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WEST VIRGINIA LEGISLATURE

SEVENTY-EIGHTH LEGISLATURE

REGULAR SESSION, 2008

SECRETARY OF STATE

ENROLLED

COMMITTEE SUBSTITUTE

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Senate Bill No. 504

(SENATORS BOWMAN AND UNGER, *original sponsors*)

[Passed March 8, 2008; in effect ninety days from passage.]

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AN ACT to amend and reenact §38-3-18 of the Code of West Virginia, 1931, as amended; to amend and reenact §48-1-205, §48-1-225, §48-1-230 and §48-1-302 of said code; to amend and reenact §48-11-103 and §48-11-105 of said code; to amend said code by adding thereto a new section,

designated §48-13-804; to amend and reenact §48-14-102, §48-14-106, §48-14-203, §48-14-302, §48-14-404, §48-14-407, §48-14-408, §48-14-502, §48-14-503, §48-14-701 and §48-14-801 of said code; to amend said code by adding thereto a new section, designated §48-14-108; to amend and reenact §48-15-201 of said code; to amend and reenact §48-17-101, §48-17-102, §48-17-103, §48-17-105, §48-17-106, §48-17-107 and §48-17-109 of said code; to amend and reenact §48-18-102, §48-18-118, §48-18-120, §48-18-202, §48-18-205 and §48-18-206 of said code; and to amend said code by adding thereto a new section, designated §48-18-118a, all relating generally to child support enforcement; providing for extension of statute of limitations for child support in certain instances; clarifying findings of fact in court orders when income is attributed for purposes of setting child support; clarifying that prescription drugs are included in medical support; providing that inmate concession accounts are income for withholding purposes; reducing the interest rate on unpaid child support from ten percent per annum to five percent per annum; providing for support to continue past age eighteen by operation of law under certain circumstances; establishing a procedure for refunding of properly withheld amounts when a support order is modified; requiring copy of modification order be sent to Bureau for Child Support Enforcement within five days; requiring family court judges enter default orders setting child support; allowing the Bureau for Child Support Enforcement to bring an action for medical support; providing refund procedures when a party to a support order is deceased; clarifying that an affidavit of accrued support may be filed in the court where the original order was entered; allowing the collection through income withholding of court-ordered fees; clarifying that withholding limitations do not apply to bonuses; creating consistency among civil contempt penalties; authorizing the

Bureau for Child Support Enforcement to collect an additional two hundred dollars when arrearage triggers are met; eliminating the requirement that the Bureau for Child Support Enforcement attorney meet with the parties prior to the posting of a bond; authorizing the Tax Commissioner to deny issuance or reissuance of a business license; reconstituting the Child Support Enforcement Commission to allow for review of the child support formula by the commission; clarifying the duties of the Bureau for Child Support Enforcement Commissioner with respect to review of the child support formula; requiring report to the Legislative Oversight Commission on Health and Human Resources Accountability; allowing the Tax Commissioner to supply names and addresses of an obligor's employer to the Bureau for Child Support Enforcement for enforcement of support obligations; allowing collection of overpayments to support obligees from state tax refunds; requiring that parties receive monthly statements of child support accounts; requiring Bureau for Child Support Enforcement determine when person owing child support will be incarcerated more than six months and modify child support; requiring Bureau for Child Support Enforcement send notice to obligors in arrears one thousand dollars or more of modification options; requiring petition for contempt in certain cases; requiring motion for modification in certain cases; providing Bureau for Child Support Enforcement one year to send notification of modification options to obligors currently in arrears one thousand dollars or more; clarifying that when attorneys for the Bureau for Child Support Enforcement enter a proposed order to modify a child support obligation without objection, a modification order will be entered; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That §38-3-18 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §48-1-205, §48-1-225, §48-1-230 and §48-1-302 of said code be amended and reenacted; that §48-11-103 and §48-11-105 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §48-13-804; that §48-14-102, §48-14-106, §48-14-203, §48-14-302, §48-14-404, §48-14-407, §48-14-408, §48-14-502, §48-14-503, §48-14-701 and §48-14-801 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §48-14-108; that §48-15-201 of said code be amended and reenacted; that §48-17-101, §48-17-102, §48-17-103, §48-17-105, §48-17-106, §48-17-107 and §48-17-109 of said code be amended and reenacted; that §48-18-102, §48-18-118, §48-18-120, §48-18-202, §48-18-205 and §48-18-206 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §48-18-118a, all to read as follows:

CHAPTER 38. LIENS.

ARTICLE 3. JUDGMENT LIENS.

§38-3-18. Limitations on enforcement of judgments.

1 (a) On a judgment, execution may be issued within ten
2 years after the date thereof. Where execution issues
3 within ten years as aforesaid, other executions may be
4 issued on such judgment within ten years from the
5 return day of the last execution issued thereon, on
6 which there is no return by an officer, or which has
7 been returned unsatisfied.

8 (b) For any order for child support in an action filed
9 on and after the amendment and reenactment of this
10 section during the legislative session of two thousand
11 eight, an execution may be issued upon a judgment for

12 child support, as those terms are defined in chapter
13 forty-eight of this code, within ten years after the
14 emancipation of the child: *Provided*, That in cases
15 where the support order is for more than one child, the
16 limitations set forth in subsection (a) of this section
17 commence when the youngest child who is the subject
18 of the order on which the execution is based reaches the
19 age of eighteen or is otherwise legally emancipated.

20 (c) An action, suit or scire facias may be brought
21 upon a judgment where there has been a change of
22 parties by death or otherwise at any time within ten
23 years next after the date of the judgment; or within ten
24 years from the return day of the last execution issued
25 thereon on which there is no return by an officer or
26 which has been returned unsatisfied. But if such
27 action, suit or scire facias be against the personal
28 representative of a decedent, it shall be brought within
29 five years from the qualification of such representative.

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 1. GENERAL PROVISIONS; DEFINITIONS.

§48-1-205. Attributed income defined.

1 (a) "Attributed income" means income not actually
2 earned by a parent but which may be attributed to the
3 parent because he or she is unemployed, is not working
4 full time or is working below full earning capacity or
5 has nonperforming or underperforming assets. Income
6 may be attributed to a parent if the court evaluates the
7 parent's earning capacity in the local economy (giving
8 consideration to relevant evidence that pertains to the
9 parent's work history, qualifications, education and
10 physical or mental condition) and determines that the

11 parent is unemployed, is not working full time or is
12 working below full earning capacity. Income may also
13 be attributed to a parent if the court finds that the
14 obligor has nonperforming or underperforming assets.

