

# West Virginia Divorce Laws

## CHAPTER 48. DOMESTIC RELATIONS.

### ARTICLE 1. GENERAL PROVISIONS; DEFINITIONS.

#### §48-1-234. Obligee defined.

"Obligee" means:

- (1) An individual to whom a duty of support is or is alleged to be owed or in whose favor a support order has been issued or a judgment determining parentage has been rendered;
- (2) A state or political subdivision to which the rights under a duty of support or support order have been assigned or which has independent claims based on financial assistance provided to an individual obligee; or
- (3) An individual seeking a judgment determining parentage of the individual's child.

#### §48-1-235. Obligor defined.

"Obligor" means an individual or the estate of a decedent:

- (1) Who owes or is alleged to owe a duty of support;
- (2) Who is alleged, but has not been adjudicated, to be a parent of a child; or
- (3) Who is liable under a support order.

#### §48-1-238. Separation defined.

"Separation" or "separation of the parties" means the uninterrupted separation of a husband and wife for some continuous period of time during which they do not cohabit or otherwise live together as husband and wife. When a separation is required as a predicate for filing an action under this article, the separation must continue through the date of filing.

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

(a) Any person attempting to collect a child or spousal support obligation or arrearage on behalf of a resident or from a resident of this state is subject to the provisions of article sixteen, chapter forty-seven of this code and the provisions of this section and is otherwise subject to the jurisdiction of this state.

(b) The amount of delinquent child or spousal support or arrearage established by order of a court of competent jurisdiction in this state is not subject to waiver or compromise, either by agreement of the parties or by a collection agency acting on behalf of a party and may only be modified by an order of a court of competent jurisdiction.

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

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

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

- (1) The performance of legal services, the offering of legal advice or the making of a false representation, directly or by implication, that a person is an attorney;
- (2) Any communication with persons in the name of an attorney or upon stationery or other written matter bearing an attorney's name; and
- (3) Any demand for or payment of money constituting a share of compensation for services performed or to be performed by an attorney in collecting a claim.

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

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

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

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

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

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

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

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

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

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

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

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

(1) The communication to any employer or his or her agent of any information relating to an employee's indebtedness other than through proper legal action, process or proceeding;

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

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

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

(i) No collection agency may use any fraudulent, deceptive or misleading representation or means to collect or attempt to collect claims or to obtain information concerning support obligors, including, but not limited to:

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

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

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

(4) Any false representation or implication of the character, extent or amount of a claim against an obligor or of the status of any legal proceeding;

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

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

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

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

(j) No collection agency may use unfair or unconscionable means to collect or attempt to collect any claim, including, but not limited to:

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

(2) Any communication with an obligor whenever it appears the obligor is represented by an attorney and the attorney's name and address are known, or could be easily ascertained, unless the attorney fails to answer correspondence, return telephone calls or discuss the obligation in question, or unless the attorney and the obligor consent to direct communication.

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

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

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

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

(o) Any resident of this state who contracts for services with a collection agency to collect current or past-due child support or spousal support may, upon thirty days' written notice, cancel the contract for collection. The notice must be mailed to the collection agency by first-class mail. All contracts signed by residents of this state must include written notification of this right of cancellation.

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

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

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

#### **§48-1-233.1. Mediation defined.**

"Mediation" means a method of alternative dispute resolution in which a neutral third person helps resolve a dispute. Mediation is an informal, non-adversarial process whereby the neutral third person, the mediator, assists parties to a dispute to resolve, by agreement, some or all of the differences between them. The mediator has no authority to render a judgment on any issue of the dispute.

#### **§48-1-233.2. Mediator defined.**

"Mediator" means a neutral third person who interposes between two contending parties, with their consent, for the purpose of assisting them in settling their differences.

### **ARTICLE 3. PROPERTY, RIGHTS AND LIABILITIES OF MARRIED WOMEN; HUSBAND AND WIFE.**

#### **§48-3-101. Right to sue to annul or affirm marriage.**

(a) Except as otherwise provided in subsection (b) of this section, an action to annul or affirm a marriage is not maintainable unless one of the parties is a resident of this state at the time the action is commenced.

(b) Even if neither party is a resident of this state, an action to annul a marriage that was performed in this state is maintainable if the parties have not established a matrimonial domicile elsewhere.

**§48-3-102. Venue of actions for annulment or affirmation.**

(a) If the respondent to an action for annulling or affirming a marriage is a resident of this state, the petitioner has an option to bring the action in the county in which the parties last cohabited or in the county where the respondent resides.

(b) If the respondent to an action for annulling or affirming a marriage is not a resident of this state, the petitioner has an option to bring the action in the county in which the parties last cohabited or in the county where the petitioner resides.

(c) If neither party is a resident of this state, the action must be brought in the county where the marriage was performed.

**§48-3-103. Voidable marriages.**

(a) The following marriages are voidable and are void from the time they are so declared by a judgment order of nullity:

(1) Marriages that are prohibited by law on account of either of the parties having a wife or husband of a prior marriage, when the prior marriage has not been terminated by divorce, annulment or death;

(2) Marriages that are prohibited by law on account of consanguinity or affinity between the parties;

(3) Marriages solemnized when either of the parties:

(A) Was an insane person, idiot or imbecile;

(B) Was afflicted with a venereal disease;

(C) Was incapable, because of natural or incurable impotency of the body, of entering into the marriage state;

(D) Was under the age of consent; or

(E) Had been, prior to the marriage and without the knowledge of the other party, convicted of an infamous offense;

(4) Marriages solemnized when, at the time of the marriage, the wife, without the knowledge of the husband:

(A) Was with child by some person other than the husband; or

(B) Had been, prior to the marriage, notoriously a prostitute; or

(5) Marriages solemnized when, prior to the marriage, the husband, without the knowledge of the wife, had been notoriously a licentious person.

**§48-3-104. Affirmation or annulment of marriage.**

If a marriage is supposed to be void, or voidable, or any doubt exists as to its validity, for any of the causes set forth in section 3-103, or for any other cause recognized in law, either party may, except as provided in section 3-105, institute an action for annulling or affirming the marriage. Upon hearing the proofs and allegations of the parties, the court shall enter a judgment order annulling or affirming the marriage. In every case where the validity of a marriage is called into question, it is presumed that the marriage is valid, unless the contrary is clearly proved. If the court orders that the marriage is valid, the finding of the court is conclusive upon all persons concerned.

**§48-3-105. What persons may not institute annulment action.**

An action for annulling a marriage may not be instituted:

(a) Where the cause is the natural or incurable impotency of body of either of the parties to enter the marriage state, by the party who had knowledge of such incapacity at the time of marriage; or

(b) Where the cause is fraud, force or coercion, by the party who was guilty of such fraud, force or coercion, nor by the injured party if, after knowledge of the facts, he or she has by acts or conduct confirmed such marriage; or

(c) Where the cause is affliction with a venereal disease existing at the time of marriage, by the party who was so afflicted if such party has subsequent to the marriage become cured of such disease, nor by the person who was not so afflicted if he or she after the curing of the afflicted person has by acts or conduct confirmed the marriage; or

(d) Where the cause is the nonage of either of the parties, by the party who was capable of consenting, nor by the party not so capable if he or she has by acts or conduct confirmed the marriage after arriving at the age of consent; or

(e) Where the cause is lack of consent on the part of either of the parties, by the party consenting or bringing about the marriage; or

(f) Where the cause is that either of the parties has been convicted of an infamous offense prior to marriage, by the other party if, after knowledge of such fact, he or she has cohabited with the party so convicted; or

(g) Where the cause is that the wife was at the time of marriage with child by some person other than the husband, or that prior to the marriage the wife had been notoriously a prostitute, by the husband, if after knowledge of the fact, he has cohabited with the wife; or

(h) Where the cause is that the husband was prior to the marriage notoriously a licentious person, by the wife if, after knowledge of the fact, she has cohabited with the husband.

