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2002 APR -3 P 5:39

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

Regular Session, 2002

ENROLLED

SENATE BILL NO. 574

(By Senators Redd and Boley)

PASSED March 9, 2002

In Effect 90 days from Passage

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2002 APR -3 P 5:40

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Senate Bill No. 574

(BY SENATORS REDD AND BOLEY)

[Passed March 9, 2002; in effect ninety days from passage.]

AN ACT to amend and reenact sections three hundred two and three hundred seven, article one, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section one hundred three, article eleven of said chapter; to amend and reenact section one hundred eleven, article twelve of said chapter; to further amend said article by adding thereto a new section, designated section one hundred eighteen; to amend and reenact sections four hundred one, four hundred six, four hundred seven and eight hundred one, article fourteen of said chapter; to amend and reenact sections one hundred twenty-five and one hundred thirty-two, article eighteen of said chapter; and to amend and reenact sections one hundred one and one hundred three, article twenty-four of said chapter, all relating to child support generally; clarifying code citations; reenacting sections omitted in recodification; providing for the continuation of amnesty for child support arrears; providing for payment of child support past age

eighteen to a custodian as well as a parent; providing for recognition of interstate medical support; civil and criminal penalties for failure of an employer to enroll a child in medical insurance coverage; providing for reporting of start date of employees upon request of the bureau for child support enforcement; payment of support by income withholding; changing the threshold for an increase in monthly support to satisfy arrears; and clarifying genetic testing.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. GENERAL PROVISIONS; DEFINITIONS.

**PART 3. MISCELLANEOUS PROVISIONS RELATING
TO DOMESTIC RELATIONS.**

§48-1-302. Calculation of interest.

- 1 (a) If an obligation to pay interest arises under this
- 2 chapter, the rate of interest is that specified in section 56-
- 3 6-31 of this code. Interest accrues only upon the outstand-
- 4 ing principal of such obligation. On and after the ninth
- 5 day of June, one thousand nine hundred ninety-five, this
- 6 section will be construed to permit the accumulation of
- 7 simple interest and may not be construed to permit the

8 compounding of interest. Interest which accrued on
9 unpaid installments accruing before the ninth day of June,
10 one thousand nine hundred ninety-five, may not be
11 modified by any court, irrespective of whether such
12 installment accrued simple or compound interest: *Pro-*
13 *vided*, That unpaid installments upon which interest was
14 compounded before the effective date of this section shall
15 accrue only simple interest thereon on and after the ninth
16 day of June, one thousand nine hundred ninety-five.

17 (b) Notwithstanding any other provision of law, no court
18 may award or approve prejudgment interest in a domestic
19 relations action against a party unless the court finds, in
20 writing, that the party engaged in conduct that would
21 violate subsection (b), rule eleven of the West Virginia
22 rules of civil procedure. If prejudgment interest is
23 awarded, the court shall calculate prejudgment interest
24 from the date the offending representation was presented
25 to the court.

26 (c) Upon written agreement by both parties, an obligor
27 may petition the court to enter an order conditionally
28 suspending the collection of all or part of the interest that
29 has accrued on past-due child support prior to the date of
30 the agreement: *Provided*, That said agreement shall also
31 establish a reasonable payment plan which is calculated to
32 fully discharge all arrearages within twenty-four months.
33 Upon successful completion of the payment plan, the court
34 shall enter an order which permanently relieves the
35 obligor of the obligation to pay the accrued interest. If the
36 obligor fails to comply with the terms of the written
37 agreement, then the court shall enter an order which
38 reinstates the accrued interest.

§48-1-307. Collection of child or spousal support by collection agencies.

1 (a) Any person attempting to collect a child or spousal
2 support obligation or arrearage on behalf of a resident or
3 from a resident of this state is subject to the provisions of

4 article sixteen, chapter forty-seven of this code and the
5 provisions of this section and is otherwise subject to the
6 jurisdiction of this state.

7 (b) The amount of delinquent child or spousal support or
8 arrearage established by order of a court of competent
9 jurisdiction in this state is not subject to waiver or com-
10 promise, either by agreement of the parties or by a collec-
11 tion agency acting on behalf of a party and may only be
12 modified by an order of a court of competent jurisdiction.

