to withhold
79 shall be sent to the source of income when the support
80 order provides for immediate income withholding, or if
81 immediate income withholding is not so provided, when
82 the support payments are in arrears in the amount speci-
83 fied in subsection (b) of this section. The source of income
84 shall withhold so much of the obligor's income as is
85 necessary to comply with the order authorizing such
86 withholding, up to the maximum amount permitted under
87 applicable law. Such withholding, unless otherwise
88 terminated under the provisions of this section, shall
89 apply to any subsequent source of income or any subse-
90 quent period of time during which income is received by
91 the obligor.

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

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

105 workweek for which withholding is sought to be enforced.

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

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

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

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

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

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

129 (4) In addition to the percentage limitations set forth in
130 subdivisions (2) and (3) of this subsection, it shall be a
131 further limitation that when the current month's obliga-
132 tion plus arrearages are being withheld from salaries or
133 wages in no case shall the total amounts withheld for the
134 current month's obligation plus arrearage exceed the
135 amounts withheld for the current obligation by an amount
136 greater than twenty-five percent of the current monthly
137 support obligation.

138 (5) The provisions of this subsection shall apply directly

139 to the withholding of disposable earnings of an obligor
140 regardless of whether the obligor is paid on a weekly,
141 biweekly, monthly or other basis.

142 (6) The child support enforcement division has the
143 authority to prorate the current support obligation in
144 accordance with the pay cycle of the source of income.
145 This prorated current support obligation shall be known
146 as the "adjusted support obligation". The current support
147 obligation or the adjusted support obligation is the
148 amount, if unpaid, on which interest will be charged.

149 (7) When an obligor acts so as to purposefully minimize
150 his or her income and to thereby circumvent the provi-
151 sions of this section which provide for withholding from
152 income of amounts payable as support, the amount to be
153 withheld as support payments may be based upon the
154 obligor's potential earnings rather than his or her actual
155 earnings, and such obligor may not rely upon the percent-
156 age limitations set forth in this subsection which limit the
157 amount to be withheld from disposable earnings.

158 (f) The source of income of any obligor who is subject to
159 withholding, upon being given notice of withholding, shall
160 withhold from such obligor's income the amount specified
161 by the notice and pay such amount to the child support
162 enforcement division for distribution. The notice given to
163 the source of income shall contain only such information
164 as may be necessary for the source of income to comply
165 with the withholding order. Such notice to the source of
166 income shall include, at a minimum, the following:

167 (1) The amount to be withheld from the obligor's
168 disposable earnings, and a statement that the amount to
169 be withheld for support and other purposes, including the
170 fee specified under subdivision (3) of this subsection, may
171 not be in excess of the maximum amounts permitted under
172 Section 303(b) of the federal Consumer Credit Protection
173 Act or limitations imposed under the provisions of this
174 code;

175 (2) That the source of income shall send the amount to
176 be withheld from the obligor's income to the child support
177 enforcement division, along with such identifying infor-
178 mation as may be required by the division, the same day
179 that the obligor is paid;

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

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

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

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

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

205 (8) That when an employer has more than one employee
206 who is an obligor who is subject to wage withholding from
207 income under the provisions of this code, the employer
208 may combine all withheld payments to the child support
209 enforcement division when the employer properly identi-

210 files each payment with the information listed in this
211 section. A source of income is liable to an obligee, includ-
212 ing the state of West Virginia or the department of health
213 and human resources where appropriate, for any amount
214 which the source of income fails to identify with the
215 information required by this section and is therefore not
216 received by the obligee;

217 (9) That the source of income shall implement withhold-
218 ing no later than the first pay period or first date for
219 payment of income that occurs after fourteen days follow-
220 ing the date the notice to the source of income was mailed;
221 and

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

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

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

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

244 (j) Withholding of amounts payable as support under the

245 provisions of this section is binding on the source of
246 income until further notice by the child support enforce-
247 ment division or until the source of income notifies the
248 child support enforcement division of a termination of the
249 obligor's employment in accordance with the provisions of
250 subsection (l) of this section.

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

257 (l) A source of income who employs or otherwise pays
258 income to an obligor who is subject to withholding under
259 the provisions of this section shall notify the child support
260 enforcement division promptly when the obligor termi-
261 nates employment or otherwise ceases receiving income
262 from the source of income, and shall provide the child
263 support enforcement division with the obligor's last
264 known address and the name and address of the obligor's
265 new source of income, if known.

266 (m) When an employer has more than one employee who
267 is an obligor who is subject to wage withholding from
268 income for amounts payable as support, the employer may
269 combine all withheld payments to the child support
270 enforcement division when the employer properly identi-
271 fies each payment with the information listed in this
272 section. A source of income is liable to an obligee, includ-
273 ing the state of West Virginia or the department of health
274 and human resources where appropriate, for any amount
275 which the source of income fails to identify in accordance
276 with this section and is therefore not received by the
277 obligee.