#### **§48-3-106. Relief ordered in annulment.**

In an action for annulment, the court may order all or any portion of the final relief provided for in sections 5-603 through 5-614 and all or any portion of the temporary relief provided for in part 5, article 5 of this chapter.

#### **§48-3-107. Modification of order granting annulment.**

Upon the petition of either party, the court may revise or alter an order entered in an action for annulment or make further orders, concerning the following matters:

- (1) The support and maintenance of either spouse;
- (2) The interest of one spouse in the property of the other spouse;
- (3) The allocation of responsibility for the children of the parties; and
- (4) The support of the children of the parties.

### **ARTICLE 4. SEPARATE MAINTENANCE.**

#### **§48-4-101. Where an action for separate maintenance may be brought.**

An action for separate maintenance may be brought in the family court of any county where an action for divorce between the parties could be brought. An action for separate maintenance may be brought whether or not a divorce is prayed for.

#### **§48-4-102. Grounds for separate maintenance.**

Separate maintenance may be ordered:

- (1) If the party seeking separate maintenance has grounds for divorce; or
- (2) If the party from whom separate maintenance is sought, without good and sufficient cause:
  - (A) Has failed to provide suitable support for the other spouse; or
  - (B) Has abandoned or deserted the other spouse.

#### **§48-4-103. Award of relief in action for separate maintenance.**

(a) In an action for separate maintenance, the court may order all or any portion of the temporary or final relief that the court may order in an action for divorce, other than a divorce.

(b) During the pendency of the action, the court has the same powers to make temporary orders as the court would have in actions for divorce, insofar as those powers are applicable, on behalf of either spouse.

(c) Any order entered in the case is effective during the time the court by its order directs, until further order of the court.

**§48-4-104. Modification of order awarding separate maintenance.**

Upon the petition of either party, the court may revise or alter an order entered in an action for separate maintenance, or may make further orders, concerning the following matters:

- (1) The support and maintenance of either spouse;
- (2) The interest of one spouse in the property of the other spouse;
- (3) The allocation of responsibility for the children of the parties; and
- (4) The support of the children of the parties.

**ARTICLE 5. DIVORCE.**

**§48-5-101. Absolute divorce.**

A divorce ordered in this state is an absolute divorce.

**§48-5-102. Subject matter jurisdiction.**

(a) The Legislature hereby finds and declares that it has the authority to establish, by general law, the jurisdiction of circuit courts and family courts over domestic relations matters.

(b) The circuit courts and family courts of this state, by act of the Legislature, are vested with concurrent jurisdiction over the subject matter of divorce. Generally, a family court has the right and authority to adjudicate actions for divorce and the power to carry its judgment and order into execution. Circuit courts have limited jurisdiction in divorce actions, as provided in section two, article two-a, chapter fifty-one of this code and as otherwise specifically provided in this chapter. Jurisdiction of the subject matter of divorce embraces the power to determine every issue or controverted question in an action for divorce, according to the court's view of the law and the evidence.

**§48-5-103. Jurisdiction of parties; service of process.**

(a) In an action for divorce, it is immaterial where the marriage was celebrated, where the parties were domiciled at the time the grounds for divorce arose or where the marital offense was committed. If one or both of the parties is domiciled in this state at the time the action is commenced, the circuit courts and family courts of this state have jurisdiction to grant a divorce for any grounds fixed by law in this state, without any reference to the law of the place where the marriage occurred or where the marital offense was committed.

(b) A judgment order may be entered upon service of process in the manner specified in the rules of civil procedure for the service of process upon individuals.

**§48-5-104. Retention of jurisdiction when divorce is denied.**

If a divorce is denied, the court shall retain jurisdiction of the case and may order all or any portion of the relief provided for in this article that has been demanded in the pleadings.

**§48-5-105. Residency requirements for maintaining an action for divorce.**

(a) Except as otherwise provided in subsection (b) of this section:

(1) If the marriage was entered into within this state, an action for divorce is maintainable if one of the parties is an actual bona fide resident of this state at the time of commencement of the action, without regard to the length of time residency has continued; or

(2) If the marriage was not entered into within this state, an action for divorce is maintainable if:

(A) One of the parties was an actual bona fide resident of this state at the time the cause of action arose, or has become a resident since that time; and

(B) The residency has continued uninterrupted through the one-year period immediately preceding the filing of the action.

(b) An action for divorce cannot be maintained if the cause for divorce is adultery, whether the cause of action arose in or out of this state, unless one of the parties, at the commencement of the

action, is a bona fide resident of this state. In such case, if the respondent is a nonresident of this state and cannot be personally served with process within this state, the action is not maintainable unless the petitioner has been an actual bona fide resident of this state for at least one year next preceding the commencement of the action; or

(c) When a divorce is granted in this state upon constructive service of process and personal jurisdiction is thereafter obtained of the respondent in the case, the court may order all or any portion of the relief that has been demanded in the pleadings.

#### **§48-5-106. Venue of actions for divorce.**

(a) If the respondent in an action for divorce is a resident of this state, the petitioner has an option to bring the action in the county in which the parties last cohabited or in the county where the respondent resides.

(b) If the respondent in an action for divorce is not a resident of this state, the petitioner has an option to bring the action in the county in which the parties last cohabited or in the county where the petitioner resides.

#### **§48-5-107. Parties to a divorce action.**

(a) Either or both of the parties to a marriage may initiate an action for divorce.

(b) A spouse who is under the age of majority has standing in a divorce action to sue, answer or plead by a next friend.

(c) An incompetent or insane person shall sue, answer or plead by his or her committee. If a person has not been adjudicated incompetent or insane and has not been divested of the power to act on his or her own behalf, it is presumed that the person has the capacity to bring the action or be made a party respondent. This presumption may be rebutted by evidence which shows that the person cannot reasonably understand the nature and purpose of the action and the effect of his or her acts with reference to the action.

(d) The appointment of a guardian ad litem for a minor, an incompetent or an insane party is not required unless specifically ordered by the judge hearing the action.

(e) Anyone charged as a particeps criminis shall be made a party to a divorce action, upon his or her application to the court, subject to such terms and conditions as the court may prescribe.

(f) In a divorce action where the interests of the minor children of the parties are or may be substantially different from those of either or both of the parents and the best interests of the children may be in conflict with the desires of either or both parents, the court may make the children parties respondent and appoint a guardian ad litem to advocate and protect their rights and welfare.

### **PART 2. GROUNDS FOR DIVORCE.**

#### **§48-5-201. Grounds for divorce; irreconcilable differences.**

The court may order a divorce if the complaint alleges that irreconcilable differences exist between the parties and an answer is filed admitting that allegation. A complaint alleging irreconcilable differences shall set forth the names of any dependent children of either or both of the parties. A divorce on this ground does not require corroboration of the irreconcilable differences or of the issues of jurisdiction or venue. The court may approve, modify or reject any agreement of the parties and make orders concerning spousal support, custodial responsibility, child support, visitation rights or property interests.

#### **§48-5-202. Grounds for divorce; voluntary separation.**

(a) A divorce may be ordered when the parties have lived separate and apart in separate places of abode without any cohabitation and without interruption for one year. The separation may occur as a result of the voluntary act of one of the parties or the mutual consent of both parties.

(b) Allegations of res judicata or recrimination with respect to any other alleged grounds for divorce are not a bar to either party obtaining a divorce on the ground of voluntary separation.

(c) When required by the circumstances of a particular case, the court may receive evidence bearing on alleged marital misconduct and may consider issues of fault for the limited purpose of

deciding whether spousal support should be awarded. Establishment of fault does not affect the right of either party to obtain a divorce on the ground of voluntary separation.

**§48-5-203. Grounds for divorce; cruel or inhuman treatment.**

(a) A divorce may be ordered for cruel or inhuman treatment by either party against the other. Cruel or inhuman treatment includes, but is not limited to, the following:

- (1) Reasonable apprehension of bodily harm;
  - (2) False accusation of adultery or homosexuality; or
  - (3) Conduct or treatment which destroys or tends to destroy the mental or physical well-being, happiness and welfare of the other and render continued cohabitation unsafe or unendurable.
- (b) It is not necessary to allege or prove acts of physical violence in order to establish cruel and inhuman treatment as a ground for divorce.