13 (c) No child or spousal support or arrearage of child or
14 spousal support collected by the state IV-D agency may be
15 redirected to any collection agency.

16 (d) No collection agency attempting to collect a child or
17 spousal support obligation or arrearage on behalf of a
18 resident or from a resident of this state may include any
19 funds collected by a IV-D agency in the amount from
20 which their fee is determined or collected.

21 (e) No collection agency, other than an attorney licensed
22 to practice law in this state, attempting to collect a child
23 support or spousal support obligation or arrearage may
24 engage in conduct which is considered the practice of law,
25 including, but not limited to:

26 (1) The performance of legal services, the offering of
27 legal advice or the making of a false representation,
28 directly or by implication, that a person is an attorney;

29 (2) Any communication with persons in the name of an
30 attorney or upon stationery or other written matter
31 bearing an attorney's name; and

32 (3) Any demand for or payment of money constituting a
33 share of compensation for services performed or to be
34 performed by an attorney in collecting a claim.

35 (f) No collection agency may collect or attempt to collect
36 any money alleged to be due and owing by any threat,
37 coercion or attempt to coerce, including, but not limited to:

38 (1) The use, or the express or implicit threat of use, of
39 violence or other criminal means, to cause harm to the
40 person, reputation or property of any person;

41 (2) The accusation or threat to accuse any person of
42 fraud, of any crime, or of any conduct which, if true,
43 would tend to disgrace the other person or in any way
44 subject them to ridicule or contempt of society;

45 (3) False accusations made to another person, including
46 any credit reporting agency, that a person is willfully
47 refusing to pay a just claim, or the threat to make such
48 false accusations;

49 (4) The threat that nonpayment of an alleged claim will
50 result in the arrest of any person, or of the taking of any
51 other action requiring judicial sanction, without informing
52 the person that there must be in effect a court order
53 permitting the action before it can be taken; and

54 (5) The threat to take any action prohibited by this
55 section or other law regulating the conduct of a collection
56 agency.

57 (g) No collection agency may unreasonably oppress or
58 abuse any person in connection with the collection of or
59 attempt to collect any child or spousal support obligation
60 or arrearage, including, but not limited to:

61 (1) The use of profane or obscene language or language
62 that is intended to unreasonably abuse the listener or
63 reader;

64 (2) The placement of telephone calls without disclosure
65 of the caller's identity and with the intent to annoy, harass
66 or threaten any person at the called number;

67 (3) Causing expense to any person in the form of long
68 distance telephone tolls, telegram fees or other charges
69 incurred by a medium of communication by concealment
70 of the true purpose of the communication; and

71 (4) Causing a telephone to ring or engaging any person in
72 telephone conversation repeatedly or continuously, or at
73 unusual times or at times known to be inconvenient, with
74 intent to annoy, abuse, oppress or threaten any person at
75 the called number.

76 (h) No collection agency may unreasonably publicize
77 information relating to any alleged child or spousal
78 support obligation or arrearage, including, but not limited
79 to:

80 (1) The communication to any employer or his or her
81 agent of any information relating to an employee's indebt-
82 edness other than through proper legal action, process or
83 proceeding;

84 (2) The disclosure, publication or communication of
85 information relating to a child or spousal support obliga-
86 tion or arrearage to any relative or family member of the
87 obligor, except through proper legal action or process or at
88 the express and unsolicited request of the obligor;

89 (3) The disclosure, publication or communication of any
90 information relating to an obligor's child or spousal
91 support obligation or arrearage to any other person other
92 than a credit reporting agency, by publishing or posting
93 any list of persons, commonly known as "deadbeat lists",
94 or in any manner other than through proper legal action,
95 process or proceeding; and

96 (4) The use of any form of communication to the obligor,
97 which ordinarily may be seen by any other person, that
98 displays or conveys any information about the alleged
99 claim other than the name, address and telephone number
100 of the collection agency.

