

HB 2167

RECEIVED

97 APR 16 PM 5:08

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1997



ENROLLED

HOUSE BILL No. 2167

Beane, Doyle, Farris, Fleischauer,
(By Delegate S Jenkins and Walters)



Passed March 27, 1997

In Effect From January 1, 1998 Passage

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 2167

(BY DELEGATES BEANE, DOYLE, FARRIS, FLEISCHAUER,
JENKINS AND WALTERS)

[Passed March 27, 1997; in effect January 1, 1998.]

AN ACT to repeal article seven, chapter forty-eight-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section twenty-seven, article two, chapter forty-eight of said code; to amend and reenact section three, article three, chapter forty-eight-a of said code; to amend and reenact section six, article four of said chapter; to amend and reenact sections two and four, article five of said chapter; and to amend said code by adding thereto a new chapter, designated chapter forty-eight-b, all relating to replacing the revised uniform reciprocal enforcement of support act with the uniform interstate family support act.

Be it enacted by the Legislature of West Virginia:

That article seven, chapter forty-eight-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section twenty-seven, article two, chapter forty-eight of said code be amended and reenacted; that section three, article three, chapter forty-eight-a of said code be amended and reenacted; that section six, article four of said chapter be amended and reenacted; that sections two and four, article five of said chapter be amended and reenacted; and that said code be

further amended by adding thereto a new chapter, designated chapter forty-eight-b, all to read as follows:

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 2. DIVORCE, ANNULMENT AND SEPARATE MAINTENANCE.

§48-2-27. Confidentiality of domestic relations court files.

1 All orders in domestic relations cases entered in the
2 civil order books by circuit clerks are public records. For
3 purposes of this section, domestic relations cases shall
4 include actions for divorce, annulment, separate
5 maintenance, paternity, child support, custody, visitation,
6 actions brought under the provisions of the uniform
7 interstate family support act and petitions for writs of
8 habeas corpus wherein the issue is child custody.

9 Upon the filing of a domestic relations case, all
10 pleadings, exhibits or other documents contained in the
11 court file are confidential and not open for public
12 inspection either during the pendency of the case or after
13 the case is closed.

14 When sensitive information has been disclosed during
15 a hearing or in pleadings, evidence, or documents filed in
16 the record, a circuit judge or family law master may, sua
17 sponte or upon motion of a party, order such information
18 sealed in the court file. Sealed documents or court files
19 shall only be opened by order of a circuit judge or family
20 law master: *Provided*, That, in any case pending before a
21 family law master, the master may open and inspect the
22 entire contents of the court file.

23 The parties, their designees, their attorneys, a duly
24 appointed guardian ad litem or any person who has
25 standing to modify or enforce a support order, shall have
26 the right to examine and copy any document in a
27 confidential court file which has not been sealed by order
28 of a circuit judge or family law master. Upon motion and
29 for good cause shown, the circuit court or family law
30 master may permit a person not a party to the action the
31 right to examine and copy such documents as are
32 necessary to further the interests of justice.

**CHAPTER 48A. ENFORCEMENT OF
FAMILY OBLIGATIONS.**

ARTICLE 3. CHILDREN'S ADVOCATE.

§48A-3-3. Duties of the children's advocate.

1 Subject to the control and supervision of the director:

2 (a) The children's advocate shall supervise and direct
3 the secretarial, clerical and other employees in his or her
4 office in the performance of their duties as such
5 performance affects the delivery of legal services. The
6 children's advocate will provide appropriate instruction
7 and supervision to employees of his or her office who are
8 nonlawyers, concerning matters of legal ethics and matters
9 of law, in accordance with applicable state and federal
10 statutes, rules and regulations.

11 (b) In accordance with the requirements of rule 5.4(c)
12 of the rules of professional conduct as promulgated and
13 adopted by the supreme court of appeals, the children's
14 advocate shall not permit a nonlawyer who is employed by
15 the department of health and human resources in a
16 supervisory position over the children's advocate to direct
17 or regulate the advocate's professional judgment in
18 rendering legal services to recipients of services in
19 accordance with the provisions of this chapter; nor shall
20 any nonlawyer employee of the department attempt to
21 direct or regulate the advocate's professional judgment.

22 (c) The children's advocate shall make available to the
23 public an informational pamphlet, designed in con-
24 sultation with the director. The informational pamphlet
25 shall explain the procedures of the court and the
26 children's advocate; the duties of the children's advocate;
27 the rights and responsibilities of the parties; and the
28 availability of human services in the community. The
29 informational pamphlet shall be provided as soon as
30 possible after the filing of a complaint or other initiating
31 pleading. Upon request, a party to a domestic relations
32 proceeding shall receive an oral explanation of the
33 informational pamphlet from the office of the children's
34 advocate.

35 (d) The children's advocate shall act to establish the
36 paternity of every child born out of wedlock for whom
37 paternity has not been established, when such child's
38 primary caretaker is an applicant for or recipient of aid to
39 families with dependent children, and when such primary
40 caretaker has assigned to the division of human services
41 any rights to support for the child which might be
42 forthcoming from the putative father: *Provided*, That if
43 the children's advocate is informed by the secretary of the
44 department of health and human resources or his or her
45 authorized employee that it has been determined that it is
46 against the best interest of the child to establish paternity,
47 the children's advocate shall decline to so act. The
48 children's advocate, upon the request of any primary
49 caretaker of a child born out of wedlock, regardless of
50 whether such primary caretaker is an applicant or recipient
51 of aid to families with dependent children, shall undertake
52 to establish the paternity of such child.

53 (e) The children's advocate shall undertake to secure
54 support for any individual who is receiving aid to families
55 with dependent children when such individual has
56 assigned to the division of human services any rights to
57 support from any other person such individual may have:
58 *Provided*, That if the children's advocate is informed by
59 the secretary of the department of health and human
60 resources or his or her authorized employee that it has
61 been determined that it is against the best interests of a
62 child to secure support on the child's behalf, the
63 children's advocate shall decline to so act. The children's
64 advocate, upon the request of any individual, regardless of
65 whether such individual is an applicant or recipient of aid
66 to families with dependent children, shall undertake to
67 secure support for the individual. If circumstances
68 require, the children's advocate shall utilize the provisions
69 of chapter forty-eight-b of this code and any other
70 reciprocal arrangements which may be adopted with other
71 states for the establishment and enforcement of support
72 obligations, and if such arrangements and other means
73 have proven ineffective, the children's advocate may
74 utilize the federal courts to obtain and enforce court
75 orders for support.

76 (f) The children's advocate shall pursue the
77 enforcement of support orders through the withholding
78 from income of amounts payable as support:

79 (1) Without the necessity of an application from the
80 obligee in the case of a support obligation owed to an
81 obligee to whom services are already being provided
82 under the provisions of this chapter; and

83 (2) On the basis of an application for services in the
84 case of any other support obligation arising from a
85 support order entered by a court of competent
86 jurisdiction.

87 (g) The children's advocate may decline to commence
88 an action to obtain an order of support under the
89 provisions of section one, article five of this chapter if an
90 action for divorce, annulment or separate maintenance is
91 pending, or the filing of such action is imminent, and such
92 action will determine the issue of support for the child:
93 *Provided*, That such action shall be deemed to be
94 imminent if it is proposed by the obligee to be
95 commenced within the twenty-eight days next following a
96 decision by the children's advocate that an action should
97 properly be brought to obtain an order for support.

98 (h) If the child advocate office, through the children's
99 advocate, shall undertake paternity determination services,
100 child support collection or support collection services for
101 a spouse or former spouse upon the written request of an
102 individual who is not an applicant or recipient of
103 assistance from the division of human services, the office
104 may impose an application fee for furnishing such
105 services. Such application fee shall be in a reasonable
106 amount, not to exceed twenty-five dollars, as determined
107 by the director: *Provided*, That the director may fix such
108 amount at a higher or lower rate which is uniform for this
109 state and all other states if the secretary of the federal
110 department of health and human services determines that a
111 uniform rate is appropriate for any fiscal year to reflect
112 increases or decreases in administrative costs. Any cost in
113 excess of the application fee so imposed may be collected
114 from the obligor who owes the child or spousal support
115 obligation involved.