**§48-5-204. Grounds for divorce; adultery.**

A divorce may be ordered for adultery. Adultery is the voluntary sexual intercourse of a married man or woman with a person other than the offender's wife or husband. The burden is on the party seeking the divorce to prove the alleged adultery by clear and convincing evidence.

**§48-5-205. Grounds for divorce; conviction of crime.**

A divorce may be ordered when either of the parties subsequent to the marriage has, in or out of this state, been convicted for the commission of a crime that is a felony, and the conviction is final.

**§48-5-206. Grounds for divorce; permanent and incurable insanity.**

(a) A divorce may be ordered for permanent and incurable insanity, only if the person is permanently and incurably insane and has been confined in a mental hospital or other similar institution for a period of not less than three consecutive years next preceding the filing of the complaint and the court has heard competent medical testimony that such insanity is permanently incurable.

(b) A court granting a divorce on this grounds may in its discretion order support and maintenance for the permanently incurably insane party by the other.

(c) In an action for divorce or annulment, where the petitioner is permanently incurably insane, the respondent shall not enter a plea of recrimination based upon the insanity of the petitioner.

**§48-5-207. Grounds for divorce; habitual drunkenness or drug addiction.**

- (a) A divorce may be ordered for habitual drunkenness of either party subsequent to the marriage.
- (b) A divorce may be ordered for the addiction of either party, subsequent to the marriage, to the habitual use of any narcotic or dangerous drug defined in this code.

**§48-5-208. Grounds for divorce; desertion.**

A divorce may be ordered to the party abandoned, when either party willfully abandons or deserts the other for six months.

**§48-5-209. Grounds for divorce; abuse or neglect of a child.**

(a) A divorce may be ordered for abuse or neglect of a child of the parties or of one of the parties, "abuse" meaning any physical or mental injury inflicted on such child including, but not limited to, sexual molestation; and "neglect" is willful failure to provide, by a party who has legal responsibility for such child, the necessary support, education as required by law, or medical, surgical or other care necessary for the well-being of such child.

(b) A divorce shall not be granted on this ground except upon clear and convincing evidence sufficient to justify permanently depriving the offending party of any allocation of custodial responsibility for the abused or neglected child.

**PART 3. DEFENSES.**

**§48-5-301. When a divorce not to be granted.**

No divorce for adultery shall be granted on the uncorroborated testimony of a prostitute, or a particeps criminis, or when it appears that the parties voluntarily cohabited after the knowledge of the adultery, or that it occurred more than three years before the institution of the action; nor shall a divorce be granted for any cause when it appears that the offense charged has been condoned, or was committed by the procurement or connivance of the plaintiff, or that the plaintiff has, within three years before the institution of action, been guilty of adultery not condoned, but such exception shall not be applicable to causes of action brought pursuant to sections 5-201 and 5-202 of this chapter. The defense of collusion shall not be pleaded as a bar to a divorce.

**PART 4. PRACTICE AND PROCEDURE.**

**§48-5-401. Verification of pleadings.**

**All pleadings in a divorce action must be verified by the party in whose name they are filed.**

**§48-5-402. Petition for divorce.**

(a) An action for divorce is instituted by a verified petition and the formal style and the caption for all pleadings is "In Re the marriage of \_\_\_\_\_ and \_\_\_\_\_". The parties shall be identified in all pleadings as "petitioner" and "respondent".

(b) The petition must set forth the ground or grounds for divorce. It is not necessary to allege the facts constituting a ground relied on and a petition or counter-petition is sufficient if a ground for divorce is alleged in the language of the statute as set forth in this article. The court has the discretionary authority to grant a motion to require a more definite and certain statement, set forth in ordinary and concise language, alleging facts and not conclusions of law.

(c) If the jurisdiction of the court to grant a divorce depends upon the existence of certain facts, including, but not limited to, facts showing domicile or domicile for a certain length of time, the petition must allege those facts. It is not necessary that allegations showing requisite domicile be in the language of the statute, but they should conform substantially thereto so that everything material to the fact of requisite domicile can be ascertained therefrom.

(d) A petition shall not be taken for confessed and whether the respondent answers or not, the case shall be tried and heard independently of the admissions of either party in the pleadings or otherwise. No judgment order shall be granted on the uncorroborated testimony of the parties or either of them, except for a proceeding in which the grounds for divorce are irreconcilable differences.

(e) The supreme court of appeals shall develop and provide forms for petitions filed pursuant to this section and for answers filed pursuant to section 5-403. The forms shall be made available for distribution in the offices of the clerks of the circuit courts and in the offices of the secretary-clerks to the family court judges.

**§48-5-403. Answer to petition.**

(a) The responsive pleading to a petition for divorce is denominated an answer. The form and requisites for an answer to a petition for divorce are governed by the rules of civil procedure.

(b) Except as provided in subsection (c) of this section, an allegedly guilty party who relies upon an affirmative defense must assert such defense by both pleadings and proof. Affirmative defenses include, but are not limited to, condonation, connivance, collusion, recrimination, insanity and lapse of time.

(c) In an action in which a party seeks a divorce based on an allegation that the parties have lived separate and apart in separate places of abode without any cohabitation and without interruption for one year, the affirmative defenses, including, but not limited to, condonation, connivance, collusion, recrimination, insanity and lapse of time, shall not be raised.

**§48-5-404. Advance filing of divorce petition in actions alleging abandonment or voluntary separation.**

(a) At any time after the parties to a marriage have lived separate and apart in separate places of abode without any cohabitation or after a party is abandoned or deserted, either party living separate and apart or the party abandoned may apply for temporary relief in accordance with the provisions of part 5 of this article by instituting an action for divorce alleging that the petitioner reasonably believes that the period of living separate and apart or of abandonment will continue for the periods prescribed by the applicable provisions of sections 5-202 and 5-208.

(b) If the period of abandonment or living separate and apart continues for the period prescribed by the applicable provisions of sections 5-202 and 5-208, the divorce action may proceed to a final hearing without a new petition being filed.

(c) The petitioner shall give the respondent at least twenty days' notice of the time, place and purpose of the final hearing, unless the respondent files a verified waiver of notice of further proceedings. If the notice is required to be served, it must be served in the same manner as original process under rule 4(d) of the rules of civil procedure, regardless of whether the respondent has appeared or answered.

#### **48-5-405. Amendments to pleadings.**

Amendments to pleadings in an action for divorce are permitted upon the same general considerations which govern the practice in other proceedings, and are properly allowed for the purpose of making the allegations of the pleading more definite and certain, of asserting an essential allegation which has been omitted, or of including allegations of misconduct committed subsequent to the commencement of the action.

### **PART 5. TEMPORARY RELIEF DURING PENDENCY OF ACTION FOR DIVORCE.**

#### **§48-5-501. Relief that may be included in temporary order of divorce.**

At the time of the filing of the complaint or at any time after the commencement of an action for divorce under the provisions of this article and upon motion for temporary relief, notice of hearing and hearing, the court may order all or any portion of the following temporary relief described in this part 5, to govern the marital rights and obligations of the parties during the pendency of the action.

#### **§48-5-502. Temporary spousal support.**

The court may require either party to pay temporary spousal support in the form of periodic installments, or a lump sum, or both, for the maintenance of the other party.

#### **§48-5-503. Temporary parenting order; child support.**

(a) The court shall enter a temporary parenting order in accordance with the provisions of sections 9-203 and 9-204 of this chapter that incorporates a temporary parenting plan.

(b) When the action involves a minor child or children, the court shall require either party to pay temporary child support in the form of periodic installments for the maintenance of the minor children of the parties.

(c) When the action involves a minor child or children, the court shall provide for medical support for any minor children.