15 (b) If an obligor: (1) Voluntarily leaves employment or
16 voluntarily alters his or her pattern of employment so
17 as to be unemployed, underemployed or employed
18 below full earning capacity; (2) is able to work and is
19 available for full-time work for which he or she is fitted
20 by prior training or experience; and (3) is not seeking
21 employment in the manner that a reasonably prudent
22 person in his or her circumstances would do, then an
23 alternative method for the court to determine gross
24 income is to attribute to the person an earning capacity
25 based on his or her previous income. If the obligor's
26 work history, qualifications, education or physical or
27 mental condition cannot be determined, or if there is an
28 inadequate record of the obligor's previous income, the
29 court may, as a minimum, base attributed income on
30 full-time employment (at forty hours per week) at the
31 federal minimum wage in effect at the time the support
32 obligation is established. In order for the court to
33 consider attribution of income, it is not necessary for
34 the court to find that the obligor's termination or
35 alteration of employment was for the purpose of
36 evading a support obligation.

37 (c) Income shall not be attributed to an obligor who is
38 unemployed or underemployed or is otherwise working
39 below full earning capacity if any of the following
40 conditions exist:

41 (1) The parent is providing care required by the
42 children to whom both of the parties owe a legal

43 responsibility for support and such children are of
44 preschool age or are handicapped or otherwise in a
45 situation requiring particular care by the parent;

46 (2) The parent is pursuing a plan of economic
47 self-improvement which will result, within a reasonable
48 time, in an economic benefit to the children to whom
49 the support obligation is owed, including, but not
50 limited to, self-employment or education: *Provided*,
51 That if the parent is involved in an educational
52 program, the court shall ascertain that the person is
53 making substantial progress toward completion of the
54 program;

55 (3) The parent is, for valid medical reasons, earning
56 an income in an amount less than previously earned; or

57 (4) The court makes a written finding that other
58 circumstances exist which would make the attribution
59 of income inequitable: *Provided*, That in such case the
60 court may decrease the amount of attributed income to
61 an extent required to remove such inequity.

62 (d) The court may attribute income to a parent's
63 nonperforming or underperforming assets, other than
64 the parent's primary residence. Assets may be
65 considered to be nonperforming or underperforming to
66 the extent that they do not produce income at a rate
67 equivalent to the current six-month certificate of
68 deposit rate or such other rate that the court determines
69 is reasonable.

§48-1-225. Extraordinary medical expenses defined.

1 "Extraordinary medical expenses" means uninsured

2 medical expenses in excess of two hundred fifty dollars
3 per year per child which are recurring and can
4 reasonably be predicted by the court at the time of
5 establishment or modification of a child support order.
6 Such expenses shall include, but not be limited to,
7 insurance copayments and deductibles, reasonable costs
8 for necessary orthodontia, dental treatment, asthma
9 treatments, physical therapy, prescription
10 pharmaceuticals, vision therapy and eye care and any
11 uninsured chronic health problem.

§48-1-230. Income defined.

1 "Income" includes, but is not limited to, the
2 following:

3 (1) Commissions, earnings, salaries, wages and other
4 income due or to be due in the future to an individual
5 from his or her employer and successor employers;

6 (2) Any payment due or to be due in the future to an
7 individual from a profit-sharing plan, a pension plan,
8 an insurance contract, an annuity, Social Security,
9 unemployment compensation, supplemental
10 employment benefits, workers' compensation benefits,
11 state lottery winnings and prizes and overtime pay;

12 (3) Any amount of money which is owing to an
13 individual as a debt from an individual, partnership,
14 association, public or private corporation, the United
15 States or any federal agency, this state or any political
16 subdivision of this state, any other state or a political
17 subdivision of another state or any other legal entity
18 which is indebted to the obligor;

19 (4) Any amount of money which is held by the
20 Regional Jail Authority for an inmate in an inmate's
21 concession account.

§48-1-302. Calculation of interest.

1 (a) Notwithstanding any other provisions of the code,
2 if an obligation to pay interest arises under this
3 chapter, the rate of interest is five percent per annum
4 and proportionate thereto for a greater or lesser sum, or
5 for a longer or shorter time. Interest awarded shall only
6 be simple interest and nothing in this section may be
7 construed to permit awarding of compound interest.
8 Interest accrues only upon the outstanding principal of
9 such obligation.

10 (b) Notwithstanding any other provision of law, no
11 court may award or approve prejudgment interest in a
12 domestic relations action against a party unless the
13 court finds, in writing, that the party engaged in
14 conduct that would violate subsection (b), Rule 11 of
15 the West Virginia Rules of Civil Procedure. If
16 prejudgment interest is awarded, the court shall
17 calculate prejudgment interest from the date the
18 offending representation was presented to the court
19 pursuant to subsection (a) of this section.

20 (c) Upon written agreement by both parties, an
21 obligor may petition the court to enter an order
22 conditionally suspending the collection of all or part of
23 the interest that has accrued on past-due child support
24 prior to the date of the agreement: *Provided*, That said
25 agreement shall also establish a reasonable payment
26 plan which is calculated to fully discharge all
27 arrearages within twenty-four months. Upon

28 successful completion of the payment plan, the court
29 shall enter an order which permanently relieves the
30 obligor of the obligation to pay the accrued interest. If
31 the obligor fails to comply with the terms of the written
32 agreement, then the court shall enter an order which
33 reinstates the accrued interest.

34 (d) Amendments to this section enacted by the
35 Legislature during the two thousand six regular session
36 shall become effective the first day of January, two
37 thousand seven.

ARTICLE 11. SUPPORT OF CHILDREN.

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

1 (a) An order for child support shall provide that
2 payments of such support continue beyond the date
3 when the child reaches the age of eighteen, so long as
4 the child is unmarried and residing with a parent,
5 guardian or custodian and is enrolled as a full-time
6 student in a secondary educational or vocational
7 program and making substantial progress towards a
8 diploma: *Provided*, That such payments may not extend
9 past the date that the child reaches the age of twenty.

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

14 (c) The reenactment of this section during the regular
15 session of the Legislature in the year one thousand nine
16 hundred ninety-four shall not, by operation of law,
17 have any effect upon or vacate any order or portion
18 thereof entered under the prior enactment of this

19 section which awarded educational and related
20 expenses for an adult child accepted or enrolled and
21 making satisfactory progress in an educational program
22 at a certified or accredited college. Any such order or
23 portion thereof shall continue in full force and effect
24 until the court, upon motion of a party, modifies or
25 vacates the order upon a finding that:

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

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

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

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

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

§48-11-105. Modification of child support order.