ARTICLE 4. PROCEEDING BEFORE A MASTER.

§48A-4-6. Matters to be heard by a family law master.

1 (a) A circuit court or the chief judge thereof shall
2 refer to the master the following matters for hearing to be
3 conducted pursuant to sections eight and nine of this
4 article:

5 (1) Actions to obtain orders of support brought under
6 the provisions of section one, article five of this chapter;

7 (2) All actions to establish paternity brought under the
8 provisions of article six of this chapter and any dependent
9 claims related to such action regarding child support,
10 custody and visitation;

11 (3) All petitions for writs of habeas corpus wherein the
12 issue contested is child custody;

13 (4) All motions for temporary relief affecting child
14 custody, visitation, child support, spousal support or
15 family violence, wherein either party has requested such
16 referral or the court on its own motion in individual cases
17 or by general order has referred such motions to the
18 master: *Provided*, That if the family law master
19 determines, in his or her discretion, that the pleadings raise
20 substantial issues concerning the identification of separate
21 property or the division of marital property which may
22 have a bearing on an award of support, the family law
23 master shall notify the court of this fact and the circuit
24 court shall refer the case to a temporary or special law
25 master or commissioner of the court designated by the
26 chief justice of the supreme court;

27 (5) All petitions for modification of an order
28 involving child custody, child visitation, child support or
29 spousal support;

30 (6) All actions for divorce, annulment or separate
31 maintenance brought pursuant to article two, chapter
32 forty-eight of this code: *Provided*, That an action for
33 divorce, annulment or separate maintenance which does
34 not involve child custody or child support shall be heard
35 by the circuit judge if, at the time of the filing of the

36 action, the parties file a written property settlement
37 agreement which has been signed by both parties;

38 (7) All actions wherein an obligor is contesting the
39 enforcement of an order of support through the
40 withholding from income of amounts payable as support
41 or is contesting an affidavit of accrued support, filed with
42 a circuit clerk, which seeks to collect arrearages;

43 (8) All actions commenced under the provisions of
44 chapter forty-eight-b of this code or under the provisions
45 of the revised uniform reciprocal enforcement of support
46 act or the uniform interstate family support act of any
47 other state;

48 (9) Proceedings for the enforcement of support,
49 custody or visitation orders: *Provided*, That contempt
50 actions shall be heard by a circuit judge; and

51 (10) All actions to establish custody of a minor child
52 or visitation with a minor child, including actions brought
53 pursuant to the uniform child custody jurisdiction act and
54 actions brought to establish grandparent visitation:
55 *Provided*, That any action instituted under article six,
56 chapter forty-nine shall be heard by a circuit judge.

57 (b) On its own motion or upon motion of a party, the
58 circuit court may revoke the referral of a particular matter
59 to a master if the master is recused, if the matter is
60 uncontested, or for other good cause, or if the matter will
61 be more expeditiously and inexpensively heard by the
62 circuit judge without substantially affecting the rights of
63 parties in actions which must be heard by the circuit court.

**ARTICLE 5. REMEDIES FOR THE ENFORCEMENT OF SUPPORT
OBLIGATIONS AND VISITATIONS.**

**§48A-5-2. Arrearages; enforcement through writ of execu-
tion, suggestion or suggestee execution.**

1 (a) The total of any matured, unpaid installments of
2 child support required to be paid by an order entered or
3 modified by a court of competent jurisdiction, or by the
4 order of a magistrate court of this state under the prior
5 enactments of this code, shall stand, by operation of law, as

6 a decretal judgment against the obligor owing such
7 support. The amount of unpaid support shall bear interest
8 from the date it accrued, at a rate of ten dollars upon one
9 hundred dollars per annum, and proportionately for a
10 greater or lesser sum, or for a longer or shorter time. A
11 child support order shall not be retroactively modified so
12 as to cancel or alter accrued installments of support.
13 When an obligor is in arrears in the payment of support
14 which is required to be paid by the terms of such order, an
15 obligee may file an "Affidavit of Accrued Support" with
16 the clerk of the circuit court, setting forth the particulars
17 of such arrearage, and requesting a writ of execution,
18 suggestion or suggestee execution. If the duty of support
19 is based upon a foreign support order, the obligee shall
20 first register the foreign support order in the same manner
21 and with the same effect as such orders are registered in
22 actions under the uniform interstate family support act as
23 set forth in article six, chapter forty-eight-b of this code:
24 *Provided*, That a copy of the reciprocal enforcement of
25 support law of the state in which the order was made need
26 not be filed with the clerk.

27 (b) The affidavit may be filed in the county wherein
28 the obligee or the obligor resides, or where the obligor's
29 source of income is located.

30 (c) The affidavit may be filed when a payment
31 required by such order has been delinquent, in whole or in
32 part, for a period of fourteen days.

33 (d) The affidavit shall:

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

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

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

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

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

46 (e) Upon receipt of the affidavit, the clerk shall issue a
47 writ of execution, suggestion or suggestee execution, and
48 shall mail a copy of the affidavit and a notice of the filing
49 of the affidavit to the obligor, at his last known address. If
50 the children's advocate is not acting on behalf of the
51 obligee in filing the affidavit, the clerk shall forward a
52 copy of the affidavit and the notice of the filing to the
53 children's advocate.

54 (f) The notice provided for in subsection (e) of this
55 section shall inform the obligor that if he or she desires to
56 contest the affidavit on the grounds that the amount
57 claimed to be in arrears is incorrect or that a writ of
58 execution, suggestion or suggestee execution is not proper
59 because of mistakes of fact, he or she must, within
60 fourteen days of the date of the notice: (1) Inform the
61 children's advocate in writing of the reasons why the
62 affidavit is contested and request a meeting with the
63 children's advocate; or (2) obtain a date for a hearing
64 before the family law master and mail written notice of
65 such hearing to the obligee and to the children's advocate
66 on a form prescribed by the administrative office of the
67 supreme court of appeals and made available through the
68 office of the clerk of the circuit court.

69 (g) Upon being informed by an obligor that he or she
70 desires to contest the affidavit, the children's advocate
71 shall inform the court of such fact, and the court shall
72 require the obligor to give security, post a bond, or give
73 some other guarantee to secure payment of overdue
74 support.

75 (h) The clerk of the circuit court shall make available
76 form affidavits for use under the provisions of this section.
77 Such form affidavits shall be provided to the clerk by the
78 child advocate office. The notice of the filing of an
79 affidavit shall be in a form prescribed by the child
80 advocate office.

81 (i) Writs of execution, suggestions or suggestee
82 executions issued pursuant to the provisions of this section

83 shall have priority over any other legal process under the
84 laws of this state against the same income, except for
85 withholding from income of amounts payable as support
86 in accordance with the provisions of section three of this
87 article, and shall be effective despite any exemption that
88 might otherwise be applicable to the same income.

89 (j) Notwithstanding any other provision of this code to
90 the contrary, the amount to be withheld from the
91 disposable earnings of an obligor pursuant to a suggestee
92 execution in accordance with the provisions of this section
93 shall be the same amount which could properly be
94 withheld in the case of a withholding order under the
95 provisions of subsection (e), section three of this article.

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

1 An order for support entered by a court of competent
2 jurisdiction will give rise to a lien imposed against real and
3 personal property for amounts of overdue support owed
4 by an obligor who resides or owns property within this
5 state when the provisions of section seventeen, article two,
6 chapter forty-eight of this code have been complied with:
7 *Provided*, That a foreign order shall first be registered as a
8 foreign support order with the clerk in the same manner as
9 such orders are registered in actions under the uniform
10 interstate family support act as set forth in article six,
11 chapter forty-eight-b of this code: *Provided*, That a copy
12 of the reciprocal enforcement of support law of the state
13 in which the order was made need not be filed with the
14 clerk.