278 (n) A source of income is liable to an obligee, including
279 the state of West Virginia or the department of health and
280 human resources where appropriate, for any amount

281 which the source of income fails to withhold from income
282 due an obligor following receipt by such source of income
283 of proper notice under subsection (f) of this section:
284 *Provided*, That a source of income shall not be required to
285 vary the normal pay and disbursement cycles in order to
286 comply with the provisions of this section.

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

293 (p) When the child support enforcement division makes
294 a written request to a source of income to provide infor-
295 mation as to whether the source of income has paid
296 income to a specific obligor, within the preceding
297 sixty-day period, the source of income shall, within
298 fourteen days thereafter, respond to such request, itemiz-
299 ing all such income, if any, paid to the obligor during such
300 sixty-day period. A source of income shall not be liable,
301 civilly or criminally, for providing such information in
302 good faith.

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

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

§48A-5-4. Liens against real property for overdue support.

1 (a) An order for support entered by a court of competent
2 jurisdiction will give rise, by operation of law, to a lien
3 against real property of an obligor who resides or owns
4 property within this state for overdue support upon the
5 filing by the obligee, or, when appropriate, the child
6 support enforcement division, an abstract of the order
7 giving rise to the support obligation and an "Affidavit of
8 Accrued Support" setting forth the particulars of the
9 arrearage.

10 (b) The affidavit and abstract shall be filed with the
11 clerk of the county court in which the real property is
12 located. The affidavit shall:

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

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

18 (3) Allege that the support obligor is at least thirty days
19 in arrears in the payment of child support;

20 (4) State the total amount of accrued support which has
21 not been paid by the obligor; and

22 (5) List the date or dates when support payments should
23 have been paid but were not, and the amount of each such
24 delinquent payment.

25 (c) If the duty of support is based upon a foreign order
26 the obligee shall first register the order in accordance with
27 the provisions of chapter forty-eight-b of this code:
28 *Provided*, That nothing in this subsection shall prevent the
29 child support enforcement division from enforcing foreign
30 orders for support without registration of the order in
31 accordance with the provisions of section five hundred
32 seven, article five, chapter forty-eight-b of this code.

33 (d) This state will accord full faith and credit to liens
34 described in subsection (a) of this section arising in
35 another state, when the out-of-state agency, party, or
36 other entity seeking to enforce such a lien complies with
37 the procedural rules relating to recording or serving liens
38 that arise within the other state.

39 (e) Upon satisfaction of the overdue support obligation,
40 the obligee shall issue a release to the obligor and file a
41 copy thereof with the clerk of the county commission in
42 the county in which the lien arose pursuant to this section.
43 The child support enforcement division shall issue a
44 release in the same manner and with the same effect as
45 liens taken by the tax commissioner pursuant to section
46 twelve, article ten, chapter eleven of this code.

47 (f) Any person who files a false affidavit shall be guilty
48 of false swearing and, upon conviction thereof, shall be
49 punished as provided by law for such offense.

50 (g) The provisions of this section shall apply to support
51 orders issued by a court or tribunal, as defined in section
52 one hundred one, article one, chapter forty-eight-b of this
53 code, of any other state.

**§48A-5-4a. Enforcement by the child support enforcement
division of lien on real property.**

1 The child support enforcement division may enforce a
2 lien upon real property pursuant to the provisions of
3 article three, chapter thirty-eight of this code.

**§48A-5-5. Enforcement of support orders by contempt pro-
ceedings; penalties.**

1 (a) In addition to or in lieu of the other remedies pro-
2 vided by this article for the enforcement of support orders,
3 the child support enforcement division may commence a
4 civil or criminal contempt proceeding in accordance with
5 the provisions of section twenty-two, article two, chapter
6 forty-eight of this code against an obligor who is alleged

7 to have willfully failed or refused to comply with the order
8 of a court of competent jurisdiction requiring the payment
9 of support. Such proceeding shall be instituted by filing
10 with the circuit court a petition for an order to show cause
11 why the obligor should not be held in contempt.

12 (b) If the court finds that the obligor willfully failed or
13 refused to comply with an order requiring the payment of
14 support, the court shall find the obligor in contempt and
15 may do one or more of the following:

16 (1) Require additional terms and conditions consistent
17 with the court's support order.

18 (2) After notice to both parties and a hearing, if re-
19 quested by a party, on any proposed modification of the
20 order, modify the order in the same manner and under the
21 same requirements as an order requiring the payment of
22 support may be modified under the provisions of subsec-
23 tion (e), section fifteen, article two, chapter forty-eight of
24 this code. A modification sought by an obligor, if other-
25 wise justified, shall not be denied solely because the
26 obligor is found to be in contempt.

27 (3) Order that all accrued support and interest thereon
28 be paid under such terms and conditions as the court, in
29 its discretion, may deem proper.

30 (4) Order the contemnor to pay support in accordance
31 with a plan approved by the child support enforcement
32 division or to participate in such work activities as the
33 court deems appropriate.

