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SB 388

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SECRETAR... STATE

**WEST VIRGINIA LEGISLATURE**  
**SEVENTY-EIGHTH LEGISLATURE**  
**REGULAR SESSION, 2007**

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**ENROLLED**

**Senate Bill No. 388**

(BY SENATORS PREZIOSO, MINARD, STOLLINGS AND FOSTER)

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[Passed March 10, 2007; in effect ninety days from passage.]

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## Senate Bill No. 388

(BY SENATORS PREZIOSO, MINARD, STOLLINGS AND FOSTER)

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[Passed March 10, 2007; in effect ninety days from passage.]

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AN ACT to amend and reenact §48-12-101, §48-12-102 and §48-12-103 of the Code of West Virginia, 1931, as amended, all relating to medical support provisions in child support orders; defining terms; establishing procedures for allocation of the costs of medical support between the parties to a child support order; and providing guidelines for setting medical support.

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

That §48-12-101, §48-12-102 and §48-12-103 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 12. MEDICAL SUPPORT.**

**§48-12-101. Definitions applicable to medical support enforcement.**

1 For the purposes of this article:

2 (1) "Appropriate health insurance coverage" means  
3 insurance coverage that is reasonable in cost,  
4 comprehensive in nature and reasonably accessible to  
5 the child to be covered.

6 (2) "Cash medical support" means an amount ordered  
7 to be paid toward the cost of health insurance provided  
8 by a public entity or by another person through  
9 employment or otherwise, or for other medical costs not  
10 covered by insurance.

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

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

19 (5) "Insurance coverage" means coverage for medical,  
20 dental, including orthodontic, optical, prescription  
21 pharmaceuticals, psychological, psychiatric or other  
22 health care services.

23 (6) "Child" means a child to whom a duty of child  
24 support is owed.

25 (7) "Medical care" means medical, dental, optical,  
26 prescription pharmaceuticals, psychological, psychiatric  
27 or other health care service for children in need of child  
28 support.

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

37 (9) "National medical support notice" means the  
38 written notice described in 29 U. S. C. §1169(a)(5)(C)  
39 and 42 U. S. C. §666(a)(19) and issued as a means of  
40 enforcing the health care coverage provisions in a child  
41 support order for children whose parent or parents are  
42 required to provide health-care coverage through an  
43 employment-related group health plan. This notice is  
44 considered under ERISA to be a qualified medical child  
45 support order (QMSO).

46 (10) "Qualified medical child support order" means a  
47 medical child support order which creates or recognizes  
48 the existence of an alternate recipient's right to, or  
49 assigns to an alternate recipient the right to, receive  
50 benefits from which a participant or beneficiary is  
51 eligible under a group health plan. A qualified medical  
52 child support order must include the name and the last  
53 known mailing address, if any, of the participant and  
54 the name and mailing address of each alternate  
55 recipient covered by the order, except that, to the extent  
56 provided in the order, the name and mailing address of

57 an official of the IV-D agency may be substituted for the  
58 mailing address of any alternate recipient, a reasonable  
59 description of the type of coverage provided to each  
60 alternate recipient or the manner in which the type of  
61 coverage is determined and the time period for which  
62 the order applies.

63 (11) "Reasonably accessible health insurance  
64 coverage" means that the coverage will provide  
65 payment for the primary health care services within a  
66 reasonable distance from the child's primary residence.

67 (12) "Reasonable costs" means the child's portion of  
68 the medical insurance premiums not exceeding five  
69 percent of the gross income of the parent who provides  
70 the coverage.

**§48-12-102. Court-ordered medical support.**

1 In every action to establish or modify an order which  
2 requires the payment of child support, the court shall  
3 ascertain the ability of each parent to provide medical  
4 care for the children of the parties. In any temporary or  
5 final order establishing an award of child support or  
6 any temporary or final order modifying a prior order  
7 establishing an award of child support, the court shall  
8 address the provision of medical support through one or  
9 more of the following methods:

10 (1) The court shall determine whether appropriate  
11 medical insurance coverage as defined in section one  
12 hundred one of this article is available to either parent.  
13 If such insurance coverage exists, the court shall order  
14 the appropriate parent to enroll the child in that  
15 coverage and the cost of providing appropriate medical

16 insurance shall be entered on line 5b of worksheet A for  
17 the basic shared parenting child support calculation as  
18 provided in section two hundred four, article thirteen of  
19 this code or line 12b of worksheet B for the extended  
20 shared parenting child support calculation as provided  
21 in said section.

22 (2) If the court does not include the cost of the medical  
23 insurance in the child support calculation, the court  
24 may order the other parent to contribute to the cost of  
25 the premium through an award of medical support. If  
26 the amount of the award of child support in the order is  
27 determined using the child support guidelines, the court  
28 shall order that nonrecurring or subsequently occurring  
29 uninsured medical expenses in excess of two hundred  
30 fifty dollars per year per child shall be separately  
31 divided between the parties in proportion to their  
32 adjusted gross incomes.

33 (3) If neither parent currently has access to  
34 appropriate medical insurance coverage, the court shall  
35 take the following actions:

36 (a) The court shall order the parties to provide  
37 appropriate medical insurance coverage if it becomes  
38 available in the future; and

39 (b) The court shall order the payment of cash medical  
40 support by either or both parties. The amount of the  
41 cash medical support to be awarded is within the  
42 discretion of the court but the total of the cash medical  
43 support and cost of the insurance premiums shall not  
44 exceed five percent of the payor's gross income.

45 (c) In setting a cash medical support award, the court

46 may consider the costs of uncovered medical expenses  
47 for the child, the relative percentages of the parties'  
48 incomes or the cost to the government to provide  
49 medical coverage for the child.

50 (d) If the support obligor's adjusted gross income is  
51 less than two hundred percent of the federal poverty  
52 level, the court shall set the cash medical support  
53 amount at zero.

54 (e) Cash medical support shall be collected and  
55 enforced in the same manner as child support payments.

56 (4) The order shall require the obligor to continue to  
57 provide the Bureau for Child Support Enforcement with  
58 information as to his or her employer's name and  
59 address and information as to the availability of  
60 employer-related insurance programs providing medical  
61 care coverage so long as the child continues to be  
62 eligible to receive support.

**§48-12-103. Cost of medical support considered in applying  
support guidelines.**

1 The Bureau for Child Support Enforcement or the  
2 parties to the case may bring a petition to modify the  
3 medical support obligations upon notification of any  
4 new source of insurance coverage or any change in  
5 circumstances as set forth in section one hundred six,  
6 article fourteen of this chapter.

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

*M. White*  
.....  
Chairman Senate Committee

*[Signature]*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*Darrell E. Johnson*  
.....  
Clerk of the Senate

*Gregg M. Sisk*  
.....  
Clerk of the House of Delegates

*Carl Raymond Tomlin*  
.....  
President of the Senate

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

The within ..... *is approved* ..... this  
the *4<sup>th</sup>* Day of *April* ....., 2007.

*[Signature]*  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

APR 02 2007

Time 3:25 pm