1 (a) The court may modify a child support order, for
2 the benefit of the child, when a motion is made that
3 alleges a change in the circumstances of a parent or
4 another proper person or persons. A motion for
5 modification of a child support order may be brought
6 by a custodial parent or any other lawful custodian or
7 guardian of the child, by a parent or other person
8 obligated to pay child support for the child or by the
9 Bureau for Child Support Enforcement of the
10 Department of Health and Human Resources of this
11 state.

12 (b) The provisions of the order may be modified if
13 there is a substantial change in circumstances. If
14 application of the guideline would result in a new order
15 that is more than fifteen percent different, then the
16 circumstances are considered a substantial change.

17 (c) An order that modifies the amount of child support
18 to be paid shall conform to the support guidelines set
19 forth in section one hundred one, article thirteen, *et*
20 *seq.*, of this chapter unless the court disregards the
21 guidelines or adjusts the award as provided in section
22 seven hundred two of said article.

23 (d) The Supreme Court of Appeals shall make
24 available to the courts a standard form for a petition for
25 modification of an order for support, which form will
26 allege that the existing order should be altered or
27 revised because of a loss or change of employment or
28 other substantial change affecting income or that the
29 amount of support required to be paid is not within
30 fifteen percent of the child support guidelines. The

31 clerk of the circuit court and the secretary-clerk of the
32 family court shall make the forms available to persons
33 desiring to represent themselves in filing a motion for
34 modification of the support award.

35 (e) Upon entry of an order modifying a child support
36 amount the court shall, no later than five days from
37 entry of the order, provide a copy of the modified order
38 to the Bureau for Child Support Enforcement. If an
39 overpayment to one of the parties occurs as a result of
40 the modified terms of the order, funds properly
41 withheld by the Bureau for Child Support Enforcement
42 pursuant the terms of the original order shall not be
43 returned until such time as the Bureau for Child
44 Support Enforcement receives repayment from the
45 party in possession of the overpayment.

ARTICLE 13. GUIDELINES FOR CHILD SUPPORT AWARDS.

§48-13-804. Default orders.

1 (a) In any proceeding in which support is to be
2 established, if a party has been served with proper
3 pleadings and notified of the date, time and place of a
4 hearing before a family court judge and does not enter
5 an appearance or file a response, the family court judge
6 shall prepare a default order for entry establishing the
7 defaulting party's child support obligation consistent
8 with the child support guidelines contained in this
9 article.

10 (1) When applying the child support guidelines, the
11 court may accept financial information from the other
12 party as accurate, pursuant to rule 13(b) of the Rules of
13 Practice and Procedure for Family Court; or

14 (2) If financial information is not available, the court
15 may attribute income to the party based upon either:

16 (i) The party's work history;

17 (ii) Minimum wage, if appropriate; or

18 (iii) At a minimum, enter a child support order in a
19 nominal amount unless, in the court's discretion, a zero
20 support order should be entered.

21 (b) All orders shall provide for automatic withholding
22 from income of the obligor pursuant to part 4, article
23 fourteen of this chapter.

**ARTICLE 14. REMEDIES FOR THE ENFORCEMENT OF SUPPORT
OBLIGATIONS.**

§48-14-102. Who may bring action for child support order.

1 An action may be brought under the provisions of
2 section one hundred one of this article by:

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

7 (2) A primary caretaker of a child;

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

10 (4) The Bureau for Child Support Enforcement, on
11 behalf of the state, when the Department of Health and
12 Human Resources is providing assistance on behalf of
13 the child or the person to whom a duty of support is

14 owed, in the form of temporary assistance to needy
15 families or medical assistance, and any right to support
16 has been assigned to the department or in any other
17 case wherein a party has applied for child support
18 enforcement services from the Bureau for Child
19 Support Enforcement.

§48-14-106. Modification of support order.

1 (a) At any time after the entry of an order for
2 support, the court may, upon the verified petition of an
3 obligee or the obligor, revise or alter such order and
4 make a new order as the altered circumstances or needs
5 of a child, an obligee or the obligor may render
6 necessary to meet the ends of justice.

7 (b) The Supreme Court of Appeals shall make
8 available to the family courts a standard form for a
9 petition for modification of an order for support, which
10 form will allege that the existing order should be
11 altered or revised because of a loss or change of
12 employment or other substantial change affecting
13 income or that the amount of support required to be
14 paid is not within fifteen percent of the child support
15 guidelines. The clerk of the circuit court and the
16 secretary-clerk of the family court shall make such
17 forms available to persons desiring to petition the court
18 pro se for a modification of the support award.

19 (c) Upon entry of an order modifying a child support
20 amount the court shall, no later than five days from
21 entry of the order, provide a copy of the modified order
22 to the Bureau for Child Support Enforcement. If an
23 overpayment to one of the parties occurs as a result of
24 the modified terms of the order, funds properly

25 withheld by the Bureau for Child Support Enforcement
26 pursuant the terms of the original order shall not be
27 returned until such time as the Bureau for Child
28 Support Enforcement receives repayment from the
29 party in possession of the overpayment.

§48-14-108. Deceased parties in support cases.

1 (a) In the event of the death of any party to a domestic
2 relations support action, support payments or a refund
3 of support payments due to the party by the obligee,
4 obligor or the Bureau for Child Support Enforcement,
5 not in excess of one thousand dollars, may, upon proper
6 demand, be paid, in the absence of actual notice of the
7 pendency of probate proceedings, without requiring
8 letters testamentary or of administration in the
9 following order of preference to decedent's:

10 (1) Surviving spouse;

11 (2) Children eighteen years of age and over in equal
12 shares;

13 (3) Father and mother, or survivor; and

14 (4) Sisters and brothers.

15 (b) Payments under this section shall release and
16 discharge the obligee, obligor or the Bureau for Child
17 Support Enforcement to the amount of such payment.

§48-14-203. Affidavit of accrued support.

1 (a) The affidavit of accrued support may be filed with
2 the clerk of the circuit court in the county in which the

3 obligee or the obligor resides, in the county where the
4 order originated or where the obligor's source of income
5 is located.

6 The affidavit may be filed when a payment required
7 by such order has been delinquent, in whole or in part,
8 for a period of fourteen days.

9 (b) The affidavit shall:

10 (1) Identify the obligee and obligor by name and
11 address, and shall list the last four digits of the
12 obligor's Social Security number or numbers, if known;

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

15 (3) State the total amount of accrued support which
16 has not been paid by the obligor; and

17 (4) State the name and address of the obligor's source
18 of income, if known.