#### **§48-5-504. Attorney's fees and court costs.**

(a) The court may compel either party to pay attorney's fees and court costs reasonably necessary to enable the other party to prosecute or defend the action. The question of whether or not a party is entitled to temporary spousal support is not decisive of that party's right to a reasonable allowance of attorney's fees and court costs.

(b) An order for temporary relief awarding attorney fees and court costs may be modified at any time during the pendency of the action, as the exigencies of the case or equity and justice may require, including, but not limited to, a modification which would require full or partial repayment of fees and costs by a party to the action to whom or on whose behalf payment of fees and costs was previously ordered. If an appeal is taken or an intention to appeal is stated, the court may further order either party to pay attorney fees and costs on appeal.

(c) If it appears to the court that a party has incurred attorney fees and costs unnecessarily because the opposing party has asserted unfounded claims or defenses for vexatious, wanton or oppressive purposes, thereby delaying or diverting attention from valid claims or defenses asserted in good faith, the court may order the offending party, or his or her attorney, or both, to pay reasonable attorney fees and costs to the other party.

**§48-5-505. Costs of health care and hospitalization.**

As an incident to requiring the payment of temporary spousal support, the court may order either party to continue in effect existing policies of insurance covering the costs of health care and hospitalization of the other party. If there is no such existing policy or policies, the court may order that such health care insurance coverage be paid for by a party if the court determines that such health care coverage is available to that party at a reasonable cost. Payments made to an insurer pursuant to this subdivision, either directly or by a deduction from wages, may be deemed to be temporary spousal support.

**§48-5-506. Use and occupancy of the marital home.**

(a) The court may grant the exclusive use and occupancy of the marital home to one of the parties during the pendency of the action, together with all or a portion of the household goods, furniture and furnishings, reasonably necessary for such use and occupancy.

(b) The court may require payments to third parties in the form of home loan installments, land contract payments, rent, payments for utility services, property taxes and insurance coverage. If these third party payments are ordered, the court may specify whether such payments or portions of payments are temporary spousal support, temporary child support, a partial distribution of marital property or an allocation of marital debt.

(c) If the court does not set forth in the temporary order that all or a portion of payments made to third parties pursuant to this section are to be deemed temporary child support, then all the payments made pursuant to this section are deemed to be temporary spousal support. The court may order third party payments to be made without denominating them as either temporary spousal support or temporary child support, reserving such decision until the court determines the interests of the parties in marital property and equitably divides the same. At the time the court determines the interests of the parties in marital property and equitably divides the same, the court may consider the extent to which payments made to third parties under the provisions of this subdivision have affected the rights of the parties in marital property and may treat these payments as a partial distribution of marital property notwithstanding the fact that these payments were denominated temporary spousal support or temporary child support or not so denominated under the provisions of this section.

(d) If the payments are not designated in an order and the parties have waived any right to receive spousal support, the court may designate the payments upon motion by any party.

(e) Nothing contained in this section shall abrogate an existing contract between either of the parties and a third party, or affect the rights and liabilities of either party or a third party under the terms of a contract.

**§48-5-507. Use and possession of motor vehicles.**

(a) As an incident to requiring the payment of temporary alimony, the court may grant the exclusive use and possession of one or more motor vehicles to either of the parties during the pendency of the action.

(b) The court may require payments to third parties in the form of automobile loan installments or insurance coverage, and payments made to third parties pursuant to this section are deemed to be temporary spousal support, subject to any reservation provided for in subsection (c) of this section.

(c) The court may order that third party payments made pursuant to this section be made without denominating them as temporary spousal support, reserving that decision until the court determines the interests of the parties in marital property and equitably divides the same. At the time the court determines the interests of the parties in marital property and equitably divides the same, the court may consider the extent to which payments made to third parties under the provisions of this section have affected the rights of the parties in marital property and may treat such payments as a partial distribution of marital property notwithstanding the fact that such

payments have been denominated temporary spousal support or not so denominated under the provisions of this section.

(d) Nothing contained in this section will abrogate an existing contract between either of the parties and a third party or affect the rights and liabilities of either party or a third party under the terms of a contract.

**§48-5-508. Preservation of the properties of the parties.**

(a) If the pleadings include a specific request for specific property or raise issues concerning the equitable division of marital property, the court may enter an order that is reasonably necessary to preserve the estate of either or both of the parties.

(b) The court may impose a constructive trust, so that the property is forthcoming to meet any order that is made in the action, and may compel either party to give security to comply with the order, or may require the property in question to be delivered into the temporary custody of a third party.

(c) The court may order either or both of the parties to pay the costs and expenses of maintaining and preserving the property of the parties during the pendency of the action. At the time the court determines the interests of the parties in marital property and equitably divides the same, the court may consider the extent to which payments made for the maintenance and preservation of property under the provisions of this section have affected the rights of the parties in marital property and may treat such payments as a partial distribution of marital property. The court may release all or any part of such protected property for sale and substitute all or a portion of the proceeds of the sale for such property.

**§48-5-509. Enjoining abuse, emergency protective order.**

(a) The court may enjoin the offending party from molesting or interfering with the other, or otherwise imposing any restraint on the personal liberty of the other, or interfering with the custodial or visitation rights of the other. This order may enjoin the offending party from:

(1) Entering the school, business or place of employment of the other for the purpose of molesting or harassing the other;

(2) Contacting the other, in person or by telephone, for the purpose of harassment or threats; or

(3) Harassing or verbally abusing the other in a public place.

(b) Any order entered by the court to protect a party from abuse may grant any other relief authorized by the provisions of article twenty-seven of this chapter, if the party seeking the relief has established the grounds for that relief as required by the provisions of said article.

(c) The court, in its discretion, may enter a protective order, as provided in article twenty-seven of this chapter, as part of the final relief granted in a divorce action, either as a part of an order for temporary relief or as part of a separate order. Notwithstanding the provisions of section five hundred five of said article, a protective order entered pursuant to the provisions of this subsection shall remain in effect until a final order is entered in the divorce, unless otherwise ordered by the judge.

**§48-5-510. Consideration of financial factors in ordering temporary relief.**

(a) In ordering temporary relief under the provisions of this part 5, the court shall consider the financial needs of the parties, the present income of each party from any source, their income-earning abilities and the respective legal obligations of each party to support himself or herself and to support any other persons.

(b) Except in extraordinary cases supported by specific findings set forth in the order granting relief, payments of temporary spousal support and temporary child support are to be made from a party's income and not from the corpus of a party's separate estate, and an award of such relief shall not be disproportionate to a party's ability to pay as disclosed by the evidence before the court: Provided, That child support shall be established in accordance with the child support guidelines set forth in article 13 of this chapter.

**§48-5-511. Disclosure of assets.**

To facilitate the resolution of issues arising at a hearing for temporary relief, the court may, or upon the motion of either party shall, order the parties to comply with the disclosure requirements

set forth in article 7 of this chapter prior to the hearing for temporary relief. The form for this disclosure shall substantially comply with the form promulgated by the supreme court of appeals, pursuant to said section. If either party fails to timely file a complete disclosure as required by this section or as ordered by the court, the court may accept the statement of the other party as accurate.

**§48-5-512. Ex parte orders granting temporary relief.**

An ex parte order granting all or part of the relief provided for in this part 5 may be granted without written or oral notice to the adverse party if:

(1) It appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss or damage will result to the applicant before the adverse party or such party's attorney can be heard in opposition. The potential injury, loss or damage may be anticipated when the following conditions exist: Provided, That the following list of conditions is not exclusive:

(A) There is a real and present threat of physical injury to the applicant at the hands or direction of the adverse party;

(B) The adverse party is preparing to quit the state with a minor child or children of the parties, thus depriving the court of jurisdiction in the matter of child custody;

(C) The adverse party is preparing to remove property from the state or is preparing to transfer, convey, alienate, encumber or otherwise deal with property which could otherwise be subject to the jurisdiction of the court and subject to judicial order under the provisions of this section or part 5-601, et seq.; and

(2) The moving party or his or her attorney certifies in writing any effort that has been made to give the notice and the reasons supporting his or her claim that notice should not be required.