**CHAPTER 48B. UNIFORM INTERSTATE
FAMILY SUPPORT ACT.**

ARTICLE 1. GENERAL PROVISIONS.

§48B-1-101. DEFINITIONS.

1 As used in this chapter:

2 (1) "Child" means an individual, whether over or
3 under the age of majority, who is or is alleged to be owed
4 a duty of support by the individual's parent or who is or is

5 alleged to be the beneficiary of a support order directed to
6 the parent.

7 (2) "Child support order" means a support order for
8 a child, including a child who has attained the age of
9 majority under the law of the issuing state.

10 (3) "Duty of support" means an obligation imposed
11 or imposable by law to provide support for a child, spouse,
12 or former spouse, including an unsatisfied obligation to
13 provide support.

14 (4) "Home state" means the state in which a child
15 lived with a parent or a person acting as parent for at least
16 six consecutive months immediately preceding the time of
17 filing of a petition or comparable pleading for support
18 and, if a child is less than six months old, the state in which
19 the child lived from birth with any of them. A period of
20 temporary absence of any of them is counted as part of
21 the six-month or other period.

22 (5) "Income" includes earnings or other periodic
23 entitlements to money from any source and any other
24 property subject to withholding for support under the law
25 of this state.

26 (6) "Income-withholding order" means an order or
27 other legal process directed to an obligor's employer or
28 other debtor, as defined by section sixteen, article one-a,
29 chapter forty-eight-a of this code to withhold support
30 from the income of the obligor.

31 (7) "Initiating state" means a state from which a
32 proceeding is forwarded or in which a proceeding is filed
33 for forwarding to a responding state under this chapter or
34 a law or procedure substantially similar to this chapter, the
35 uniform reciprocal enforcement of support act, or the
36 revised uniform reciprocal enforcement of support act.

37 (8) "Initiating tribunal" means the authorized
38 tribunal in an initiating state.

39 (9) "Issuing state" means the state in which a tribunal
40 issues a support order or renders a judgment determining
41 parentage.

42 (10) "Issuing tribunal" means the tribunal that issues
43 a support order or renders a judgment determining
44 parentage.

45 (11) "Law" includes decisional and statutory law and
46 rules having the force of law.

47 (12) "Obligee" means: (i) An individual to whom a
48 duty of support is or is alleged to be owed or in whose
49 favor a support order has been issued or a judgment
50 determining parentage has been rendered; (ii) a state or
51 political subdivision to which the rights under a duty of
52 support or support order have been assigned or which has
53 independent claims based on financial assistance provided
54 to an individual obligee; or (iii) an individual seeking a
55 judgment determining parentage of the individual's child.

56 (13) "Obligor" means an individual, or the estate of a
57 decedent: (i) Who owes or is alleged to owe a duty of
58 support; (ii) who is alleged but has not been adjudicated to
59 be a parent of a child; or (iii) who is liable under a support
60 order.

61 (14) "Register" means to record a support order or
62 judgment determining parentage in the registry of foreign
63 support orders.

64 (15) "Registering tribunal" means a tribunal in which
65 a support order is registered.

66 (16) "Responding state" means a state in which a
67 proceeding is filed or to which a proceeding is forwarded
68 for filing from an initiating state under this chapter or a
69 law or procedure substantially similar to this chapter, the
70 uniform reciprocal enforcement of support act, or the
71 revised uniform reciprocal enforcement of support act.

72 (17) "Responding tribunal" means the authorized
73 tribunal in a responding state.

74 (18) "Spousal-support order" means a support order
75 for a spouse or former spouse of the obligor.

76 (19) "State" means a state of the United States, the
77 District of Columbia, Puerto Rico, the United States Virgin
78 Islands or any territory or insular possession subject to the

79 jurisdiction of the United States. The term includes: (i)
80 An Indian tribe; (ii) a foreign jurisdiction that has enacted
81 a law or established procedures for issuance and
82 enforcement of support orders which are substantially
83 similar to the procedures under this chapter, the uniform
84 reciprocal enforcement of support act, or the revised
85 uniform reciprocal of enforcement of support act.

86 (20) "Support enforcement agency" means a public
87 official or agency authorized to seek: (i) Enforcement of
88 support orders or laws relating to the duty of support; (ii)
89 establishment or modification of child support; (iii)
90 determination of parentage; or (iv) to locate obligors or
91 their assets.

92 (21) "Support order" means a judgment, decree or
93 order, whether temporary, final or subject to modification,
94 for the benefit of a child, a spouse or a former spouse,
95 which provides for monetary support, health care,
96 arrearages, or reimbursement and may include related
97 costs and fees, interest, income withholding, attorney's
98 fees and other relief.

99 (22) "Tribunal" means a court, administrative
100 agency, family law master or quasi-judicial entity
101 authorized to establish, enforce or modify support orders
102 or to determine parentage.

§48B-1-102. Tribunals of state.

1 The circuit court and the family law masters are the
2 tribunals of this state.

§48B-1-103. Remedies cumulative.

1 Remedies provided by this chapter are cumulative and
2 do not affect the availability of remedies under other law.

ARTICLE 2. JURISDICTION.

PART 1. EXTENDED PERSONAL JURISDICTION.

§48B-2-201. Bases for jurisdiction over nonresident.

1 In a proceeding to establish, enforce, or modify a
2 support order or to determine parentage, a tribunal of this

3 state may exercise personal jurisdiction over a nonresident
4 individual or the individual's guardian or conservator if:
5 (1) The individual is personally served with notice within
6 this state; (2) the individual submits to the jurisdiction of
7 this state by consent, by entering a general appearance, or
8 by filing a responsive document having the effect of
9 waiving any contest to personal jurisdiction; (3) the
10 individual resided with the child in this state; (4) the
11 individual resided in this state and provided prenatal
12 expenses or support for the child; (5) the child resides in
13 this state as a result of the acts or directives of the
14 individual; (6) the individual engaged in sexual
15 intercourse in this state and the child may have been
16 conceived by that act of intercourse; (7) the individual has
17 committed a tortious act by failing to support a child
18 resident in this state; or (8) there is any other basis
19 consistent with the constitutions of this state and the
20 United States for the exercise of personal jurisdiction.

**§48B-2-202. Procedure when exercising jurisdiction over
nonresident.**

1 A tribunal of this state exercising personal jurisdiction
2 over a nonresident under section two hundred one may
3 apply section three hundred sixteen (Special Rules of
4 Evidence and Procedure) to receive evidence from another
5 state, and section three hundred eighteen (Assistance with
6 Discovery) to obtain discovery through a tribunal of
7 another state. In all other respects, articles three through
8 seven do not apply and the tribunal shall apply the
9 procedural and substantive law of this state, including the
10 rules on choice of law other than those established by this
11 chapter.

PART 2. PROCEEDINGS INVOLVING TWO OR MORE STATES.

§48B-2-203. Initiating and responding tribunal of state.

1 Under this chapter, a tribunal of this state may serve as
2 an initiating tribunal to forward proceedings to another
3 state and as a responding tribunal for proceedings initiated
4 in another state.

§48B-2-204. Simultaneous proceedings in another state.

1 (a) A tribunal of this state may exercise jurisdiction to
2 establish a support order if the petition or comparable
3 pleading is filed after a petition or comparable pleading is
4 filed in another state only if: (1) The petition or
5 comparable pleading in this state is filed before the
6 expiration of the time allowed in the other state for filing a
7 responsive pleading challenging the exercise of
8 jurisdiction by the other state; (2) the contesting party
9 timely challenges the exercise of jurisdiction in the other
10 state; and (3) if relevant, this state is the home state of the
11 child.

12 (b) A tribunal of this state may not exercise
13 jurisdiction to establish a support order if the petition or
14 comparable pleading is filed before a petition or
15 comparable pleading is filed in another state if: (1) The
16 petition or comparable pleading in the other state is filed
17 before the expiration of the time allowed in this state for
18 filing a responsive pleading challenging the exercise of
19 jurisdiction by this state; (2) the contesting party timely
20 challenges the exercise of jurisdiction in this state; and (3)
21 if relevant, the other state is the home state of the child.