101 (i) No collection agency may use any fraudulent, decep-
102 tive or misleading representation or means to collect or
103 attempt to collect claims or to obtain information concern-
104 ing support obligors, including, but not limited to:

105 (1) The use of any business, company or organization
106 name while engaged in the collection of claims, other than
107 the true name of the collection agency's business, company
108 or organization;

109 (2) Any false representation that the collection agency
110 has in its possession information or something of value for
111 the obligor with the underlying purpose of soliciting or
112 discovering information about the person;

113 (3) The failure to clearly disclose the name of the person
114 to whom the claim is owed, at the time of making any
115 demand for money;

116 (4) Any false representation or implication of the charac-
117 ter, extent or amount of a claim against an obligor or of
118 the status of any legal proceeding;

119 (5) Any false representation or false implication that any
120 collection agency is vouched for, bonded by, affiliated with
121 an agency, instrumentality, agent or official of this state or
122 of the federal or local government;

123 (6) The use, distribution or sale of any written communi-
124 cation which simulates or is falsely represented to be a
125 document authorized, issued or approved by a court, an
126 official or any other legally constituted or authorized
127 authority, or which creates a false impression about its
128 source, authorization or approval;

129 (7) Any representation that an existing obligation of the
130 obligor may be increased by the addition of attorney's fees,
131 investigation fees, service fees or any other fees or charges
132 when in fact the fees or charges may not legally be added
133 to the existing obligation; and

134 (8) Any false representation or false impression about the
135 status or true nature of the services rendered by the
136 collection agency.

137 (j) No collection agency may use unfair or unconsciona-
138 ble means to collect or attempt to collect any claim,
139 including, but not limited to:

140 (1) The collection of or the attempt to collect any interest
141 in excess of that interest authorized by the provisions of
142 this chapter, or other charge, fee or expense incidental to
143 the principal obligation that exceeds ten percent of the
144 principal amount from an obligor or obligee; and

145 (2) Any communication with an obligor whenever it
146 appears the obligor is represented by an attorney and the
147 attorney's name and address are known, or could be easily
148 ascertained, unless the attorney fails to answer correspon-
149 dence, return telephone calls or discuss the obligation in
150 question, or unless the attorney and the obligor consent to
151 direct communication.

152 (k) No collection agency may use, distribute, sell or
153 prepare for use any written communication which violates
154 or fails to conform to United States postal laws and
155 regulations.

156 (l) No collection agency may place a telephone call or
157 otherwise communicate by telephone with an obligor at
158 any place, including a place of employment, falsely stating
159 that the call is "urgent" or an "emergency".

160 (m) No collection agency may attempt to collect any
161 portion of a fee from any money collected by any other
162 entity or authority. The collection agency may only collect
163 a fee from funds procured solely through its collection
164 activities.

165 (n) A collection agency must provide the state IV-D
166 agency with an accounting of any money collected and
167 forwarded to the obligee as child support, spousal support
168 or arrearages every sixty days until the collection agency
169 ceases all collection activity.

170 (o) Any resident of this state who contracts for services
171 with a collection agency to collect current or past-due
172 child support or spousal support may, upon thirty days'
173 written notice, cancel the contract for collection. The
174 notice must be mailed to the collection agency by first-

175 class mail. All contracts signed by residents of this state
176 must include written notification of this right of cancella-
177 tion.

178 (p) Any person who violates the provisions of this section
179 is subject to the penalties set forth in section 47-16-5 and
180 section 11-12-9.

181 (q) Any person who violates the provisions of this section
182 is liable to the injured party in a civil action. Additionally,
183 any person who violates the provisions of this section is
184 guilty of a misdemeanor and, upon conviction thereof,
185 shall be fined not less than one thousand dollars nor more
186 than five thousand dollars for each separate incident.

187 (r) For any action filed pursuant to this section alleging
188 illegal, fraudulent or unconscionable conduct or any
189 prohibited debt collection practice, the court, in its
190 discretion, may award all or a portion of the costs of
191 litigation, including reasonable attorney fees, court costs
192 and fees, to the injured party. Upon a finding by the court
193 that an action filed pursuant to this section on the grounds
194 of illegal, fraudulent or unconscionable conduct or any
195 prohibited debt collection practice was brought in bad
196 faith and for the purposes of harassment, the court may
197 award the defendant reasonable attorney fees.