§48-14-302. Affidavit of accrued support.

1 The affidavit and abstract as provided in section four,
2 article three, chapter thirty-eight of this code shall be
3 filed with the clerk of the county commission in which
4 the real property is located or in the county where the
5 order originated. The affidavit shall:

6 (1) Identify the obligee and obligor by name and
7 address, and shall list the last four digits of the
8 obligor's Social Security number or numbers, if known;

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

11 (3) Allege that the support obligor is at least thirty
12 days in arrears in the payment of child support; and

13 (4) State the total amount of accrued support which
14 has not been paid by the obligor.

**§48-14-404. Enforcement of withholding by Bureau for Child
Support Enforcement.**

1 The withholding from an obligor's income of amounts
2 payable as spousal or child support or fees awarded by
3 a court of competent jurisdiction to the state in
4 connection with the establishment of paternity and
5 support or the enforcement of a support order shall be
6 enforced by the Bureau for Child Support Enforcement
7 in accordance with the provisions of part 4 of this
8 article. If an overpayment of spousal or child support
9 occurs and an arrearage exists, the Bureau for Child
10 Support Enforcement shall first offset the overpayment
11 of spousal or child support against the arrearage. If no
12 arrears exists with which to offset the overpayment
13 or the arrearage is not sufficient to offset the
14 overpayment and the obligee does not enter into a
15 repayment agreement with the Bureau for Child
16 Support Enforcement, the Bureau for Child Support
17 Enforcement may issue an income withholding to the
18 obligee's employer to recoup the amount of the
19 overpayment. The income withholding shall be in the
20 same manner as provided in this article: *Provided*, That
21 in no circumstances may the amount withheld exceed
22 thirty-five percent of the disposable earnings for the
23 period, regardless of the length of time that the

24 overpayment has been owed.

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

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

13 (1) The amount to be withheld from the obligor's
14 disposable earnings and a statement that the amount to
15 be withheld for support and other purposes, including
16 the fee specified under subdivision (3) of this
17 subsection, may not be in excess of the maximum
18 amounts permitted under Section 303(b) of the federal
19 Consumer Credit Protection Act or limitations imposed
20 under the provisions of this code;

21 (2) That the source of income shall send the amount to
22 be withheld from the obligor's income to the Bureau for
23 Child Support Enforcement, along with such
24 identifying information as may be required by the
25 bureau, the same day that the obligor is paid;

26 (3) That, in addition to the amount withheld under the
27 provisions of subdivision (1) of this subsection, the
28 source of income may deduct a fee, not to exceed one

29 dollar, for administrative costs incurred by the source
30 of income for each withholding;

31 (4) That withholding is binding on the source of
32 income until further notice by the Bureau for Child
33 Support Enforcement or until the source of income
34 notifies the Bureau for Child Support Enforcement of
35 a termination of the obligor's employment in
36 accordance with the provisions of section four hundred
37 twelve of this article;

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

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

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

52 (8) That when an employer has more than one
53 employee who is an obligor who is subject to wage
54 withholding from income under the provisions of this
55 code, the employer may combine all withheld payments
56 to the Bureau for Child Support Enforcement when the
57 employer properly identifies each payment with the
58 information listed in this part. A source of income is

59 liable to an obligee, including the State of West Virginia
60 or the Department of Health and Human Resources
61 where appropriate, for any amount which the source of
62 income fails to identify with the information required
63 by this part and is therefore not received by the obligee;

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

69 (10) That the source of income shall notify the Bureau
70 for Child Support Enforcement promptly when the
71 obligor terminates his or her employment or otherwise
72 ceases receiving income from the source of income and
73 shall provide the obligor's last known address and the
74 name and address of the obligor's new source of income,
75 if known.

76 (b) The Bureau for Child Support Enforcement shall,
77 by administrative rule, establish procedures for
78 promptly refunding to obligors amounts which have
79 been improperly withheld under the provisions of this
80 part. When a court reduces an order of support, the
81 Bureau for Child Support Enforcement is not liable for
82 refunding amounts which have been withheld pursuant
83 to a court order enforceable at the time that the bureau
84 received the funds unless the funds were kept by the
85 state. The obligee or obligor who received the benefit
86 of the withheld amounts shall be liable for promptly
87 refunding any amounts which would constitute an
88 overpayment of the support obligation.

§48-14-408. Determination of amounts to be withheld.

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

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

16 (2) Prior to the first day of January, two thousand
17 one, when none of the withholding is for amounts which
18 came due prior to such twelve-week period, then:

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

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

29 (3) Prior to the first day of January, two thousand
30 one, when a part of the withholding is for amounts

31 which came due prior to such twelve-week period, then:

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

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

42 (4) Beginning the first day of January, two thousand
43 one, when none of the withholding is for amounts which
44 came due prior to such twelve-week period, then:

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

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

55 (5) Beginning the first day of January, two thousand
56 one, when a part of the withholding is for amounts
57 which came due prior to such twelve-week period, then:

58 (A) When the obligor is supporting another spouse or

59 dependent child other than the spouse or child for
60 whom the proposed withholding is being sought, the
61 amount withheld may not exceed forty-five percent of
62 the obligor's disposable earnings for that week; and

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

68 (6) In addition to the percentage limitations set forth
69 in subdivisions (2) and (3) of this section, it shall be a
70 further limitation that when the current month's
71 obligation plus arrearages are being withheld from
72 salaries or wages in no case shall the total amounts
73 withheld for the current month's obligation plus
74 arrearage exceed the amounts withheld for the current
75 obligation by an amount greater than twenty-five
76 percent of the current monthly support obligation.

77 (7) The provisions of this section shall apply directly
78 to the withholding of disposable earnings of an obligor
79 regardless of whether the obligor is paid on a weekly,
80 biweekly, monthly or other basis.

81 (8) The Bureau for Child Support Enforcement has
82 the authority to prorate the current support obligation
83 in accordance with the pay cycle of the source of
84 income. This prorated current support obligation shall
85 be known as the "adjusted support obligation". The
86 current support obligation or the adjusted support
87 obligation is the amount, if unpaid, on which interest
88 will be charged.

89 (9) When an obligor acts so as to purposefully
90 minimize his or her income and to thereby circumvent
91 the provisions of part 4 of this article which provide for
92 withholding from income of amounts payable as
93 support, the amount to be withheld as support
94 payments may be based upon the obligor's potential
95 earnings rather than his or her actual earnings, and
96 such obligor may not rely upon the percentage
97 limitations set forth in this subsection which limit the
98 amount to be withheld from disposable earnings.