§48B-2-205. Continuing, exclusive jurisdiction.

1 (a) A tribunal of this state issuing a support order
2 consistent with the law of this state has continuing,
3 exclusive jurisdiction over a child support order: (1) As
4 long as this state remains the residence of the obligor, the
5 individual obligee, or the child for whose benefit the
6 support order is issued; or (2) until all of the parties who
7 are individuals have filed written consents with the tribunal
8 of this state for a tribunal of another state to modify the
9 order and assume continuing, exclusive jurisdiction.

10 (b) A tribunal of this state issuing a child support
11 order consistent with the law of this state may not exercise
12 its continuing jurisdiction to modify the order if the order
13 has been modified by a tribunal of another state pursuant
14 to this chapter or a law substantially similar to this chapter.

15 (c) If a child support order of this state is modified by
16 a tribunal of another state pursuant to this chapter or a law
17 substantially similar to this chapter, a tribunal of this state
18 loses its continuing, exclusive jurisdiction with regard to
19 prospective enforcement of the order issued in this state,
20 and may only: (1) Enforce the order that was modified as
21 to amounts accruing before the modification; (2) enforce
22 nonmodifiable aspects of that order; and (3) provide other
23 appropriate relief for violations of that order which
24 occurred before the effective date of the modification.

25 (d) A tribunal of this state shall recognize the
26 continuing, exclusive jurisdiction of a tribunal of another
27 state which has issued a child support order pursuant to a
28 law substantially similar to this chapter.

29 (e) A temporary support order issued ex parte or
30 pending resolution of a jurisdictional conflict does not
31 create continuing, exclusive jurisdiction in the issuing
32 tribunal.

33 (f) A tribunal of this state issuing a support order
34 consistent with the law of this state has continuing,
35 exclusive jurisdiction over a spousal support order
36 throughout the existence of the support obligation. A
37 tribunal of this state may not modify a spousal support
38 order issued by a tribunal of another state having
39 continuing, exclusive jurisdiction over that order under the
40 law of that state.

**§48B-2-206. Enforcement and modification of support order
by tribunal having continuing jurisdiction.**

1 (a) A tribunal of this state may serve as an initiating
2 tribunal to request a tribunal of another state to enforce or
3 modify a support order issued in that state.

4 (b) A tribunal of this state having continuing,
5 exclusive jurisdiction over a support order may act as a
6 responding tribunal to enforce or modify the order. If a
7 party subject to the continuing, exclusive jurisdiction of
8 the tribunal no longer resides in the issuing state, in
9 subsequent proceedings the tribunal may apply section
10 three hundred sixteen (Special Rules of Evidence and

11 Procedure) to receive evidence from another state and
12 section three hundred eighteen (Assistance with
13 Discovery) to obtain discovery through a tribunal of
14 another state.

15 (c) A tribunal of this state which lacks continuing,
16 exclusive jurisdiction over a spousal support order may
17 not serve as a responding tribunal to modify a spousal
18 support order of another state.

PART 3. RECONCILIATION OF MULTIPLE ORDERS.

§48B-2-207. Recognition of controlling child support order.

1 (a) If a proceeding is brought under this chapter and
2 only one tribunal has issued a child support order, the
3 order of that tribunal is controlling and must be
4 recognized.

5 (b) If a proceeding is brought under this chapter, and
6 two or more child support orders have been issued by
7 tribunals of this state or another state with regard to the
8 same obligor and child, a tribunal of this state shall apply
9 the following rules in determining which order to
10 recognize for purposes of continuing, exclusive
11 jurisdiction:

12 (1) If only one of the tribunals would have continuing,
13 exclusive jurisdiction under this chapter, the order of that
14 tribunal is controlling and must be recognized.

15 (2) If more than one of the tribunals would have
16 continuing, exclusive jurisdiction under this chapter, an
17 order issued by a tribunal in the current home state of the
18 child must be recognized, but if an order has not been
19 issued in the current home state of the child, the order
20 most recently issued is controlling and must be
21 recognized.

22 (3) If none of the tribunals would have continuing,
23 exclusive jurisdiction under this chapter, the tribunal of
24 this state having jurisdiction over the parties must issue a
25 child support order, which is controlling and must be
26 recognized.

27 (c) If two or more child support orders have been
28 issued for the same obligor and child and if the obligor or
29 the individual obligee resides in this state, a party may
30 request a tribunal of this state to determine which order
31 controls and must be recognized under subsection (b).
32 The request must be accompanied by a certified copy of
33 every support order in effect. Every party whose rights
34 may be affected by a determination of the controlling
35 order must be given notice of the request for that
36 determination.

37 (d) The tribunal that issued the order that must be
38 recognized as controlling under subsection (a), (b) or (c)
39 is the tribunal that has continuing, exclusive jurisdiction in
40 accordance with section two hundred five.

41 (e) A tribunal of this state which determines by order
42 the identity of the controlling child support order under
43 subsections (b) (1) or (b) (2) or which issued a new
44 controlling child support order under subsection (b) (3)
45 shall include in that order the basis upon which the
46 tribunal made its determination.

47 (f) Within thirty days after issuance of the order
48 determining the identity of the controlling order, the party
49 obtaining that order shall file a certified copy of it with
50 each tribunal that had issued or registered an earlier order
51 of child support. Failure of the party obtaining the order
52 to file a certified copy as required subjects that party to
53 appropriate sanctions by a tribunal in which the issue of
54 failure to file arises, but that failure has no effect on the
55 validity or enforceability of the controlling order.

§48B-2-208. Multiple child support orders for two or more obligees.

1 In responding to multiple registrations or petitions for
2 enforcement of two or more child support orders in effect
3 at the same time with regard to the same obligor and
4 different individual obligees, at least one of which was
5 issued by a tribunal of another state, a tribunal of this state
6 shall enforce those orders in the same manner as if the
7 multiple orders had been issued by a tribunal of this state.

§48B-2-209. Credit for payments.

1 Amounts collected and credited for a particular period
2 pursuant to a support order issued by a tribunal of another
3 state must be credited against the amounts accruing or
4 accrued for the same period under a support order issued
5 by the tribunal of this state.

ARTICLE 3. CIVIL PROVISIONS OF GENERAL APPLICATION.

§48B-3-301. Proceedings under chapter.

1 (a) Except as otherwise provided in this chapter, this
2 article applies to all proceedings under this chapter.

3 (b) This chapter provides for the following
4 proceedings: (1) Establishment of an order for spousal
5 support or child support pursuant to article four; (2)
6 enforcement of a support order and income-withholding
7 order of another state without registration pursuant to
8 article five; (3) registration of an order for spousal support
9 or child support of another state for enforcement pursuant
10 to article six; (4) modification of an order for child
11 support or spousal support issued by a tribunal of this
12 state pursuant to article two, Part 2; (5) registration of an
13 order for child support of another state for modification
14 pursuant to article six; (6) determination of parentage
15 pursuant to article seven; and (7) assertion of jurisdiction
16 over nonresidents pursuant to article two, part 1.

17 (c) An individual petitioner or a support enforcement
18 agency may commence a proceeding authorized under
19 this chapter by filing a petition in an initiating tribunal for
20 forwarding to a responding tribunal or by filing a petition
21 or a comparable pleading directly in a tribunal of another
22 state which has or can obtain personal jurisdiction over the
23 respondent.

§48B-3-302. Action by minor parent.

1 A minor parent, or a guardian or other legal
2 representative of a minor parent, may maintain a
3 proceeding on behalf of or for the benefit of the minor's
4 child.

§48B-3-303. Application of law of state.