ARTICLE 11. SUPPORT OF CHILDREN.

§48-11-103. Child support beyond age eighteen.

1 (a) Upon a specific finding of good cause shown and
2 upon findings of fact and conclusions of law in support
3 thereof, an order for child support may provide that
4 payments of such support continue beyond the date when
5 the child reaches the age of eighteen, so long as the child
6 is unmarried and residing with a parent, guardian or
7 custodian and is enrolled as a full-time student in a
8 secondary educational or vocational program and making
9 substantial progress towards a diploma: *Provided*, That
10 such payments may not extend past the date that the child
11 reaches the age of twenty.

12 (b) Nothing herein shall be construed to abrogate or
13 modify existing case law regarding the eligibility of
14 handicapped or disabled children to receive child support
15 beyond the age of eighteen.

16 (c) The reenactment of this section during the regular
17 session of the Legislature in the year one thousand nine
18 hundred ninety-four shall not, by operation of law, have
19 any effect upon or vacate any order or portion thereof
20 entered under the prior enactment of this section which
21 awarded educational and related expenses for an adult
22 child accepted or enrolled and making satisfactory prog-
23 ress in an educational program at a certified or accredited
24 college. Any such order or portion thereof shall continue
25 in full force and effect until the court, upon motion of a
26 party, modifies or vacates the order upon a finding that:

27 (1) The facts and circumstances which supported the
28 entry of the original order have changed, in which case the
29 order may be modified;

30 (2) The facts and circumstances which supported the
31 entry of the original order no longer exist because the
32 child has not been accepted or is not enrolled in and
33 making satisfactory progress in an educational program at
34 a certified or accredited college, or the parent ordered to
35 pay such educational and related expenses is no longer
36 able to make such payments, in which case the order shall
37 be vacated;

38 (3) The child, at the time the order was entered, was
39 under the age of sixteen years, in which case the order
40 shall be vacated;

41 (4) The amount ordered to be paid was determined by an
42 application of child support guidelines in accordance with
43 the provisions of article 13-101, *et seq.*, or legislative rules
44 promulgated thereunder, in which case the order may be
45 modified or vacated; or

46 (5) The order was entered after the fourteenth day of
47 March, one thousand nine hundred ninety-four, in which
48 case the order shall be vacated.

ARTICLE 12. MEDICAL SUPPORT.

§48-12-111. Employer's duties upon service of national medical support notice; notice from another state.

1 (a) Upon service of the national medical support notice
2 requiring insurance coverage for the children, the em-
3 ployer, multiemployer trust or union shall enroll the child
4 as a beneficiary in the group insurance plan and withhold
5 any required premium from the obligated parent's income
6 or wages, unless the child is already enrolled in this plan.

7 (b) If more than one plan is offered by the employer,
8 multiemployer trust or union, the child shall be enrolled in
9 the same plan as the obligated parent. If the obligated
10 parent is not enrolled for insurance coverage, the employer
11 shall promptly report the availability of plans to the IV-D
12 agency. The IV-D agency, in consultation with parent,
13 shall promptly select the most appropriate plan, consider-
14 ing both the health needs of the child and the cost to the
15 parents, and shall notify the plan administrator and the
16 parties of the selection.

17 (c) Insurance coverage for the child which is ordered
18 pursuant to the provisions of this section shall not be
19 terminated except as provided in section one hundred
20 fifteen of this article.

21 (d) A medical support notice issued by the appropriate
22 IV-D agency of another state may be sent directly to an
23 employer in this state without the necessity of first filing
24 a petition or similar pleading or registering the order with
25 the IV-D agency of this state. The medical support notice
26 shall have the same force and effect as if the notice had
27 been issued by the IV-D agency of this state. Upon receipt
28 of a medical support notice from the IV-D agency of

29 another state, the employer shall immediately provide a
30 copy of the notice to the obligor.

§48-12-118. Failure of employer to comply with medical insurance coverage; penalties.