**§48-5-513. Granting of ex parte relief.**

(a) Every ex parte order granted without notice must:

(1) Be endorsed with the date and hour of issuance;

(2) Be filed forthwith in the circuit clerk's office and entered of record; and

(3) Set forth the finding of the court that unless the order is granted without notice there is probable cause to believe that existing conditions will result in immediate and irreparable injury, loss or damage to the moving party before the adverse party or his or her attorney can be heard in opposition.

(b) The order granting ex parte relief must fix a time for a hearing for temporary relief to be held within a reasonable time, not to exceed twenty days, unless before the time fixed for hearing, the hearing is continued for good cause shown or with the consent of the party against whom the ex parte order is directed. The reasons for the continuance must be entered of record. Within the time limits described herein, when an ex parte order is made, a motion for temporary relief must be set down for hearing at the earliest possible time and takes precedence over all matters except older matters of the same character. If the party who obtained the ex parte order fails to proceed with a motion for temporary relief, the court shall set aside the ex parte order.

(c) At any time after ex parte relief is granted, and on two days' notice to the party who obtained the relief or on such shorter notice as the court may direct, the adverse party may appear and move the court to set aside or modify the ex parte order on the grounds that the effects of the order are onerous or otherwise improper. In that event, the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

**§48-5-514. Temporary order not subject to appeal or review.**

An order granting temporary relief may not be the subject of an appeal or a petition for review.

**PART 6. JUDGMENT ORDERING DIVORCE.**

**§48-5-601. Relief that may be included in final order of divorce.**

In ordering a divorce, the court may order additional relief, including, but not limited to, the relief described in the following sections of this part 6.

**§48-5-602. Court may require payment of spousal support.**

The court, in ordering a divorce may require either party to pay spousal support in accordance with the provisions of article 8-101, et seq., of this chapter.

**§48-5-603. Relief regarding minor child or children.**

(a) If the action involves a minor child or children, the court may, if appropriate, order the allocation of custodial responsibility and the allocation of decision-making responsibility in accordance with the provisions of article 9-101, et seq., of this chapter.

(b) If the action involves a minor child or children, the court shall order either or both parties to pay child support in accordance with the provisions of articles 11-101, et seq., and 13-101, et seq., of this chapter.

(c) If the action involves a minor child or children, the court shall order medical support to be provided for the child or children in accordance with the provisions of article 12-101, et seq., of this chapter.

**§48-5-604. Use and occupancy of marital home.**

(a) The court may award the exclusive use and occupancy of the marital home to a party. An order granting use and occupancy of the marital home shall include the use of any necessary household goods, furniture and furnishings. The order shall establish a definite period for the use and occupancy, ending at a specific time set forth in the order, subject to modification upon the petition of either party.

(b) Generally, an award of the exclusive use and occupancy of the marital home is appropriate when necessary to accommodate rearing minor children of the parties. Otherwise, the court may award exclusive use and occupancy only in extraordinary cases supported by specific findings set forth in the order that grants relief.

(c) An order awarding the exclusive use and occupancy of the marital home may also require payments to third parties for home loan installments, land contract payments, rent, property taxes and insurance coverage. When requiring third-party payments, the court shall reduce them to a fixed monetary amount set forth in the order. The court shall specify whether third-party payments or portions of payments are spousal support, child support, a partial distribution of marital property or an allocation of marital debt. Unless the court identifies third-party payments as child support payments or as installment payments for the distribution of marital property, then such payments are spousal support. If the court does not identify the payments and the parties have waived any right to receive spousal support, the court may identify the payments upon motion by any party.

(d) This section is not intended to abrogate a contract between either party and a third party or affect the rights and liabilities of either party or a third party under the terms of a contract.

**§48-5-605. Use and possession of motor vehicles.**

(a) The court may award the exclusive use and possession of a motor vehicle or vehicles to either of the parties.

(b) The court may require payments to third parties in the form of automobile loan installments or insurance coverage, if coverage is available at reasonable rates. When requiring third-party payments, the court shall reduce them to a fixed monetary amount set forth in the order. The court shall specify whether third-party payments or portions of payments are spousal support or installment payments for the distribution of marital property.

(c) This section is not intended to abrogate a contract between either party and a third party or affect the rights and liabilities of either party or a third party under the terms of a contract.

**§48-5-606. Relief regarding costs of health care and hospitalization.**

As an incident to requiring the payment of spousal support or child support, the court may order either party to provide medical support to the other party. Payments made to an insurer pursuant to this subdivision, either directly or by a deduction from wages, shall be deemed to be spousal support or installment payments for the distribution of marital property, in such proportion as the court shall direct: Provided, That if the court does not set forth in the order that a portion of the payments is to be deemed installment payments for the distribution of marital property, then all

payments made pursuant to this section are spousal support. The designation of insurance coverage as spousal support under the provisions of this subdivision shall not, in and of itself, give rise to a subsequent modification of the order to provide for spousal support other than insurance for covering the costs of health care and hospitalization.

**§48-5-607. Court may order transfer of accounts for recurring expenses.**

The court may order either party to take necessary steps to transfer utility accounts and other accounts for recurring expenses from the name of one party into the name of the other party or from the joint names of the parties into the name of one party. This section is not intended to affect the liability of the parties for indebtedness on any account incurred before the transfer of the account.

**§48-5-608. Injunctive relief or protective orders.**

(a) When allegations of abuse have been proved, the court shall enjoin the offending party from molesting or interfering with the other, or otherwise imposing any restraint on the personal liberty of the other or interfering with the custodial or visitation rights of the other. The order may permanently enjoin the offending party from entering the school, business or place of employment of the other for the purpose of molesting or harassing the other; or from contacting the other, in person or by telephone, for the purpose of harassment or threats; or from harassing or verbally abusing the other in a public place.

(b) Any order entered by the court to protect a party from abuse may grant any other relief authorized to be awarded by the provisions of article twenty-seven of this chapter, if the party seeking the relief has established the grounds for that relief as required by the provisions of said article.

(c) The court, in its discretion, may enter a protective order, as provided by the provisions of article twenty-seven of this chapter, as part of the final relief in a divorce action, either as a part of an order for final relief or in a separate order. A protective order entered pursuant to the provisions of this subsection shall remain in effect for the period of time ordered by the court not to exceed one hundred eighty days: Provided, That if the court determines that a violation of a domestic violence protective order entered during or extended by the divorce action has occurred, it may extend the protective order for whatever period the court deems necessary to protect the safety of the petitioner and others threatened or at risk.

**§48-5-609. Court may restore to either party his or her property.**

Upon ordering a divorce, the court has the power to award to either of the parties whatever of his or her property, real or personal, may be in the possession, or under the control, or in the name, of the other, and to compel a transfer or conveyance.

**§48-5-610. Court may order just and equitable distribution of property.**

(a) When the pleadings include a specific request for specific property or raise issues concerning the equitable division of marital property, the court shall order such relief as may be required to effect a just and equitable distribution of the property and to protect the equitable interests of the parties therein.

(b) In addition to the disclosure requirements set forth in part 7-201, et seq., of this chapter, the court may order accounts to be taken as to all or any part of marital property or the separate estates of the parties and may direct that the accounts be taken as of the date of the marriage, the date upon which the parties separated or any other time in assisting the court in the determination and equitable division of property.

**§48-5-611. Suit money, counsel fees and costs.**

(a) Costs may be awarded to either party as justice requires, and in all cases the court, in its discretion, may require payment of costs at any time and may suspend or withhold any order until the costs are paid.

(b) The court may compel either party to pay attorney's fees and court costs reasonably necessary to enable the other party to prosecute or defend the action. An order for temporary relief awarding

attorney's fees and court costs may be modified at any time during the pendency of the action, as the exigencies of the case or equity and justice may require, including, but not limited to, a modification which would require full or partial repayment of fees and costs by a party to the action to whom or on whose behalf payment of such fees and costs was previously ordered. If an appeal be taken or an intention to appeal be stated, the court may further order either party to pay attorney fees and costs on appeal.