1 Except as otherwise provided by this chapter, a
2 responding tribunal of this state: (1) Shall apply the
3 procedural and substantive law, including the rules on
4 choice of law, generally applicable to similar proceedings
5 originating in this state and may exercise all powers and
6 provide all remedies available in those proceedings; and
7 (2) shall determine the duty of support and the amount
8 payable in accordance with the law and support guidelines
9 of this state.

§48B-3-304. Duties of initiating tribunal.

1 (a) Upon the filing of a petition authorized by this
2 chapter, an initiating tribunal of this state shall forward
3 three copies of the petition and its accompanying
4 documents: (1) To the responding tribunal or appropriate
5 support enforcement agency in the responding state; or
6 (2) if the identity of the responding tribunal is unknown,
7 to the state information agency of the responding state
8 with a request that they be forwarded to the appropriate
9 tribunal and that receipt be acknowledged.

10 (b) If a responding state has not enacted this chapter
11 or a law or procedure substantially similar to this chapter,
12 a tribunal of this state may issue a certificate or other
13 document and make findings required by the law of the
14 responding state. If the responding state is a foreign
15 jurisdiction, the tribunal may specify the amount of
16 support sought and provide other documents necessary to
17 satisfy the requirements of the responding state.

§48B-3-305. Duties and powers of responding tribunal.

1 (a) When a responding tribunal of this state receives a
2 petition or comparable pleading from an initiating
3 tribunal or directly pursuant to subsection (c), section
4 three hundred one (proceedings under this chapter), the
5 clerk of the court shall cause the petition or pleading to be
6 filed and notify the petitioner where and when it was filed.

7 (b) A responding tribunal of this state, to the extent
8 otherwise authorized by law, may do one or more of the
9 following: (1) Issue or enforce a support order, modify a

10 child support order or render a judgment to determine
11 parentage; (2) order an obligor to comply with a support
12 order, specifying the amount and the manner of
13 compliance; (3) order income withholding; (4) determine
14 the amount of any arrearages and specify a method of
15 payment; (5) enforce orders by civil or criminal contempt,
16 or both; (6) set aside property for satisfaction of the
17 support order; (7) place liens and order execution on the
18 obligor's property; (8) order an obligor to keep the
19 tribunal informed of the obligor's current residential
20 address, telephone number, employer, address of
21 employment and telephone number at the place of
22 employment; (9) issue a capias for an obligor who has
23 failed after proper notice to appear at a hearing ordered
24 by the tribunal and enter the capias in any local and state
25 computer systems for criminal warrants; (10) order the
26 obligor to seek appropriate employment by specified
27 methods; (11) award reasonable attorney's fees and other
28 fees and costs; and (12) grant any other available remedy.

29 (c) A responding tribunal of this state shall include in
30 a support order issued under this chapter, or in the
31 documents accompanying the order, the calculations on
32 which the support order is based.

33 (d) A responding tribunal of this state may not
34 condition the payment of a support order issued under
35 this chapter upon compliance by a party with provisions
36 for visitation.

37 (e) If a responding tribunal of this state issues an order
38 under this chapter, the tribunal shall send a copy of the
39 order to the petitioner and the respondent and to the
40 initiating tribunal, if any.

§48B-3-306. Inappropriate tribunal.

1 If a petition or comparable pleading is received by an
2 inappropriate tribunal of this state, the clerk of the court
3 shall forward the pleading and accompanying documents
4 to an appropriate tribunal in this state or another state and
5 notify the petitioner where and when the pleading was
6 sent.

§48B-3-307. Duties of support enforcement agency.

1 (a) A support enforcement agency of this state, upon
2 request, shall provide services to a petitioner in a
3 proceeding under this chapter.

4 (b) A support enforcement agency that is providing
5 services to the petitioner as appropriate shall: (1) Take all
6 steps necessary to enable an appropriate tribunal in this
7 state or another state to obtain jurisdiction over the
8 respondent; (2) request an appropriate tribunal to set a
9 date, time, and place for a hearing; (3) make a reasonable
10 effort to obtain all relevant information, including
11 information as to income and property of the parties; (4)
12 within two days, exclusive of Saturdays, Sundays and legal
13 holidays, after receipt of a written notice from an
14 initiating, responding, or registering tribunal, send a copy
15 of the notice to the petitioner; (5) within two days,
16 exclusive of Saturdays, Sundays and legal holidays, after
17 receipt of a written communication from the respondent
18 or the respondent's attorney, send a copy of the
19 communication to the petitioner; and (6) notify the
20 petitioner if jurisdiction over the respondent cannot be
21 obtained.

22 (c) This chapter does not create or negate a
23 relationship of attorney and client or other fiduciary
24 relationship between a support enforcement agency or the
25 attorney for the agency and the individual being assisted
26 by the agency.

**§48B-3-308. Duty of West Virginia support enforcement
commission.**

1 If the West Virginia support enforcement commission
2 determines that the support enforcement agency is
3 neglecting or refusing to provide services to an individual,
4 the commission may order the agency to perform its
5 duties under this chapter or may provide those services
6 directly to the individual.

§48B-3-309. Private counsel.

1 An individual may employ private counsel to
2 represent the individual in proceedings authorized by this
3 chapter.

§48B-3-310. Duties of state information agency.

1 (a) The child support enforcement division is the state
2 information agency under this chapter.

3 (b) The state information agency shall: (1) Compile
4 and maintain a current list, including addresses, of the
5 tribunals in this state which have jurisdiction under this
6 chapter and any support enforcement agencies in this state
7 and transmit a copy to the state information agency of
8 every other state; (2) maintain a register of tribunals and
9 support enforcement agencies received from other states;
10 (3) forward to the appropriate tribunal in the place in this
11 state in which the individual obligee or the obligor resides,
12 or in which the obligor's property is believed to be
13 located, all documents concerning a proceeding under this
14 chapter received from an initiating tribunal or the state
15 information agency of the initiating state; and (4) obtain
16 information concerning the location of the obligor and
17 the obligor's property within this state not exempt from
18 execution, by such means as postal verification and federal
19 or state locator services, examination of telephone
20 directories, requests for the obligor's address from
21 employers, and examination of governmental records,
22 including, to the extent not prohibited by other law, those
23 relating to real property, vital statistics, law enforcement,
24 taxation, motor vehicles, driver's licenses and social
25 security.

§48B-3-311. Pleadings and accompanying documents.

1 (a) A petitioner seeking to establish or modify a
2 support order or to determine parentage in a proceeding
3 under this chapter must verify the petition. Unless
4 otherwise ordered under section three hundred twelve
5 (Nondisclosure of Information in Exceptional
6 Circumstances), the petition or accompanying documents
7 must provide, so far as known, the name, residential

8 address and social security numbers of the obligor and the
9 obligee, and the name, sex, residential address, social
10 security number and date of birth of each child for whom
11 support is sought. The petition must be accompanied by a
12 certified copy of any support order in effect. The petition
13 may include any other information that may assist in
14 locating or identifying the respondent.

15 (b) The petition must specify the relief sought. The
16 petition and accompanying documents must conform
17 substantially with the requirements imposed by the forms
18 mandated by federal law for use in cases filed by a
19 support enforcement agency.

**§48B-3-312. Nondisclosure of information in exceptional
circumstances.**

1 Upon a finding, which may be made ex parte, that the
2 health, safety or liberty of a party or child would be
3 unreasonably put at risk by the disclosure of identifying
4 information, or if an existing order so provides, a tribunal
5 shall order that the address of the child or party or other
6 identifying information not be disclosed in a pleading or
7 other document filed in a proceeding under this chapter.

§48B-3-313. Costs and fees.

1 (a) The petitioner may not be required to pay a filing
2 fee or other costs.

3 (b) If an obligee prevails, a responding tribunal may
4 assess against an obligor filing fees, reasonable attorney's
5 fees, other costs and necessary travel and other reasonable
6 expenses incurred by the obligee and the obligee's
7 witnesses. The tribunal may not assess fees, costs or
8 expenses against the obligee or the support enforcement
9 agency of either the initiating or the responding state,
10 except as provided by other law. Attorney's fees may be
11 taxed as costs, and may be ordered paid directly to the
12 attorney, who may enforce the order in the attorney's own
13 name. Payment of support owed to the obligee has
14 priority over fees, costs and expenses.