1 For the failure of any employer, multiemployer trust or
2 employee's union to comply with the requirements of this
3 article the bureau for child support enforcement may
4 assess a civil penalty of not more than one hundred
5 dollars. If a court of competent jurisdiction determines
6 that the employer, multiemployer trust or the employee's
7 union wilfully failed to comply with the provisions of this
8 article the employer, multiemployer trust or employee's
9 union shall be found guilty of a misdemeanor and, upon
10 conviction thereof, shall be fined not less than five hun-
11 dred dollars nor more than one thousand dollars.

ARTICLE 14. REMEDIES FOR THE ENFORCEMENT OF SUPPORT OBLIGATIONS.

**PART 4. WITHHOLDING OF INCOME OF
AMOUNTS PAYABLE AS SUPPORT.**

§48-14-401. Support orders to provide for withholding from income.

1 (a) Every order entered or modified under the provisions
2 of this article that requires the payment of child support
3 or spousal support must include a provision for automatic
4 withholding from income of the obligor in order to facili-
5 tate income withholding as a means of collecting support.
6 (b) Every support order heretofore or hereafter entered
7 by a court of competent jurisdiction is considered to
8 provide for an order of income withholding, notwithstand-
9 ing the fact that the support order does not in fact provide
10 for an order of withholding. Income withholding may be
11 instituted under this part for any arrearage without the
12 necessity of additional judicial or legal action.

13 (c) Every such order as described in subsection (a) of this
14 section shall contain language authorizing income with-
15 holding for both current support and for any arrearages to
16 commence without further court action as follows:

17 (1) The order shall provide that income withholding shall
18 begin immediately, without regard to whether there is an
19 arrearage;

20 (A) When a child for whom support is ordered is included
21 or becomes included in a grant of assistance from the
22 division of human services or a similar agency of a sister
23 state for temporary assistance for needy families benefits,
24 medical assistance only benefits or foster care benefits and
25 is referred to the bureau for child support enforcement; or

26 (B) When the support obligee has applied for services
27 from the bureau for child support enforcement created
28 pursuant to section 18-101, *et seq.*, of this chapter, or the
29 support enforcement agency of another state or is other-
30 wise receiving services from the bureau for child support
31 enforcement as provided for in this chapter. In any case
32 where one of the parties demonstrates, and the court finds,
33 that there is good cause not to require immediate income
34 withholding, or in any case where there is filed with the
35 court a written agreement between the parties which
36 provides for an alternative arrangement, such order shall
37 not provide for income withholding to begin immediately,
38 pursuant to article fourteen, section four hundred three of
39 this chapter.

**§48-14-406. Notice to source of income; withholding in compli-
ance with order.**

1 (a) Withholding shall occur and the notice to withhold
2 shall be sent either by first-class mail or by electronic
3 means to the source of income when the support order
4 provides for immediate income withholding pursuant to
5 sections four hundred one and four hundred two of this
6 article or if immediate income withholding is not so

7 provided, when the support payments are in arrears in the
8 amount specified in section 403 [§ 48-14-403] of this
9 article.

10 (b) The source of income shall withhold so much of the
11 obligor's income as is necessary to comply with the order
12 authorizing such withholding, up to the maximum amount
13 permitted under applicable law for both current support
14 and for any arrearages which are due. Such withholding,
15 unless otherwise terminated under the provisions of this
16 part, shall apply to any subsequent source of income or
17 any subsequent period of time during which income is
18 received by the obligor.

19 (c) In addition to any amounts payable as support
20 withheld from the obligor's income, the source of income
21 may deduct a fee, not to exceed one dollar, for administra-
22 tive costs incurred by the source of income for each
23 withholding.

§48-14-407. Contents of notice to source of income.