99 (10) Notwithstanding any other provision of this
100 section, the Bureau for Child Support Enforcement may
101 withhold not more than fifty percent of any earnings
102 denominated as an employment related bonus to satisfy
103 an outstanding child support arrearage.

**§48-14-502. Willful failure or refusal to comply with order to
pay support.**

1 If the court finds that the obligor willfully failed or
2 refused to comply with an order requiring the payment
3 of support, the court shall find the obligor in contempt
4 and may do one or more of the following:

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

7 (2) After notice to both parties and a hearing, if
8 requested by a party, on any proposed modification of
9 the order, modify the order in the same manner and
10 under the same requirements as an order requiring the
11 payment of support may be modified under the
12 provisions of Part 5-701, *et seq.* A modification sought
13 by an obligor, if otherwise justified, shall not be denied

14 solely because the obligor is found to be in contempt.

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

18 (4) Order the contemnor to pay support in accordance
19 with a plan approved by the Bureau for Child Support
20 Enforcement or to participate in such work activities as
21 the court deems appropriate.

22 (5) If appropriate under the provisions of section
23 1-304:

24 (A) Commit the contemnor to the regional jail; or

25 (B) Commit the contemnor to the regional jail with the
26 privilege of leaving the jail, during such hours as the
27 court determines and under such supervision as the
28 court considers necessary, for the purpose of allowing
29 the contemnor to go to and return from his or her place
30 of employment.

§48-14-503. Limitation on length of commitment.

1 (a) In a commitment under subdivision (5), section five
2 hundred two of this article shall the court shall confine
3 the contemnor for an indeterminate period not to
4 exceed six months or until such time as the contemnor
5 has purged himself or herself, whichever shall first
6 occur.

7 (b) An obligor committed under subdivision (5),
8 section five hundred two of this article shall be released
9 by court order if the court has reasonable cause to

10 believe that the obligor will comply with the court's
11 order.

**§48-14-701. Posting of bonds or giving security to guarantee
payment of overdue support.**

1 An obligor with a pattern of overdue support may be
2 required by order of the court to post bond, give
3 security or some other guarantee to secure payment of
4 overdue support. The guarantee may include an order
5 requiring that stocks, bonds or other assets of the
6 obligor be held in escrow by the court until the obligor
7 pays the support.

**§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
3 authority to increase the monthly support payments of
4 an obligor by as much as one hundred dollars per
5 month to satisfy the arrearage when:

6 (1) An obligor has failed to make payments as
7 required by a support order and arrears are equal to an
8 amount of support payable for six months if the order
9 requires support to be paid in monthly installments; or

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

15 (b) For the purpose of securing overdue support, the

16 Bureau for Child Support Enforcement has the
17 authority to increase the monthly support payments of
18 an obligor by as much as two hundred dollars per
19 month to satisfy the arrearage when:

20 (1) An obligor's gross income equals or exceeds
21 sixty-five thousand dollars; and,

22 (2) An obligor has failed to make payments as
23 required by a support order and arrears are equal to an
24 amount of support payable for twelve months if the
25 order requires support to be paid in monthly
26 installments; or

27 (3) An obligor has failed to make payments as
28 required by a support order and arrears are equal to an
29 amount of support payable for fifty-four weeks if the
30 order requires support to be paid in weekly or biweekly
31 installments.

32 (c) An increase in monthly support under this section
33 will be in addition to any amounts withheld from
34 income pursuant to of this article.

35 (d) This increase in monthly support may be enforced
36 through the withholding process.

**ARTICLE 15. ENFORCEMENT OF SUPPORT ORDER THROUGH ACTION
AGAINST LICENSE.**

PART 2. ACTION AGAINST LICENSE.

§48-15-201. Licenses subject to action.

1 The following licenses are subject to an action against
2 a license as provided for in this article:

3 (1) A business registration certificate issued under
4 article twelve, chapter eleven of this code authorizing
5 a person to transact business in the State of West
6 Virginia;

7 (2) A permit or license issued under chapter
8 seventeen-b of this code authorizing a person to drive
9 a motor vehicle;

10 (3) A commercial driver's license issued under chapter
11 seventeen-e of this code authorizing a person to drive a
12 class of commercial vehicle;

13 (4) A permit, license or stamp issued under article two
14 or two-b, chapter twenty of this code regulating a
15 person's activities for wildlife management purposes,
16 authorizing a person to serve as an outfitter or guide or
17 authorizing a person to hunt or fish;

18 (5) A license or registration issued under chapter
19 thirty of this code authorizing a person to practice or
20 engage in a profession or occupation;

21 (6) A license issued under article twelve, chapter
22 forty-seven of this code authorizing a person to transact
23 business as a real estate broker or real estate
24 salesperson;

25 (7) A license or certification issued under article
26 fourteen, chapter thirty-seven of this code authorizing
27 a person to transact business as a real estate appraiser;

28 (8) A license issued under article twelve, chapter
29 thirty-three of this code authorizing a person to
30 transact insurance business as an agent, broker or

31 solicitor;

32 (9) A registration made under article two, chapter
33 thirty-two of this code authorizing a person to transact
34 securities business as a broker-dealer, agent or
35 investment advisor;

36 (10) A license issued under article twenty-two,
37 chapter twenty-nine of this code authorizing a person
38 to transact business as a lottery sales agent;

39 (11) A license issued under article thirty-two or
40 thirty-four, chapter sixteen of this code authorizing
41 persons to pursue a trade or vocation in asbestos
42 abatement or radon mitigation;

43 (12) A license issued under article eleven, chapter
44 twenty-one of this code authorizing a person to act as
45 a contractor;

46 (13) A license issued under article two-c, chapter
47 nineteen of this code authorizing a person to act as an
48 auctioneer; and

49 (14) A license, permit or certificate issued under
50 chapter nineteen of this code authorizing a person to
51 sell, market or distribute agricultural products or
52 livestock.

ARTICLE 17. WEST VIRGINIA SUPPORT ENFORCEMENT COMMISSION.

**§48-17-101. Creation of Support Enforcement Commission;
number of members.**

1 The West Virginia Support Enforcement Commission,
2 consisting of nine members, is hereby created in the

3 Department of Health and Human Resources and may
4 use the administrative support and services of that
5 department. The commission is not subject to control,
6 supervision or direction by the Department of Health
7 and Human Resources, but is an independent, self-
8 sustaining commission that shall have the powers and
9 duties specified in this chapter.

10 The commission is a part-time commission whose
11 members perform such duties as specified in this
12 chapter. The ministerial duties of the commission shall
13 be administered and carried out by the Commissioner
14 of the Bureau for Child Support Enforcement, with the
15 assistance of such staff of the Department of Health
16 and Human Resources as the Secretary may assign.