15 (c) The tribunal shall order the payment of costs and
16 reasonable attorney's fees if it determines that a hearing

17 was requested primarily for delay. In a proceeding under
18 article six (Enforcement and Modification of Support
19 Order After Registration), a hearing is presumed to have
20 been requested primarily for delay if a registered support
21 order is confirmed or enforced without change.

§48B-3-314. Limited immunity of petitioner.

1 (a) Participation by a petitioner in a proceeding before
2 a responding tribunal, whether in person, by private
3 attorney, or through services provided by the support
4 enforcement agency, does not confer personal jurisdiction
5 over the petitioner in another proceeding.

6 (b) A petitioner is not amenable to service of civil
7 process while physically present in this state to participate
8 in a proceeding under this chapter.

9 (c) The immunity granted by this section does not
10 extend to civil litigation based on acts unrelated to a
11 proceeding under this chapter committed by a party while
12 present in this state to participate in the proceeding.

§48B-3-315. Nonparentage as defense.

1 A party whose parentage of a child has been
2 previously determined by or pursuant to law may not
3 plead nonparentage as a defense to a proceeding under
4 this chapter.

§48B-3-316. Special rules of evidence and procedure.

1 (a) The physical presence of the petitioner in a
2 responding tribunal of this state is not required for the
3 establishment, enforcement or modification of a support
4 order or the rendition of a judgment determining
5 parentage.

6 (b) A verified petition, affidavit, document
7 substantially complying with federally mandated forms
8 and a document incorporated by reference in any of them,
9 not excluded under the hearsay rule if given in person, is
10 admissible in evidence if given under oath by a party or
11 witness residing in another state.

12 (c) A copy of the record of child support payments
13 certified as a true copy of the original by the custodian of
14 the record may be forwarded to a responding tribunal.
15 The copy is evidence of facts asserted in it, and is
16 admissible to show whether payments were made.

17 (d) Copies of bills for testing for parentage, and for
18 prenatal and postnatal health care of the mother and child,
19 furnished to the adverse party at least ten days before trial,
20 are admissible in evidence to prove the amount of the
21 charges billed and that the charges were reasonable,
22 necessary and customary.

23 (e) Documentary evidence transmitted from another
24 state to a tribunal of this state by telephone, telecopier or
25 other means that do not provide an original writing may
26 not be excluded from evidence on an objection based on
27 the means of transmission.

28 (f) In a proceeding under this chapter, a tribunal of
29 this state may permit a party or witness residing in another
30 state to be deposed or to testify by telephone, audiovisual
31 means or other electronic means at a designated tribunal
32 or other location in that state. A tribunal of this state shall
33 cooperate with tribunals of other states in designating an
34 appropriate location for the deposition or testimony. The
35 supreme court of appeals shall promulgate new rules or
36 amend the rules of practice and procedure for family law
37 to establish procedures pertaining to the exercise of cross
38 examination in those instances involving the receipt of
39 testimony by means other than direct or personal
40 testimony.

41 (g) If a party called to testify at a civil hearing refuses
42 to answer on the ground that the testimony may be self-
43 incriminating, the trier of fact may draw an adverse
44 inference from the refusal.

45 (h) A privilege against disclosure of communications
46 between spouses does not apply in a proceeding under this
47 chapter.

48 (i) The defense of immunity based on the relationship
49 of husband and wife or parent and child does not apply in
50 a proceeding under this chapter.

§48B-3-317. Communications between tribunals.

1 A tribunal of this state may communicate with a
2 tribunal of another state in writing, or by telephone or
3 other means, to obtain information concerning the laws of
4 that state, the legal effect of a judgment, decree, or order
5 of that tribunal and the status of a proceeding in the other
6 state. A tribunal of this state may furnish similar
7 information by similar means to a tribunal of another
8 state.

§48B-3-318. Assistance with discovery.

1 A tribunal of this state may: (1) Request a tribunal of
2 another state to assist in obtaining discovery; and (2) upon
3 request, compel a person over whom it has jurisdiction to
4 respond to a discovery order issued by a tribunal of
5 another state.

§48B-3-319. Receipt and disbursement of payments.

1 A support enforcement agency or tribunal of this state
2 shall disburse promptly any amounts received pursuant to
3 a support order, as directed by the order. The agency or
4 tribunal shall furnish to a requesting party or tribunal of
5 another state a certified statement by the custodian of the
6 record of the amounts and dates of all payments received.

ARTICLE 4. ESTABLISHMENT OF SUPPORT ORDER.

§48B-4-401. Petition to establish support order.

1 (a) If a support order entitled to recognition under this
2 chapter has not been issued, a responding tribunal of this
3 state may issue a support order if: (1) The individual
4 seeking the order resides in another state; or (2) the
5 support enforcement agency seeking the order is located
6 in another state.

7 (b) The tribunal may issue a temporary child support
8 order if: (1) The respondent has signed a verified
9 statement acknowledging parentage; (2) the respondent

10 has been determined by or pursuant to law to be the
11 parent; or (3) there is other clear and convincing evidence
12 that the respondent is the child's parent.

13 (c) Upon finding, after notice and opportunity to be
14 heard, that an obligor owes a duty of support, the tribunal
15 shall issue a support order directed to the obligor and may
16 issue other orders pursuant to section three hundred five
17 (Duties and Powers of Responding Tribunal).

**ARTICLE 5. DIRECT ENFORCEMENT OF ORDER OF ANOTHER
STATE WITHOUT REGISTRATION.**

**§48B-5-501. Employer's receipt of income-withholding order
of another state.**

1 An income-withholding order issued in another state
2 may be sent to the person or entity defined as the
3 obligor's employer under section sixteen, article one-a,
4 chapter forty-eight-a of this code without first filing a
5 petition or comparable pleading or registering the order
6 with a tribunal of this state.

**§48B-5-502. Employer's compliance with income-withholding
order of another state.**

1 (a) Upon receipt of the order, the obligor's employer
2 shall immediately provide a copy of the order to the
3 obligor.

4 (b) The employer shall treat an income-withholding
5 order issued in another state which appears regular on its
6 face as if it had been issued by a tribunal of this state.

7 (c) Except as provided by subsection (d) and section
8 five hundred three, the employer shall withhold and
9 distribute the funds as directed in the withholding order
10 by complying with the terms of the order, as applicable,
11 that specify:

12 (1) The duration and the amount of periodic
13 payments of current child support, stated as a sum certain;

14 (2) The person or agency designated to receive
15 payments and the address to which the payments are to be
16 forwarded;

17 (3) Medical support, whether in the form of periodic
18 cash payment, stated as a sum certain, or ordering the
19 obligor to provide health insurance coverage for the child
20 under a policy available through the obligor's
21 employment;

22 (4) The amount of periodic payments of fees and
23 costs for a support enforcement agency, the issuing
24 tribunal, and the obligee's attorney, stated as sums certain;
25 and

26 (5) The amount of periodic payments of arrears and
27 interest on arrears, stated as sums certain.

28 (d) The employer shall comply with the law of the
29 state of the obligor's principal place of employment for
30 withholding from income with respect to:

31 (1) The employer's fee for processing an income
32 withholding order;

33 (2) The maximum amount permitted to be withheld
34 from the obligor's income;

35 (3) The time periods within which the employer must
36 implement the withholding order and forward the child
37 support payment.

§48B-5-503. Compliance with multiple income withholding orders.

1 If the obligor's employer receives multiple orders to
2 withhold support from the earnings of the same obligor,
3 the employer shall be deemed to have satisfied the terms
4 of the multiple orders if the law of the state of the
5 obligor's principal place of employment to establish the
6 priorities for withholding and allocating income withheld
7 for multiple child support obligees is complied with.

§48B-5-504. Immunity from civil liability.