(c) When it appears to the court that a party has incurred attorney's fees and costs unnecessarily because the opposing party has asserted unfounded claims or defenses for vexatious, wanton or oppressive purposes, thereby delaying or diverting attention from valid claims or defenses asserted in good faith, the court may order the offending party, or his or her attorney, or both, to pay reasonable attorney's fees and costs to the other party.

**§48-5-612. Court may order a party to deliver separate property.**

Unless a contrary disposition is ordered pursuant to other provisions of this section, then upon the motion of either party, the court may compel the other party to deliver to the moving party any of his or her separate estate which may be in the possession or control of the respondent party and may make such further order as is necessary to prevent either party from interfering with the separate estate of the other.

**§48-5-613. Former name of party; restoration.**

The court, upon ordering a divorce, shall if requested to do so by either party, allow such party to resume the name used prior to his or her first marriage. The court shall, if requested to do so by either party, allow such party to resume the name of a former spouse if such party has any living child or children by marriage to such former spouse.

**PART 7. MODIFICATION OF FINAL DIVORCE ORDER.**

**§48-5-701. Revision of order concerning spousal support.**

After the entry of a final divorce order, the court may revise the order concerning spousal support or the maintenance of the parties and enter a new order concerning the same, as the circumstances of the parties may require.

**§48-5-702. Revision of order enjoining abuse.**

After entering an order enjoining abuse in accordance with the provisions of section 5-509, the court may, from time to time afterward, upon motion of either of the parties and upon proper service, revise the order and enter a new order concerning the same as the circumstances of the parties and the benefit of children may require.

**§48-5-703. Revision of order allocating custodial responsibility and decision-making responsibility.**

After entering an order allocating custodial responsibility and decision-making responsibility in accordance with the provisions of sections 9-206 and 9-207, the court may also from time to time afterward, upon the motion of either of the parties or other proper person having actual or legal custody of the minor child or children of the parties, revise or alter the order concerning the allocation of custodial responsibility or allocation of decision-making responsibility in accordance with the provisions of article 9 of this chapter, and make a new order concerning the same, issuing it forthwith, as the circumstances of the parents or other proper person or persons and the benefit of the children may require.

**§48-5-704. Revision of order establishing child support.**

(a) After entering an order establishing child support in accordance with the provisions of section 5-603, the court may from time to time afterward, upon the motion of either of the parties or other proper person having actual or legal custody of the minor child or children of the parties, revise or alter the order concerning the support of the children, and make a new order concerning the same,

issuing it forthwith, as the circumstances of the parents or other proper person or persons and the benefit of the children may require.

(b) All orders modifying an award of child support must conform to the provisions regarding child support guidelines that are set forth in article 13 of this chapter.

(c) An order providing for child support payments may be revised or altered for the reason, inter alia, that the existing order provides for child support payments in an amount that is less than eighty-five percent or more than one hundred fifteen percent of the amount that would be required to be paid under the provisions of the child support guidelines that are set forth in article 13 of this chapter.

**§48-5-705. Bureau for child support enforcement may seek revision of order establishing child support.**

The bureau for child support enforcement may review a child support order and, if appropriate, file a motion with the court for modification of the child support order.

**§48-5-706. Revision of order concerning distribution of marital property.**

In modifying a final divorce order, the court may, when other means are not conveniently available, alter any prior order of the court with respect to the distribution of marital property, if:

(1) The property is still held by the parties;

(2) The alteration of the prior order as it relates the distribution of marital property is necessary to give effect to a modification of spousal support, child support or child custody; or

(3) The alteration of the prior order as it relates the distribution of marital property is necessary to avoid an inequitable or unjust result which would be caused by the manner in which the modification will affect the prior distribution of marital property.

**§48-5-707. Reduction or termination of spousal support because of de facto marriage.**

(a)(1) In the discretion of the court, an award of spousal support may be reduced or terminated upon specific written findings by the court that since the granting of a divorce and the award of spousal support a de facto marriage has existed between the spousal support payee and another person.

(2) In determining whether an existing award of spousal support should be reduced or terminated because of an alleged de facto marriage between a payee and another person, the court should elicit the nature and extent of the relationship in question. The court should give consideration, without limitation, to circumstances such as the following in determining the relationship of an ex-spouse to another person:

(A) The extent to which the ex-spouse and the other person have held themselves out as a married couple by engaging in conduct such as using the same last name, using a common mailing address, referring to each other in terms such as "my husband" or "my wife", or otherwise conducting themselves in a manner that evidences a stable marriage-like relationship;

(B) The period of time that the ex-spouse has resided with another person not related by consanguinity or affinity in a permanent place of abode;

(C) The duration and circumstances under which the ex-spouse has maintained a continuing conjugal relationship with the other person;

(D) The extent to which the ex-spouse and the other person have pooled their assets or income or otherwise exhibited financial interdependence;

(E) The extent to which the ex-spouse or the other person has supported the other, in whole or in part;

(F) The extent to which the ex-spouse or the other person has performed valuable services for the other;

(G) The extent to which the ex-spouse or the other person has performed valuable services for the other's company or employer;

(H) Whether the ex-spouse and the other person have worked together to create or enhance anything of value;

(I) Whether the ex-spouse and the other person have jointly contributed to the purchase of any real or personal property;

(J) Evidence in support of a claim that the ex-spouse and the other person have an express agreement regarding property sharing or support; or

(K) Evidence in support of a claim that the ex-spouse and the other person have an implied agreement regarding property sharing or support.

(3) On the issue of whether spousal support should be reduced or terminated under this subsection, the burden is on the payor to prove by a preponderance of the evidence that a de facto marriage exists. If the court finds that the payor has failed to meet burden of proof on the issue, the court may award reasonable attorney's fees to a payee who prevails in an action that sought to reduce or terminate spousal support on the ground that a de facto marriage exists.

(4) The court shall order that a reduction or termination of spousal support is retroactive to the date of service of the petition on the payee, unless the court finds that reimbursement of amounts already paid would cause an undue hardship on the payee.

(5) An award of rehabilitative spousal support shall not be reduced or terminated because of the existence of a de facto marriage between the spousal support payee and another person.

(6) An award of spousal support in gross shall not be reduced or terminated because of the existence of a de facto marriage between the spousal support payee and another person.

(7) An award of spousal support shall not be reduced or terminated under the provisions of this subsection for conduct by a spousal support payee that occurred before the first day of October, one thousand nine hundred ninety-nine.

(b) Nothing in this subsection shall be construed to abrogate the requirement that every marriage in this state be solemnized under a license or construed to recognize a common law marriage as valid.

## **ARTICLE 6. APPENTICES.**

### **PART I. DEFINITIONS.**

#### **§48-6-101. Property settlement or separation agreement defined.**

(a) "Property settlement or separation agreement" means a written agreement between a husband and wife whereby they agree to live separate and apart from each other. A separation agreement may also:

(1) Settle the property rights of the parties;

(2) Provide for child support;

(3) Provide for the allocation of custodial responsibility and the determination of decision-making responsibility for the children of the parties;

(4) Provide for the payment or waiver of spousal support by either party; or

(5) Otherwise settle and compromise issues arising from the marital rights and obligations of the parties.

(b) To the extent that an antenuptial agreement affects the property rights of the parties or the disposition of property after an annulment of the marriage or after a divorce or separation of the parties, the antenuptial agreement is a separation agreement.