1 (a) The source of income of any obligor who is subject to
2 withholding, upon being given notice of withholding, shall
3 withhold from such obligor's income the amount specified
4 by the notice and pay such amount to the bureau for child
5 support enforcement for distribution. The notice given to
6 the source of income shall contain only such information
7 as may be necessary for the source of income to comply
8 with the withholding order and no source of income may
9 require additional information or documentation. Such
10 notice to the source of income shall include, at a minimum,
11 the following:

12 (1) The amount to be withheld from the obligor's dispos-
13 able earnings, and a statement that the amount to be
14 withheld for support and other purposes, including the fee
15 specified under subdivision (3) of this subsection, may not
16 be in excess of the maximum amounts permitted under
17 Section 303(b) of the federal Consumer Credit Protection

18 Act or limitations imposed under the provisions of this
19 code;

20 (2) That the source of income shall send the amount to be
21 withheld from the obligor's income to the bureau for child
22 support enforcement, along with such identifying informa-
23 tion as may be required by the bureau, the same day that
24 the obligor is paid;

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

30 (4) That withholding is binding on the source of income
31 until further notice by the bureau for child support
32 enforcement or until the source of income notifies the
33 bureau for child support enforcement of a termination of
34 the obligor's employment in accordance with the provi-
35 sions of section four hundred twelve of this article;

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

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

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

50 (8) That when an employer has more than one employee
51 who is an obligor who is subject to wage withholding from

52 income under the provisions of this code, the employer
53 may combine all withheld payments to the bureau for
54 child support enforcement when the employer properly
55 identifies each payment with the information listed in this
56 part. A source of income is liable to an obligee, including
57 the state of West Virginia or the department of health and
58 human resources where appropriate, for any amount
59 which the source of income fails to identify with the
60 information required by this part and is therefore not
61 received by the obligee;

62 (9) That the source of income shall implement withhold-
63 ing no later than the first pay period or first date for
64 payment of income that occurs after fourteen days follow-
65 ing the date the notice to the source of income was mailed;
66 and

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

73 (b) The commission shall, by administrative rule, estab-
74 lish procedures for promptly refunding to obligors
75 amounts which have been improperly withheld under the
76 provisions of this part.

§48-14-801. When monthly payments may be increased to satisfy overdue support.

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

6 (1) An obligor has failed to make payments as required
7 by a support order and arrears are equal to an amount of

8 support payable for six months if the order requires
9 support to be paid in monthly installments; or

10 (2) An obligor has failed to make payments as required
11 by a support order and arrears are equal to an amount of
12 support payable for twenty-seven weeks if the order
13 requires support to be paid in weekly or biweekly install-
14 ments.

15 (b) An increase in monthly support under this section
16 will be in addition to any amounts withheld from income
17 pursuant to part 4 of this article.

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

ARTICLE 18. BUREAU FOR CHILD SUPPORT ENFORCEMENT.

§48-18-125. 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 bureau for child support enforcement:

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 of
27 the employee or compromise an ongoing investigation or
28 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 bureau for
32 child support enforcement the hiring, rehiring or return to
33 work of any employee if the employer has filed with the
34 secretary of the federal department of health and human
35 services, as required by 42 U.S.C. §653A, a written
36 designation of another state in which it has employees as
37 the reporting state.

38 (e) Employers shall report by mailing to the bureau for
39 child support enforcement a copy of the employee's W-4
40 form; however, an employer may transmit such informa-
41 tion through another means if approved in writing by the
42 bureau for child support enforcement prior to the trans-
43 mittal. The report shall include the employee's name,
44 address and social security number, the employer's name
45 and address, any different address of the payroll office and
46 the employer's federal tax identification number. The
47 employer may report other information, such as date of
48 birth 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 bureau for child
56 support enforcement, upon its written request, information
57 regarding an obligor's employment, wages or salary,
58 medical insurance, start date 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 bureau for child support enforcement 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 bureau
80 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.

§48-18-132. 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 assis-
4 tance from the bureau for child support enforcement 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 bureau or with the out-of-state agency in the location
8 of parents who have abandoned and deserted children and
9 shall provide the bureau 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 bureau 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 bureau 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 bureau for child support enforcement shall
27 have access, subject to safeguards on privacy and informa-
28 tion security, and to the nonliability of entities that afford
29 such access under this subdivision, to information con-
30 tained in the following records, including automated
31 access, in the case of records maintained in automated
32 data bases:

33 (A) Records of other state and local government agen-
34 cies, including, but not limited to:

- 35 (i) Vital statistics, including records of marriage, birth
36 and divorce;
- 37 (ii) State and local tax and revenue records, including
38 information on residence address, employer, income and
39 assets;
- 40 (iii) Records concerning real and titled personal prop-
41 erty;
- 42 (iv) Records of occupational and professional licenses
43 and records concerning the ownership and control of
44 corporations, partnerships and other business entities;
- 45 (v) Employment security records;
- 46 (vi) Records of agencies administering public assistance
47 programs;
- 48 (vii) Records of the division of motor vehicles; and
- 49 (viii) Corrections records.
- 50 (B) Certain records held by private entities with respect
51 to individuals who owe or are owed support or certain
52 individuals against, or with respect to, whom a support
53 obligation is sought, consisting of:
- 54 (i) The names and addresses of such individuals and the
55 names and addresses of the employers of such individuals,
56 as appearing in the customer records of public utilities and
57 cable television companies, pursuant to an administrative
58 subpoena authorized by section one hundred twenty three,
59 article eighteen of this chapter; and
- 60 (ii) Information, including information on assets and
61 liabilities, on such individuals held by financial institu-
62 tions.
- 63 (2) Out-of-state agencies administering programs under
64 Title IV-D of the Social Security Act shall, without the
65 need for any court order, have the authority to access

66 records in this state by making a request through the
67 bureau for child support enforcement.

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

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

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

88 (g) No state, county or municipal agency or licensing
89 board required to release information pursuant to the
90 provisions of this section to the bureau for child support
91 enforcement or to any out-of-state agency administering
92 programs under Title IV-D of the Social Security Act may
93 require the bureau for child support enforcement or any
94 out-of-state agency to obtain a court order prior to the
95 release of the information.

96 (h) Any information received pursuant to the provisions
97 of this section is subject to the confidentiality provisions
98 set forth in section 18-131 of this chapter.

ARTICLE 24. ESTABLISHMENT OF PATERNITY.

§48-24-101. 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 family 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 family 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 father
15 of the child. The parties to a paternity proceeding are not
16 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 partic-
20 ular case shall rest in the sound discretion of the court, to
21 be exercised by the court according to the circumstances
22 and exigencies of the case, having due regard for precedent
23 and the provisions of the statutory law of this state.

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

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

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

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

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

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

42 (C) The respondent, rather than her husband, is the
43 father of the child;

44 (3) The state of West Virginia, including the bureau for
45 child support enforcement;

46 (4) Any person who is not the mother of the child but
47 who has physical or legal custody of the child;

48 (5) The guardian or committee of the child;

49 (6) The next friend of the child when the child is a minor;

50 (7) By the child in his or her own right at any time after
51 the child's eighteenth birthday but prior to the child's
52 twenty-first birthday; or

53 (8) A man who believes he is the father of a child born
54 out of wedlock when there has been no prior judicial
55 determination of paternity.

56 (f) If a paternity proceeding is brought that names the
57 father of the child as being someone other than the person
58 whose name appears on the child's birth certificate, then
59 the person bringing the action shall cause a copy of the
60 verified complaint to be served on the person named as the
61 father on the birth certificate. Service must be in accor-
62 dance with rule 4 of the rules of civil procedure.

63 (g) Blood or tissue samples taken pursuant to the provi-
64 sions of this article may be ordered to be taken in such
65 locations as may be convenient for the parties so long as
66 the integrity of the chain of custody of the samples can be
67 preserved.

68 (h) A person who has sexual intercourse in this state
69 submits to the jurisdiction of the courts of this state for a
70 proceeding brought under this article with respect to a
71 child who may have been conceived by that act of inter-
72 course. Service of process may be perfected according to
73 the rules of civil procedure.