1 An employer who complies with an income-
2 withholding order issued in another state in accordance
3 with this article is not subject to civil liability to any
4 individual or agency with regard to the employer's
5 withholding child support from the obligor's income.

§48B-5-505. Penalties for noncompliance.

1 An employer who willfully fails to comply with an
2 income-withholding order issued by another state and
3 received for enforcement is subject to the same penalties
4 that may be imposed for noncompliance with an order
5 issued by a tribunal of this state.

§48B-5-506. Contest by obligor.

1 (a) An obligor may contest the validity or
2 enforcement of an income-withholding order issued in
3 another state and received directly by an employer in this
4 state in the same manner as if the order had been issued
5 by a tribunal of this state. Section six hundred four
6 (Choice of Law) applies to the contest.

7 (b) The obligor shall give notice of the contest to:

8 (1) A support enforcement agency providing services
9 to the obligee;

10 (2) Each employer which has directly received an
11 income-withholding order; and

12 (3) The person or agency designated to receive
13 payments in the income-withholding order; or if no
14 person or agency is designated, to the obligee.

§48B-5-507. Administrative enforcement of orders.

1 (a) A party seeking to enforce a support order or an
2 income-withholding order, or both, issued by a tribunal of
3 another state may send the documents required for
4 registering the order to a support enforcement agency of
5 this state.

6 (b) Upon receipt of the documents, the support
7 enforcement agency, without initially seeking to register
8 the order, shall consider and, if appropriate, use any
9 administrative procedure authorized by the law of this
10 state to enforce a support order or an income-withholding
11 order, or both. If the obligor does not contest
12 administrative enforcement, the order need not be
13 registered. If the obligor contests the validity or
14 administrative enforcement of the order, the support

15 enforcement agency shall register the order pursuant to
16 this chapter.

**ARTICLE 6. ENFORCEMENT AND MODIFICATION OF
SUPPORT ORDER AFTER REGISTRATION.**

PART 1. REGISTRATION AND ENFORCEMENT OF SUPPORT ORDER.

§48B-6-601. Registration of order for enforcement.

1 A support order or an income-withholding order
2 issued by a tribunal of another state may be registered in
3 this state for enforcement.

§48B-6-602. Procedure to register order for enforcement.

1 (a) A support order or income-withholding order of
2 another state may be registered in this state by sending the
3 following documents and information to the state
4 information agency who shall forward the order to the
5 appropriate tribunal: (1) A letter of transmittal to the
6 tribunal requesting registration and enforcement; (2) two
7 copies, including one certified copy, of all orders to be
8 registered, including any modification of an order; (3) a
9 sworn statement by the party seeking registration or a
10 certified statement by the custodian of the records
11 showing the amount of any arrearage; (4) the name of the
12 obligor and, if known: (i) The obligor's address and social
13 security number; (ii) the name and address of the
14 obligor's employer and any other source of income of the
15 obligor; and (iii) a description and the location of
16 property of the obligor in this state not exempt from
17 execution; and (5) the name and address of the obligee
18 and, if applicable, the agency or person to whom support
19 payments are to be remitted.

20 (b) On receipt of a request for registration, the clerk of
21 the court shall cause the order to be filed as a foreign
22 judgment, together with one copy of the documents and
23 information, regardless of their form.

24 (c) A petition or comparable pleading seeking a
25 remedy that must be affirmatively sought under other law
26 of this state may be filed at the same time as the request

27 for registration or later. The pleading must specify the
28 grounds for the remedy sought.

§48B-6-603. Effect of registration for enforcement.

1 (a) A support order or income-withholding order
2 issued in another state is registered when the order is filed
3 in the registering tribunal of this state.

4 (b) A registered order issued in another state is
5 enforceable in the same manner and is subject to the same
6 procedures as an order issued by a tribunal of this state.

7 (c) Except as otherwise provided in this article, a
8 tribunal of this state shall recognize and enforce, but may
9 not modify, a registered order if the issuing tribunal had
10 jurisdiction.

§48B-6-604. Choice of law.

1 (a) The law of the issuing state governs the nature,
2 extent, amount, and duration of current payments and
3 other obligations of support and the payment of
4 arrearages under the order.

5 (b) In a proceeding for arrearages, the statute of
6 limitation under the laws of this state or of the issuing
7 state, whichever is longer, applies.

PART 2. CONTEST OF VALIDITY OR ENFORCEMENT.

§48B-6-605. Notice of registration of order.

1 (a) When a support order or income-withholding
2 order issued in another state is registered, the clerk of the
3 court shall notify the nonregistering party. The notice
4 must be accompanied by a copy of the registered order
5 and the documents and relevant information accom-
6 panying the order.

7 (b) The notice must inform the nonregistering party:
8 (1) That a registered order is enforceable as of the date of
9 registration in the same manner as an order issued by a
10 tribunal of this state; (2) that a hearing to contest the
11 validity or enforcement of the registered order must be
12 requested within twenty days after notice; (3) that failure

13 to contest the validity or enforcement of the registered
14 order in a timely manner will result in confirmation of the
15 order and enforcement of the order and the alleged
16 arrearages and precludes further contest of that order with
17 respect to any matter that could have been asserted; and
18 (4) of the amount of any alleged arrearages.

19 (c) Upon registration of an income-withholding order
20 for enforcement, the registering tribunal shall notify the
21 obligor's employer pursuant to article five, chapter forty-
22 eight-a of this code.

§48B-6-606. Procedure to contest validity or enforcement of registered order.

1 (a) A nonregistering party seeking to contest the
2 validity or enforcement of a registered order in this state
3 shall request a hearing within twenty days after the date of
4 mailing or personal service of notice of the registration.
5 The nonregistering party may seek to vacate the
6 registration, to assert any defense to an allegation of
7 noncompliance with the registered order, or to contest the
8 remedies being sought or the amount of any alleged
9 arrearages pursuant to section six hundred seven (Contest
10 of Registration or Enforcement).

11 (b) If the nonregistering party fails to contest the
12 validity or enforcement of the registered order in a timely
13 manner, the order is confirmed by operation of law.

14 (c) If a nonregistering party requests a hearing to
15 contest the validity or enforcement of the registered order,
16 the registering tribunal shall schedule the matter for
17 hearing and give notice to the parties of the date, time and
18 place of the hearing.

§48B-6-607. Contest of registration or enforcement.

1 (a) A party contesting the validity or enforcement of a
2 registered order or seeking to vacate the registration has
3 the burden of proving one or more of the following
4 defenses: (1) The issuing tribunal lacked personal
5 jurisdiction over the contesting party; (2) the order was
6 obtained by fraud; (3) the order has been vacated,
7 suspended or modified by a later order; (4) the issuing

8 tribunal has stayed the order pending appeal; (5) there is a
9 defense under the law of this state to the remedy sought;
10 (6) full or partial payment has been made; or (7) the
11 statute of limitation under section six hundred four
12 (Choice of Law) precludes enforcement of some or all of
13 the arrearages.

14 (b) If a party presents evidence establishing a full or
15 partial defense under subsection (a), a tribunal may stay
16 enforcement of the registered order, continue the
17 proceeding to permit production of additional relevant
18 evidence, and issue other appropriate orders. An
19 uncontested portion of the registered order may be
20 enforced by all remedies available under the law of this
21 state.

22 (c) If the contesting party does not establish a defense
23 under subsection (a) to the validity or enforcement of the
24 order, the registering tribunal shall issue an order
25 confirming the order.

§48B-6-608. Confirmed order.

1 Confirmation of a registered order, whether by
2 operation of law or after notice and hearing, precludes
3 further contest of the order with respect to any matter that
4 could have been asserted at the time of registration.

**PART 3. REGISTRATION AND MODIFICATION
OF CHILD SUPPORT ORDER.**

**§48B-6-609. Procedure to register child support order of
another state for modification.**

1 A party or support enforcement agency seeking to
2 modify, or to modify and enforce, a child support order
3 issued in another state shall register that order in this state
4 in the same manner provided in Part 1 if the order has not
5 been registered. A petition for modification may be filed
6 at the same time as a request for registration, or later. The
7 pleading must specify the grounds for modification.