#### **§48-6-201. Effect of separation agreement.**

(a) In cases where the parties to an action commenced under the provisions of this chapter have executed a separation agreement, if the court finds that the agreement is fair and reasonable, and not obtained by fraud, duress or other unconscionable conduct by one of the parties, and further finds that the parties, through the separation agreement, have expressed themselves in terms which, if incorporated into a judicial order, would be enforceable by a court in future proceedings, then the court shall conform the relief which it is authorized to order under the provisions of parts 5 and 6, article 5 of this chapter to the separation agreement of the parties. The separation agreement may contractually fix the division of property between the parties and may determine whether spousal support shall be awarded, whether an award of spousal support, other than an award of rehabilitative spousal support or spousal support in gross, may be reduced or terminated because a de facto marriage exists between the spousal support payee and another person, whether a court shall have continuing jurisdiction over the amount of a spousal support award so as to increase or decrease the amount of spousal support to be paid, whether spousal support shall be awarded as a lump sum settlement in lieu of periodic payments, whether spousal support shall continue beyond the death of the payor party or the remarriage of the payee party, or whether the spousal support award shall be enforceable by contempt proceedings or other judicial remedies aside from contractual remedies.

(b) Any award of periodic payments of spousal support shall be deemed to be judicially decreed and subject to subsequent modification unless there is some explicit, well expressed, clear, plain and unambiguous provision to the contrary set forth in the court-approved separation agreement or the order granting the divorce. Child support shall, under all circumstances, always be subject to continuing judicial modification.

**§48-6-202. Agreement for spousal support beyond the death of the payor.**

When a separation agreement is the basis for an award of spousal support, the court, in approving the agreement, shall examine the agreement to ascertain whether it clearly provides for spousal support to continue beyond the death of the payor or the payee or to cease in such event. When spousal support is to be paid pursuant to the terms of a separation agreement which does not state whether the payment of spousal support is to continue beyond the death of the payor or payee or is to cease, or when the parties have not entered into a separation agreement and spousal support is awarded, the court shall have the discretion to determine, as a part of its order, whether such payments of spousal support are to be continued beyond the death of the payor or payee or cease. In the event neither an agreement nor an order makes provision for the death of the payor or payee, spousal support other than rehabilitative spousal support or spousal support in gross shall cease on the death of the payor or payee. In the event neither an agreement nor an order makes provision for the death of the payor, rehabilitative spousal support continues beyond the payor's death, in the absence of evidence that the payor's estate is likely to be insufficient to meet other obligations or that other matters would make continuation after death inequitable. Rehabilitative spousal support ceases with the payee's death. In the event neither an agreement nor an order makes provision for the death of the payor or payee, spousal support in gross continues beyond the payor's or payee's death.

**§48-6-203. Agreement for spousal support beyond the remarriage of the payee.**

When a separation agreement is the basis for an award of spousal support, the court, in approving the agreement, shall examine the agreement to ascertain whether it clearly provides for spousal support to continue beyond the remarriage of the payee or to cease in such event. When spousal support is to be paid pursuant to the terms of a separation agreement which does not state whether the payment of spousal support is to continue beyond the remarriage of the payee or is to cease, or when the parties have not entered into a separation agreement and spousal support is awarded, the court shall have the discretion to determine, as a part of its order, whether such payments of spousal support are to be continued beyond the remarriage of the payee. In the event neither an agreement nor an order makes provision for the remarriage of the payee, spousal support other than rehabilitative spousal support or spousal support in gross shall cease on the remarriage of the payee. Rehabilitative spousal support does not cease upon the remarriage of the payee during the first four years of a rehabilitative period. In the event neither an agreement nor an order makes provision for the remarriage of the payee, spousal support in gross continues beyond the payee's remarriage.

**PART 3. RELIEF IN ABSENCE OF AGREEMENT.**

**§48-6-301. Factors considered in awarding spousal support, child support or separate maintenance.**

(a) In cases where the parties to an action commenced under the provisions of this article have not executed a separation agreement, or have executed an agreement which is incomplete or insufficient to resolve the outstanding issues between the parties, or where the court finds the separation agreement of the parties not to be fair and reasonable or clear and unambiguous, the court shall proceed to resolve the issues outstanding between the parties.

(b) The court shall consider the following factors in determining the amount of spousal support, child support or separate maintenance, if any, to be ordered under the provisions of parts 5 and 6, article five of this chapter, as a supplement to or in lieu of the separation agreement:

- (1) The length of time the parties were married;
- (2) The period of time during the marriage when the parties actually lived together as husband and wife;
- (3) The present employment income and other recurring earnings of each party from any source;

- (4) The income-earning abilities of each of the parties, based upon such factors as educational background, training, employment skills, work experience, length of absence from the job market and custodial responsibilities for children;
- (5) The distribution of marital property to be made under the terms of a separation agreement or by the court under the provisions of article seven of this chapter, insofar as the distribution affects or will affect the earnings of the parties and their ability to pay or their need to receive spousal support, child support or separate maintenance: Provided, That for the purposes of determining a spouse's ability to pay spousal support, the court may not consider the income generated by property allocated to the payor spouse in connection with the division of marital property unless the court makes specific findings that a failure to consider income from the allocated property would result in substantial inequity;
- (6) The ages and the physical, mental and emotional condition of each party;
- (7) The educational qualifications of each party;
- (8) Whether either party has foregone or postponed economic, education or employment opportunities during the course of the marriage;
- (9) The standard of living established during the marriage;
- (10) The likelihood that the party seeking spousal support, child support or separate maintenance can substantially increase his or her income-earning abilities within a reasonable time by acquiring additional education or training;
- (11) Any financial or other contribution made by either party to the education, training, vocational skills, career or earning capacity of the other party;
- (12) The anticipated expense of obtaining the education and training described in subdivision (10) above;
- (13) The costs of educating minor children;
- (14) The costs of providing health care for each of the parties and their minor children;
- (15) The tax consequences to each party;
- (16) The extent to which it would be inappropriate for a party, because said party will be the custodian of a minor child or children, to seek employment outside the home;
- (17) The financial need of each party;
- (18) The legal obligations of each party to support himself or herself and to support any other person;
- (19) Costs and care associated with a minor or adult child's physical or mental disabilities; and
- (20) Such other factors as the court deems necessary or appropriate to consider in order to arrive at a fair and equitable grant of spousal support, child support or separate maintenance.

## **ARTICLE 7. EQUITABLE DISTRIBUTION OF PROPERTY.**

### **§48-7-101. Equal division of marital property.**

Except as otherwise provided in this section, upon every judgment of annulment, divorce or separation, the court shall divide the marital property of the parties equally between the parties.

### **§48-7-102. Division of marital property in accordance with a separation agreement.**

In cases where the parties to an action commenced under the provisions of this chapter have executed a separation agreement, then the court shall divide the marital property in accordance with the terms of the agreement, unless the court finds:

- (1) That the agreement was obtained by fraud, duress or other unconscionable conduct by one of the parties; or
- (2) That the parties, in the separation agreement, have not expressed themselves in terms which, if incorporated into a judicial order, would be enforceable by a court in future proceedings; or
- (3) That the agreement, viewed in the context of the actual contributions of the respective parties to the net value of the marital property of the parties, is so inequitable as to defeat the purposes of this section, and such agreement was inequitable at the time the same was executed.

### **§48-7-103. Division of marital property without a valid agreement.**

In the absence of a valid agreement, the court shall presume that all marital property is to be divided equally between the parties, but may alter this distribution, without regard to any

attribution of fault to either party which may be alleged or proved in the course of the action, after a consideration of the following:

(1) The extent to which each party has contributed to the acquisition, preservation and maintenance, or increase in value of marital property by monetary contributions, including, but not limited to:

(A) Employment income and other earnings; and

(B) Funds which are separate property.

(2) The extent to which each party has contributed to the acquisition, preservation and maintenance or increase in value of marital property by nonmonetary contributions, including, but not limited to:

(A) Homemaker services;

(B) Child care services;

(C) Labor performed without compensation, or for less than adequate compensation, in a family business or other business entity in which one or both of the parties has an interest;

(D) Labor performed in the actual maintenance or improvement of tangible marital property; and

(E) Labor performed in the management or investment of assets which are marital property.