17 Each member of the commission shall devote the time
18 necessary to carry out the duties and obligations of the
19 office and the seven members appointed by the
20 Governor may pursue and engage in another business,
21 occupation or gainful employment that is not in conflict
22 with the duties of the commission.

23 While the commission is self-sustaining and
24 independent, it, its members, its employees and the
25 commissioner are subject to article nine-a, chapter six
26 of this code, chapter six-b of this code, chapter twenty-
27 nine-a of this code and chapter twenty-nine-b of this
28 code.

**§48-17-102. Appointment of members of Support
Enforcement Commission; qualifications
and eligibility.**

1 (a) Of the nine members of the commission, seven

2 members are to be appointed by the governor:
3 *Provided*, That no more than five members of the
4 commission may belong to the same political party.

5 (1) One member is to be a lawyer licensed by, and in
6 good standing with, the West Virginia State Bar, with
7 at least five years of professional experience in
8 domestic relations law and the establishment and
9 enforcement of support obligations;

10 (2) One member is to be a person experienced as a
11 public administrator in the supervision and regulation
12 of a governmental agency;

13 (3) One member is to be an employer experienced in
14 withholding support payments from the earnings of
15 obligors;

16 (4) One member is to be a practicing family court
17 judge, as an ex officio member, who will serve in an
18 advisory capacity, without compensation or voting
19 rights; and

20 (5) Three members are to be representatives of the
21 public at large, with at least one being an obligor and
22 one being an obligee.

23 (b) One member is to be the commissioner of the
24 Bureau for Children and Families, Department of
25 Health and Human Resources or his or her designee.

26 (c) The Commissioner of the Bureau for Child Support
27 Enforcement, or his or her designee, is an ex officio
28 nonvoting member of the commission.

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

§48-17-103. Terms of commission members; conditions of membership.

1 (a) Beginning first day of June, two thousand eight,
2 and every four years thereafter, the Governor shall
3 convene the commission to review the child support
4 guidelines, in accordance with the Code of Federal
5 Regulations, Part 45, Section 302.56(C)(3)(e).

6 (b) The Governor shall make appointments by the
7 first day of June, two thousand eight, and on the first
8 day of June every four years thereafter.

9 (c) The commissioner shall report the commission's
10 findings and recommendations to the Legislative
11 Oversight Commission on Health and Human Resources
12 Accountability by the first day of July, two thousand
13 nine, and by the first day of July every four years
14 thereafter.

15 (d) The commissioners terms shall expire on the first
16 day of July in the year in which they submit the
17 required report Legislature as set forth in subsection (c)
18 of this section.

§48-17-105. Commission chairman.

1 The Commissioner of the Bureau for Child Support
2 Enforcement shall serve as the chair of the commission.

§48-17-106. Compensation of members; reimbursement for expenses.

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

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

§48-17-107. Meeting requirements.

1 (a) The commission shall meet at least twice during
2 the one-year term for the sole purpose of reviewing the
3 child support guidelines set forth in article thirteen of
4 this chapter. The commission may determine if it needs
5 to convene more frequently to effectively study the
6 guidelines, but shall not meet more than eight times
7 during the one-year term.

8 (b) Four voting members of the commission are a
9 quorum for the transaction of any business and for the
10 performance of any duty.

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

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

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

**§48-17-109. General duties of support enforcement
commission.**

1 (a) Federal law requires that each state periodically
2 review the formula used to set child support obligations
3 to determine appropriate awards for the support of
4 children. States are required to consider current
5 research and data on the costs of and expenditures
6 necessary for rearing children. A process for review of
7 the guidelines should be established to ensure the
8 integrity of the formula and reviews undertaken to
9 comply with federal law.

10 (b) The commission shall review and analyze:

11 (1) The current child support guidelines;

12 (2) Relevant research and data regarding the costs of
13 child rearing;

14 (3) Research and data on the application of, and
15 deviations from, the child support guidelines;

16 (4) Current law, administrative rules and practices
17 regarding child support; and

18 (5) Any other data the commission deems relevant to
19 the review of the current child support guidelines.

ARTICLE 18. BUREAU FOR CHILD SUPPORT ENFORCEMENT.

§48-18-102. Appointment of commissioner; duties; compensation.

1 (a) There is hereby created the position of
2 commissioner. The commissioner shall:

3 (1) Be appointed by the secretary;

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

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

9 (4) Be a lawyer licensed by, and in good standing
10 with, the West Virginia State Bar; and

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

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

19 (b) The duties of the commissioner shall include the
20 following:

21 (1) To direct and administer the daily operations of
22 the Bureau for Child Support Enforcement;

23 (2) To administer the Child Support Enforcement

24 Fund created pursuant to section one hundred seven of
25 this article;

26 (3) To chair the commission set forth in article
27 seventeen of this chapter for the purpose of conducting
28 the federally required review of the child support
29 formula every four years and make a report to the
30 Legislative Oversight Commission on Health and
31 Human Resources Accountability of the commission's
32 findings;

33 (4) To keep the records and papers of the commission,
34 including a record of each proceeding; and

35 (5) To prepare, issue and submit reports of the
36 commission.

37 (c) All payments to the commissioner as compensation
38 shall be made from the Child Support Enforcement
39 Fund. The commissioner is entitled to:

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

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

§48-18-118. Obtaining support from state income tax refunds.

1 (a) The Tax Commissioner shall establish procedures
2 necessary for the Bureau for Child Support
3 Enforcement to obtain payment of past-due support
4 from state income tax refunds from overpayment made
5 to the Tax Commissioner pursuant to the provisions of
6 article twenty-one, chapter eleven of this code.

7 (b) The Commissioner for the Bureau for Child
8 Support Enforcement shall establish procedures
9 necessary to enforce a support order through a notice to
10 the Tax Commissioner which will cause any refund of
11 state income tax which would otherwise be payable to
12 an obligor to be reduced by the amount of overdue
13 support owed by such obligor.

14 (1) The procedures shall, at a minimum, prescribe:

15 (A) The time or times at which the Bureau for Child
16 Support Enforcement shall serve on the obligor or
17 submit to the Tax Commissioner notices of past-due
18 support;

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

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

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

27 (E) Circumstances when the Bureau for Child Support
28 Enforcement may deduct a twenty-five dollar fee from
29 the obligor's state income tax refund. This procedure
30 may not require a deduction from the state income tax
31 refund of an applicant who is a recipient of assistance
32 from the Bureau for Children and Families in the form
33 of temporary assistance for needy families.