34 (5) If appropriate under the provisions of section
35 twenty-two, article two, chapter forty-eight of this code:

36 (A) Commit the contemnor to the county jail; or

37 (B) Commit the contemnor to the county jail with the
38 privilege of leaving the jail, during such hours as the court
39 determines and under such supervision as the court
40 considers necessary, for the purpose of allowing the

41 contemnor to go to and return from his or her place of
42 employment.

43 (c) A commitment under subdivision (5) of subsection (b)
44 shall not exceed forty-five days for the first adjudication
45 of contempt or ninety days for any subsequent adjudica-
46 tion of contempt.

47 (d) An obligor committed under subdivision (5), subsec-
48 tion (b) of this section shall be released if the court has
49 reasonable cause to believe that the obligor will comply
50 with the court's orders.

51 (e) If an obligor is committed to jail under the provisions
52 of paragraph (B), subdivision (5), subsection (b) of this
53 section and violates the conditions of the court, the court
54 may commit the person to the county jail without the
55 privilege provided under said paragraph (B) for the
56 balance of the period of commitment imposed by the
57 court.

58 (f) If a person is committed to jail under the provisions
59 of paragraph (B), subdivision (5), subsection (b) of this
60 section and willfully fails to return to the place of confine-
61 ment within the time prescribed, such person shall be
62 considered to have escaped from custody and shall be
63 guilty of a misdemeanor, punishable by imprisonment for
64 not more than one year.

§48A-5-7. Increase in monthly payments.

1 (a) For the purpose of securing overdue support, the
2 child support enforcement division has the authority to
3 increase the monthly support payments by as much as one
4 hundred dollars per month to satisfy the arrearage where
5 the obligor:

6 (1) Owes an arrearage of not less than eight thousand
7 dollars; or

8 (2) Has not paid support for twelve consecutive months.

9 (b) This increase in monthly support will be in addition
10 to any amounts withheld pursuant to section three, article
11 five of this chapter.

12 (c) This increase in monthly support may be enforced
13 through the withholding process.

14 (d) Notice of the increase shall be sent to the obligor at
15 the time such increase is implemented. If the obligor
16 disagrees with the increase in payments, he or she may
17 file, within thirty days of the date of the notice, a motion
18 with the circuit court in which the case is situated for a
19 determination of whether there should be an increase in
20 monthly payments and the amount of that increase, if any.

21 (e) The provisions of this section apply to support orders
22 issued by a court or tribunal, as defined in section one
23 hundred one, article one, chapter forty-eight-b of this
24 code, of this or any other state.

ARTICLE 6. ESTABLISHMENT OF PATERNITY.

§48A-6-1. Paternity proceedings.

1 (a) A civil action to establish the paternity of a child and
2 to obtain an order of support for the child may be insti-
3 tuted, by verified complaint, in the circuit court of the
4 county where the child resides: *Provided*, That if such
5 venue creates a hardship for the parties, or either of them,
6 or if judicial economy requires, the court may transfer the
7 action to the county where either of the parties resides.

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

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

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

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

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

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

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

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

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

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

49 (4) Any person who is not the mother of the child, but

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

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

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

7 (b) Upon motion by a party, the court shall issue a
8 temporary order for child support pending a judicial
9 determination of parentage if there is clear and convincing
10 evidence of paternity on the basis of genetic tests or other
11 scientifically recognized evidence.

12 (c) The court shall give full faith and credit to a determi-
13 nation of paternity made by any other state, based on the
14 laws of that state, whether established through voluntary
15 acknowledgment or through administrative or judicial
16 process.

17 (d) Bills for pregnancy, childbirth, and genetic testing
18 are admissible as evidence of expenses incurred. Evidence
19 so admitted shall constitute prima facie evidence of
20 amounts incurred for such services or for testing on behalf
21 of the child.

CHAPTER 57. EVIDENCE AND WITNESSES.

ARTICLE 1. LEGISLATIVE ACTS AND RESOLUTIONS; PUBLIC RECORDS.

§57-1-12. Authentication of records and proceedings of courts of United States or other states; full faith and credit.

1 The records and judicial proceedings of any court of the
2 United States, or of any state or territory, or of any
3 country subject to the jurisdiction of the United States,
4 shall be proved or admitted in any court in this state, by
5 the attestation of the clerk, and the seal of the court
6 annexed, if there be a seal, together with a certificate of
7 the judge, chief justice, or presiding magistrate, that the
8 said attestation is in due form. And the said records and
9 judicial proceedings, so authenticated, shall have such
10 faith and credit given to them in every court within this
11 state as they have by law or usage in the courts of the state
12 or jurisdiction from which they are taken. Full faith and
13 credit for child support orders shall be accorded by this
14 state in conformity with federal law.

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

[Handwritten Signature]
.....
Chairman Senate Committee

[Handwritten Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Handwritten Signature]
.....
Clerk of the Senate

[Handwritten Signature]
.....
Clerk of the House of Delegates

[Handwritten Signature]
.....
President of the Senate

[Handwritten Signature]
.....
Speaker House of Delegates

The within *approved* this the *6th*
day of *April*, 19*58*.

[Handwritten Signature]
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/3/98

Time 10:58 am