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

**§48-24-103. Medical testing procedures to aid in the determina-
tion of paternity.**

1 (a) Prior to the commencement of an action for the
2 establishment of paternity, the bureau for child support
3 enforcement may order the mother, her child and the man
4 to submit to genetic tests to aid in proving or disproving
5 paternity. The bureau may order the tests upon the
6 request, supported by a sworn statement, of any person
7 entitled to petition the court for a determination of
8 paternity as provided in section one of this article. If the
9 request is made by a party alleging paternity, the state-
10 ment shall set forth facts establishing a reasonable possi-
11 bility or requisite sexual contact between the parties. If
12 the request is made by a party denying paternity, the
13 statement may set forth facts establishing a reasonable
14 possibility of the nonexistence of sexual contact between
15 the parties or other facts supporting a denial of paternity.
16 If genetic testing is not performed pursuant to an order of
17 the bureau for child support enforcement, the court may,
18 on its own motion or shall upon the motion of any party,
19 order such tests. A request or motion may be made upon
20 ten days' written notice to the mother and alleged father
21 without the necessity of filing a complaint. When the tests
22 are ordered, the court or the bureau shall direct that the
23 inherited characteristics, including, but not limited to,
24 blood types, be determined by appropriate testing proce-

25 dures at a hospital, independent medical institution or
26 independent medical laboratory duly licensed under the
27 laws of this state or any other state and an expert qualified
28 as an examiner of genetic markers shall analyze, interpret
29 and report on the results to the court or to the bureau for
30 child support enforcement. The results shall be considered
31 as follows:

32 (1) Blood or tissue test results which exclude the man as
33 the father of the child are admissible and shall be clear
34 and convincing evidence of nonpaternity and, if a com-
35 plaint has been filed, the court shall, upon considering
36 such evidence, dismiss the action.

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

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

47 (4) When a party desires to challenge the results of the
48 blood or tissue tests or the expert's analysis of inherited
49 characteristics, he or she shall file a written protest with
50 the family court or with the bureau for child support
51 enforcement, if appropriate, within thirty days of the filing
52 of such test results and serve a copy of such protest upon
53 the other party. The written protest shall be filed at least
54 thirty days prior to any hearing involving the test results.
55 The court or the bureau for child support enforcement,
56 upon reasonable request of a party, shall order that
57 additional tests be made by the same laboratory or another
58 laboratory within thirty days of the entry of the order, at
59 the expense of the party requesting additional testing.
60 Costs shall be paid in advance of the testing. When the

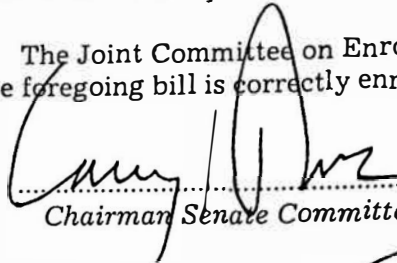
61 results of the blood or tissue tests or the expert's analysis
62 which show a statistical probability of paternity of more
63 than ninety-eight percent are confirmed by the additional
64 testing, then the results are admissible evidence which is
65 clear and convincing evidence of paternity. The admission
66 of the evidence creates a presumption that the man tested
67 is the father.

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

76 (c) Except as provided in subsection (d) of this section,
77 when a blood or tissue test is ordered pursuant to this
78 section, the moving party shall initially bear all costs
79 associated with the blood or tissue test unless that party is
80 determined by the court to be financially unable to pay
81 those costs. This determination shall be made following
82 the filing of an affidavit pursuant to section one, article
83 two, chapter fifty-nine of this code. When the court finds
84 that the moving party is unable to bear that cost, the cost
85 shall be borne by the state of West Virginia. Following the
86 finding that a person is the father based on the results of
87 a blood or tissue test ordered pursuant to this section, the
88 court shall order that the father be ordered to reimburse
89 the moving party for the costs of the blood or tissue tests
90 unless the court determines, based upon the factors set
91 forth in this section, that the father is financially unable to
92 pay those costs.

93 (d) When a blood or tissue test is ordered by the bureau
94 for child support enforcement, the bureau shall initially
95 bear all costs subject to recoupment from the alleged
96 father if paternity is established.

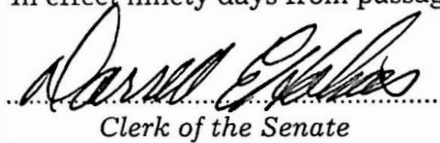
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


.....
Chairman Senate Committee


.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.


.....
Clerk of the Senate


.....
Clerk of the House of Delegates


.....
President of the Senate


.....
Speaker House of Delegates

The within is approved this the 3rd
Day of April, 2002.


.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/25/02

Time 11:00 am