34 (2) Withholding from state income tax refunds may

35 not be pursued unless the Bureau for Child Support
36 Enforcement has examined the obligor's pattern of
37 payment of support and the obligee's likelihood of
38 successfully pursuing other enforcement actions, and
39 has determined that the amount of past-due support
40 which will be owed, at the time the withholding is to be
41 made, will be one hundred dollars or more. In
42 determining whether the amount of past-due support
43 will be one hundred dollars or more, the Bureau for
44 Child Support Enforcement shall consider the amount
45 of all unpaid past-due support, including that which
46 may have accrued prior to the time that the Bureau for
47 Child Support Enforcement first agreed to enforce the
48 support order.

49 (c) The Commissioner of the Bureau for Child Support
50 Enforcement shall enter into agreements with the
51 Secretary of the Treasury and the Tax Commissioner,
52 and other appropriate governmental agencies, to secure
53 information relating to the Social Security number or
54 numbers and the address or addresses of any obligor,
55 and the name or names and address or addresses of any
56 employer or employers, in order to provide notice
57 between such agencies to aid the Bureau for Child
58 Support Enforcement in requesting state income tax
59 deductions and to aid the Tax Commissioner in
60 enforcing such deductions. In each such case, the Tax
61 Commissioner, in processing the state income tax
62 deduction, shall notify the Bureau for Child Support
63 Enforcement of the obligor's home address and Social
64 Security number or numbers. The Bureau for Child
65 Support Enforcement shall provide this information to
66 any other state involved in processing the support
67 order;

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

75 (e) The Bureau for Child Support Enforcement may,
76 under the provisions of this section, enforce the
77 collection of past-due support on behalf of a child who
78 has reached the age of majority.

79 (f) The procedure shall, at a minimum, provide that
80 prior to notifying the Tax Commissioner of past-due
81 support, a notice to the obligor as prescribed under
82 subsection (a) of this section shall:

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

85 (2) Instruct the obligor of the steps which may be
86 taken to contest the determination of the Bureau for
87 Child Support Enforcement that past-due support is
88 owed or the amount of the past-due support; and

89 (3) Provide information with respect to the procedures
90 to be followed, in the case of a joint return, to protect
91 the share of the refund which may be payable to
92 another person.

93 (g) If the Bureau for Child Support Enforcement is
94 notified by the Tax Commissioner that the refund from
95 which withholding is proposed to be made is based
96 upon a joint return, and if the past-due support which

97 is involved has not been assigned to the Department of
98 Health and Human Resources, the Bureau for Child
99 Support Enforcement may delay distribution of the
100 amount withheld until such time as the Tax
101 Commissioner notifies the Bureau for Child Support
102 Enforcement that the other person filing the joint
103 return has received his or her proper share of the
104 refund, but such delay shall not exceed six months.

105 (h) In any case in which an amount is withheld by the
106 Tax Commissioner under the provisions of this section
107 and paid to the Bureau for Child Support Enforcement,
108 if the Bureau for Child Support Enforcement
109 subsequently determines that the amount certified as
110 past due was in excess of the amount actually owed at
111 the time the amount withheld is to be distributed, the
112 agency shall pay the excess amount withheld to the
113 obligor thought to have owed the past due support or,
114 in the case of amounts withheld on the basis of a joint
115 return, jointly to the parties filing the return.

116 (i) The amounts received by the Bureau for Child
117 Support Enforcement shall be distributed in
118 accordance with the provisions for distribution set forth
119 in 42 U. S. C. §657.

**§48-18-118a. Obtaining refunds of overpaid support from
state income tax refunds.**

1 (a) Definitions.

2 (1) "Obligee" means the same as that term is defined
3 in section two hundred thirty-four, article one of this
4 chapter.

5 (2) "Obligor" means the same as that term is defined
6 in section two hundred thirty-five, article one of this
7 chapter.

8 (3) "Overpaid support" means the same as that term
9 is defined in section two hundred thirty-five, article one
10 of this chapter.

11 (b) The Tax Commissioner shall cooperate with the
12 Commissioner of the Bureau for Child Support
13 Enforcement in establishing and implementing
14 procedures for the collection of overpaid child support
15 from state income tax refunds that are payable to
16 obligees. The Tax Commissioner shall collect the
17 refunds and send the amounts to the Bureau for Child
18 Support Enforcement for distribution to obligors who
19 made the overpayment.

§48-18-120. Statements of account.

1 The Bureau for Child Support enforcement shall
2 provide monthly statements of their account to each
3 obligor and obligee without charge. The commissioner
4 shall establish procedures whereby an obligor or
5 obligee can contest or correct a statement of account.

§48-18-202. Request for assistance by party.

1 (a) To make a request for assistance under this article,
2 a party shall submit the request in writing to the
3 Bureau for Child Support Enforcement on a form
4 provided by the bureau. The written request form shall
5 include all of the requesting party's information known
6 to the party that is relevant to determine the child
7 support amount. The request shall be accompanied by:

8 (1) A copy of the order being modified, or in the
9 discretion of the bureau, information sufficient to
10 permit the bureau to retrieve or identify the order;

11 (2) A form containing a statement of all of the
12 requesting party's information known to the party that
13 is relevant to determining the amount of child support,
14 including a general statement or argument advancing
15 the reason the request is being made;

16 (3) Copies of documentation reasonably available to
17 the requesting party setting forth all of the requesting
18 party's information that is relevant to determine the
19 amount of child support;

20 (4) A statement setting forth the relevant information
21 pertaining to the responding party's earnings and child
22 support that is known or believed to be true by the
23 requesting party;

24 (5) Copies of any relevant documentation which the
25 requesting party may have in its possession which
26 would be relevant to determining the responding
27 party's child support obligations; and

28 (6) A statement of all other known proceedings
29 pending court proceedings or other pending requests
30 for assistance involving the parties or related to the
31 child or children whose support is being reevaluated.

32 (b) Upon receipt of notification that an obligor is
33 incarcerated in a regional jail or a state or federal
34 correctional facility, the Bureau for Child Support
35 Enforcement shall determine whether the expected
36 incarceration will exceed six months. If the
37 incarceration will exceed six months, the bureau shall

38 file a petition to modify child support.

§48-18-205. Bureau action on request of recalculation and presentation of proposed order.