§48B-6-610. Effect of registration for modification.

1 A tribunal of this state may enforce a child support
2 order of another state registered for purposes of

3 modification, in the same manner as if the order had been
4 issued by a tribunal of this state, but the registered order
5 may be modified only if the requirements of section six
6 hundred eleven (Modification of Child Support Order of
7 Another State) have been met.

§48B-6-611. Modification of child support order of another state.

1 (a) After a child support order issued in another state
2 has been registered in this state, the responding tribunal of
3 this state may modify that order only if section six
4 hundred thirteen does not apply and after notice and
5 hearing it finds that: (1) The following requirements are
6 met: (i) The child, the individual obligee, and the obligor
7 do not reside in the issuing state; (ii) a petitioner who is a
8 nonresident of this state seeks modification; and (iii) the
9 respondent is subject to the personal jurisdiction of the
10 tribunal of this state; or (2) the child or a party who is an
11 individual, is subject to the personal jurisdiction of the
12 tribunal of this state and all of the parties who are
13 individuals have filed written consents in the issuing
14 tribunal for a tribunal of this state to modify the support
15 order and assume continuing, exclusive jurisdiction over
16 the order. However, if the issuing state is a foreign
17 jurisdiction that has not enacted a law or established
18 procedures substantially similar to the procedures under
19 this chapter, the consent otherwise required of an
20 individual residing in this state is not required for the
21 tribunal to assume jurisdiction to modify the child support
22 order.

23 (b) Modification of a registered child support order is
24 subject to the same requirements, procedures, and defenses
25 that apply to the modification of an order issued by a
26 tribunal of this state and the order may be enforced and
27 satisfied in the same manner.

28 (c) A tribunal of this state may not modify any aspect
29 of a child support order that may not be modified under
30 the law of the issuing state. If two or more tribunals have
31 issued child support orders for the same obligor and child,
32 the order that controls and must be so recognized under

33 section two hundred seven establishes the aspects of the
34 support order which are nonmodifiable.

35 (d) On issuance of an order modifying a child support
36 order issued in another state, a tribunal of this state
37 becomes the tribunal of continuing, exclusive jurisdiction.

§48B-6-612. Recognition of order modified in another state.

1 A tribunal of this state shall recognize a modification
2 of its earlier child support order by a tribunal of another
3 state which assumed jurisdiction pursuant to this chapter
4 or a law substantially similar to this chapter and, upon
5 request, except as otherwise provided in this chapter, shall:
6 (1) Enforce the order that was modified only as to
7 amounts accruing before the modification; (2) enforce
8 only nonmodifiable aspects of that order; (3) provide
9 other appropriate relief only for violations of that order
10 which occurred before the effective date of the
11 modification; and (4) recognize the modifying order of
12 the other state, upon registration, for the purpose of
13 enforcement.

**§48B-6-613. Jurisdiction to modify support order of another
state when individual parties reside in this
state.**

1 (a) If all of the individual parties reside in this state
2 and the child does not reside in the issuing state, a tribunal
3 of this state has jurisdiction to enforce and to modify the
4 issuing state's child support order in a proceeding to
5 register that order.

6 (b) A tribunal of this state exercising jurisdiction as
7 provided in this section shall apply the provisions of
8 articles one and two and this article to the enforcement or
9 modification proceeding. Articles three through five, and
10 articles seven and eight do not apply and the tribunal shall
11 apply the procedural and substantive law of this state.

§48B-6-614. Notice to issuing tribunal of modification.

1 Within thirty days after issuance of a modified child
2 support order, the party obtaining the modification shall
3 file a certified copy of the order with the issuing tribunal

4 which had continuing, exclusive jurisdiction over the
5 earlier order, and in each tribunal in which the party
6 knows that earlier order has been registered. Failure of
7 the party obtaining the order to file a certified copy as
8 required subjects that party to appropriate sanctions by a
9 tribunal in which the issue of failure to file arises, but that
10 failure has no effect on the validity or enforceability of
11 the modified order of the new tribunal of continuing,
12 exclusive jurisdiction.

ARTICLE 7. DETERMINATION OF PARENTAGE.

§48B-7-701. Proceeding to determine parentage.

1 (a) A tribunal of this state may serve as an initiating or
2 responding tribunal in a proceeding brought under this
3 chapter or a law substantially similar to this chapter, the
4 uniform reciprocal enforcement of support act, or the
5 revised uniform reciprocal enforcement of support act to
6 determine that the petitioner is a parent of a particular
7 child or to determine that a respondent is a parent of that
8 child.

9 (b) In a proceeding to determine parentage, a
10 responding tribunal of this state shall apply article six,
11 chapter forty-eight-a of this code and the rules of this state
12 on choice of law.

ARTICLE 8. INTERSTATE RENDITION.

§48B-8-801. Grounds for rendition.

1 (a) For purposes of this article, "governor" includes
2 an individual performing the functions of governor or the
3 executive authority of a state covered by this chapter.

4 (b) The governor of this state may: (1) Demand that
5 the governor of another state surrender an individual
6 found in the other state who is charged criminally in this
7 state with having failed to provide for the support of an
8 obligee; or (2) on the demand by the governor of another
9 state, surrender an individual found in this state who is
10 charged criminally in the other state with having failed to
11 provide for the support of an obligee.

12 (c) A provision for extradition of individuals not
13 inconsistent with this chapter applies to the demand even if
14 the individual whose surrender is demanded was not in the
15 demanding state when the crime was allegedly committed
16 and has not fled therefrom.

§48B-8-802. Conditions of rendition.

1 (a) Before making demand that the governor of
2 another state surrender an individual charged criminally in
3 this state with having failed to provide for the support of
4 an obligee, the governor of this state may require a
5 prosecutor of this state to demonstrate that at least sixty
6 days previously the obligee had initiated proceedings for
7 support pursuant to this chapter or that the proceeding
8 would be of no avail.

9 (b) If, under this chapter or a law substantially similar
10 to this chapter, the uniform reciprocal enforcement of
11 support act, or the revised uniform reciprocal enforcement
12 of support act, the governor of another state makes a
13 demand that the governor of this state surrender an
14 individual charged criminally in that state with having
15 failed to provide for the support of a child or other
16 individual to whom a duty of support is owed, the
17 governor may require a prosecutor to investigate the
18 demand and report whether a proceeding for support has
19 been initiated or would be effective. If it appears that a
20 proceeding would be effective but has not been initiated,
21 the governor may delay honoring the demand for a
22 reasonable time to permit the initiation of a proceeding.

23 (c) If a proceeding for support has been initiated and
24 the individual whose rendition is demanded prevails, the
25 governor may decline to honor the demand. If the
26 petitioner prevails and the individual whose rendition is
27 demanded is subject to a support order, the governor may
28 decline to honor the demand if the individual is
29 complying with the support order.

ARTICLE 9. MISCELLANEOUS PROVISIONS.

§48B-9-901. Uniformity of application and construction.

1 This chapter shall be applied and construed to
2 effectuate its general purpose to make uniform the law
3 with respect to the subject of this chapter among states
4 enacting it.

§48B-9-902. Short title.

1 This chapter may be cited as the "Uniform Interstate
2 Family Support Act."

§48B-9-903. Effective date.

1 The provisions of this chapter take effect on the first
2 day of January, one thousand nine hundred ninety-eight.

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

Randy Schromer
Chairman Senate Committee

Nick Fantasia
Chairman House Committee

Originating in the House.

Takes effect January 1, 1998.

Russell E. Barnes
Clerk of the Senate

Bryony M. Bay
Clerk of the House of Delegates

Earl Ray Bondler
President of the Senate

[Signature]
Speaker of the House of Delegates

The within is approved this the 14th
day of April, 1997.

[Signature]
Governor

PRESENTED TO THE

GOVERNOR

Date 4/8/97

Time 3:10pm