1 (a) If the bureau determines that no credible
2 information exists to establish finding of a substantial
3 change in circumstances as required by section one
4 hundred five, article eleven of this chapter or section
5 one hundred six, article fourteen of this chapter, the
6 Bureau for Child Support Enforcement shall notify the
7 parties of that fact and notify the parties that the
8 Bureau for Child Support Enforcement will not be
9 preparing a petition of proposed order seeking
10 modification of the parties' child support obligation.
11 Under those circumstances, if the parties disagree with
12 the Bureau for Child Support Enforcement's assessment
13 and wish to independently file a petition for
14 modification, the parties may still seek modification of
15 child support by filing a petition for modification of an
16 order for support with the family court under the
17 provisions of section one hundred five or one hundred
18 six, article eleven of this chapter or under the
19 provisions of section one hundred six, article fourteen
20 of this chapter.

21 (b) If the Bureau for Child Support Enforcement
22 determines that there has been a substantial change of
23 circumstances as required by section one hundred five,
24 article eleven of this chapter or by section one hundred
25 six, article fourteen of this chapter, then the Bureau for
26 Child Support Enforcement shall prepare a petition and
27 proposed order modifying the child support order to be
28 filed with the clerk of the family court.

29 (c) Any such petition filed by the Bureau for Child
30 Support Enforcement filed pursuant to this article shall
31 include the following:

32 (1) A copy of the proposed order;

33 (2) A print-out of the child support guidelines
34 calculations;

35 (3) A notice of the bureau's action;

36 (4) The documents and statements relied upon;

37 (5) Any statement of findings or justification the
38 bureau is required or determines to include; and

39 (6) A form and instructions for filing an objection to
40 the proposed order, should a party wish to do so, which
41 form shall require a statement of the ground or grounds
42 for filing the objection.

43 (d) The Bureau for Child Support Enforcement's
44 proposed order shall be based on the child support
45 guidelines: *Provided*, That the bureau may disregard
46 the child support guidelines or adjust the amount as
47 allowed by section seven hundred two, article thirteen
48 of this chapter in the following instances:

49 (1) When the previous child support order disregarded
50 the child support guidelines, the grounds for the
51 disregarding or adjusting the guidelines are stated in
52 the worksheet or previous order or are agreed upon by
53 the parties, or are otherwise clear, and those grounds
54 continue to exist and can be applied to the current
55 circumstances; or

56 (2) If new grounds for the disregard or adjustment are
57 fully explained in the proposed order.

58 (e) Within six months of the time that a child support
59 obligation becomes one thousand dollars in arrears the
60 Bureau for Child Support Enforcement shall notify the
61 obligor that he or she may be in violation of section
62 twenty-nine, article five, chapter sixty-one of this code,
63 felony nonsupport, should the arrearage increase to eight
64 thousand dollars. The notice shall also advise the
65 obligor of the availability of child support modification,
66 the amnesty program established in section three
67 hundred two, article one of this chapter and the
68 possibility of establishing a payment plan with the
69 bureau: *Provided*, That where the monthly child
70 support obligation is greater than one thousand dollars,
71 the notice shall be sent when the arrearage equals to or
72 greater than three months child support obligation.

73 (1) If the obligor fails to respond within thirty days,
74 the Bureau for Child Support Enforcement shall file a
75 petition for contempt pursuant to section five hundred
76 three, article fourteen of this chapter.

77 (2) If the obligor responds within thirty days, the
78 Bureau for Child Support Enforcement shall review the
79 response and file appropriate pleadings which may
80 include a motion for modification of child support.

81 (3) The Bureau for Child Support Enforcement will
82 have one year from the amendment and reenactment of
83 this section during the two thousand eight legislative
84 session to notify obligors who currently owe one
85 thousand dollars or more in child support arrearages or,
86 where the monthly child support obligation is greater

87 than one thousand dollars, the arrearage is equal to or
88 greater than three months child support obligation, of
89 the child support modification options available to
90 them.

**§48-18-206. Family court action on petition and proposed
order prepared by Bureau for Child Support
Enforcement.**

1 (a) Upon receipt of petition for modification and
2 proposed order prepared by the Bureau for Child
3 Support Enforcement in accordance with the provisions
4 of this article, the circuit clerk shall serve a copy of the
5 petition and the proposed order upon all parties to the
6 proceeding by personal service or by United States
7 certified mail, return receipt requested, and direct the
8 parties to file any objections to the proposed modified
9 child support order within twenty days of the date of
10 receiving such notice.

11 (b) Within five days of the filing of a petition for
12 modification and proposed order, the circuit clerk shall
13 notify the family court.

14 (c) If no party files timely objection to the proposed
15 order or timely requests a hearing on the petition after
16 receiving such notice, then the family court shall
17 proceed to review the petition and proposed order sua
18 sponte, and shall issue the proposed order. If the family
19 court receives no objection, but the family court
20 concludes that the proposed order should not be
21 entered or should be changed, it shall set the matter for
22 hearing.

23 (d) If the family court receives an objection to the

24 petition or proposed order, the family court shall set a
25 date and time for hearing.

26 (e) At any hearing on the proposed order, the family
27 court shall treat the proposed order as a motion for
28 modification made by the party requesting the bureau
29 to initiate the modification. The actions of the family
30 court at a hearing shall be de novo and shall not be an
31 appeal from the bureau's recommended order. The
32 family court shall notify the parties of the hearing and
33 of the parties' rights and the procedures to be followed.

34 (f) The fees to be assessed for filing and service of the
35 petition and the disbursement of the fee for petitions
36 filed pursuant to this section shall be the same as the
37 fee charged by the clerk for petitioning for an expedited
38 modification of a child support order, as set forth in
39 section eleven, article one, chapter fifty-nine of this
40 code.

49 [Enr. Com. Sub. for Com. Sub. for S. B. No. 504

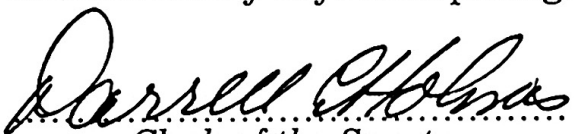
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


.....
Chairman Senate Committee

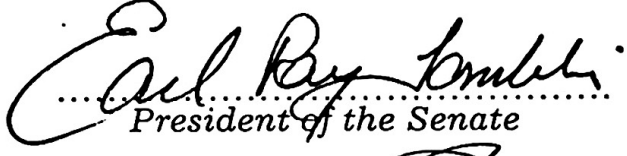

.....
Chairman House Committee


Originated in the Senate.

In effect ninety days from passage.


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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


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Speaker House of Delegates

The within is approved this
the 15th Day of April, 2008.


.....
Governor

PRESENTED TO THE
GOVERNOR

MAR 24 2008

Time 3:05pm