(3) The extent to which each party expended his or her efforts during the marriage in a manner which limited or decreased such party's income-earning ability or increased the income-earning ability of the other party, including, but not limited to:

(A) Direct or indirect contributions by either party to the education or training of the other party which has increased the income-earning ability of such other party; and

(B) Foregoing by either party of employment or other income-earning activity through an understanding of the parties or at the insistence of the other party.

(4) The extent to which each party, during the marriage, may have conducted himself or herself so as to dissipate or depreciate the value of the marital property of the parties: Provided, That except for a consideration of the economic consequences of conduct as provided for in this subdivision, fault or marital misconduct shall not be considered by the court in determining the proper distribution of marital property.

#### **§48-7-104. Determination of worth of marital property.**

After considering the factors set forth in section 7-103, the court shall:

(1) Determine the net value of all marital property of the parties as of the date of the separation of the parties or as of such later date determined by the court to be more appropriate for attaining an equitable result. Where the value of the marital property portion of a spouse's entitlement to future payments can be determined at the time of entering a final order in a domestic relations action, the court may include it in reckoning the worth of the marital property assigned to each spouse. In the absence of an agreement between the parties, when the value of the future payments is not known at the time of entering a final order in a domestic relations action, if their receipt is contingent on future events or not reasonably assured, or if for other reasons it is not equitable under the circumstances to include their value in the property assigned at the time of dissolution, the court may decline to do so; and

(A) Fix the spouses' respective shares in such future payments if and when received; or

(B) If it is not possible and practical to fix their share at the time of entering a final order in a domestic relations action, reserve jurisdiction to make an appropriate order at the earliest practical date;

If a valuation is made after a contingent or other future fee has been earned through the personal services or skills of a spouse, the portion that is marital property shall be in the same proportion to the total fee that the personal services or skills expended before the separation of the parties bears to the total personal skills or services expended. The provisions of this subdivision apply to pending cases when the issues of contingent fees or future earned fees have not been finally adjudicated.

(2) Designate the property which constitutes marital property, and define the interest therein to which each party is entitled and the value of their respective interest therein. In the case of an action wherein there is no agreement between the parties and the relief demanded requires the court to consider such factors as are described in subdivisions (1), (2), (3) and (4), section 7-103, if a consideration of factors only under said subdivisions (1) and (2) would result in an unequal division of marital property, and if an examination of the factors described in said subdivisions (3) and (4) produce a finding that a party: (A) Expended his or her efforts during the marriage in a manner which limited or decreased such party's income-earning ability or increased the income-earning ability of the other party; or (B) conducted himself or herself so as to dissipate or

depreciate the value of the marital property of the parties, then the court may, in the absence of a fair and just spousal support award under the provisions of section 5-602 which adequately takes into account the facts which underlie the factors described in subdivisions (3) and (4), section 7-103, equitably adjust the definition of the parties' interest in marital property, increasing the interest in marital property of a party adversely affected by the factors considered under said subdivisions who would otherwise be awarded less than one half of the marital property, to an interest not to exceed one half of the marital property;

(3) Designate the property which constitutes separate property of the respective parties or the separate property of their children;

(4) Determine the extent to which marital property is susceptible to division in accordance with the findings of the court as to the respective interests of the parties therein;

(5) In the case of any property which is not susceptible to division, ascertain the projected results of a sale of such property;

(6) Ascertain the projected effect of a division or transfer of ownership of income-producing property, in terms of the possible pecuniary loss to the parties or other persons which may result from an impairment of the property's capacity to generate earnings; and

(7) Transfer title to such component parts of the marital property as may be necessary to achieve an equitable distribution of the marital property. To make such equitable distribution, the court may:

(A) Direct either party to transfer their interest in specific property to the other party;

(B) Permit either party to purchase from the other party their interest in specific property;

(C) Direct either party to pay a sum of money to the other party in lieu of transferring specific property or an interest therein, if necessary to adjust the equities and rights of the parties, which sum may be paid in installments or otherwise, as the court may direct;

(D) Direct a party to transfer his or her property to the other party in substitution for property of the other party of equal value which the transferor is permitted to retain and assume ownership of;

or

(E) Order a sale of specific property and an appropriate division of the net proceeds of such sale: Provided, That such sale may be by private sale, or through an agent or by judicial sale, whichever would facilitate a sale within a reasonable time at a fair price.

#### **§48-7-105. Transfers of property to achieve equitable distribution of marital property.**

In order to achieve the equitable distribution of marital property, the court shall, unless the parties otherwise agree, order, when necessary, the transfer of legal title to any property of the parties, giving preference to effecting equitable distribution through periodic or lump sum payments: Provided, That the court may order the transfer of legal title to motor vehicles, household goods and the former marital domicile without regard to such preference where the court determines it to be necessary or convenient. In any case involving the equitable distribution of: (1) Property acquired by bequest, devise, descent, distribution or gift; or (2) ownership interests in a business entity, the court shall, unless the parties otherwise agree, give preference to the retention of the ownership interests in such property. In the case of such business interests, the court shall give preference to the party having the closer involvement, larger ownership interest or greater dependency upon the business entity for income or other resources required to meet responsibilities imposed under this article, and shall also consider the effects of transfer or retention in terms of which alternative will best serve to preserve the value of the business entity or protect the business entity from undue hardship or from interference caused by one of the parties or by the divorce, annulment or decree of separate maintenance: Provided, however, That the court may, unless the parties otherwise agree, sever the business relationship of the parties and order the transfer of legal title to ownership interests in the business entity from one party to the other, without regard to the limitations on the transfer of title to such property otherwise provided in this subsection, if such transfer is required to achieve the other purposes of this article: Provided further, That in all such cases the court shall order, or the agreement of the parties shall provide for, equitable payment or transfer of legal title to other property, of fair value in money or moneys' worth, in lieu of any ownership interests in a business entity which are ordered to be transferred under this subsection: And provided further, That the court may order the transfer of such business interests to a third party (such as the business entity itself or another principal in the business entity) where the interests of the parties under this article can be protected and at least one party consents thereto.

**§48-7-106. Findings; rationale for division of property.**

In any order which divides or transfers the title to any property, determines the ownership or value of any property, designates the specific property to which any party is entitled or grants any monetary award, the court shall set out in detail its findings of fact and conclusions of law, and the reasons for dividing the property in the manner adopted.

**§48-7-107. Refusal to transfer property; appointment of special commissioner.**

If an order entered in accordance with the provisions of this article requires the transfer of title to property and a party fails or refuses to execute a deed or other instrument necessary to convey title to such property, the deed or other instrument shall be executed by a special commissioner appointed by the court for the purpose of effecting such transfer of title pursuant to section seven, article twelve, chapter fifty-five of this code.

**§48-7-108. Interest or title in property prior to judicial determination.**

As to any third party, the doctrine of equitable distribution of marital property and the provisions of this article shall be construed as creating no interest or title in property until and unless an order is entered under this article judicially defining such interest or approving a separation agreement which defines such interest. Neither this article nor the doctrine of equitable distribution of marital property shall be construed to create community property nor any other interest or estate in property except those previously recognized in this state. A husband or wife may alienate property at any time prior to the entry of an order under the provisions of this article or prior to the recordation of a notice of lis pendens in accordance with the provisions of part 7-401, et seq., and at anytime and in any manner not otherwise prohibited by an order under this chapter, in like manner and with like effect as if this article and the doctrine of equitable distribution had not been adopted: Provided, That as to any transfer prior to the entry of an order under the provisions of this article, a transfer other than to a bona fide purchaser for value shall be voidable if the court finds such transfer to have been effected to avoid the application of the provisions of this article or to otherwise be a fraudulent conveyance. Upon the entry of any order under this article or the admission to record of any notice with respect to an action under this article, restraining the alienation of property of a party, a bona fide purchaser for value shall take such title or interest as he or she might have taken prior to the effective date of this section and no purchaser for value need see to the application of the proceeds of such purchase except to the extent he or she would have been required so to do prior to the effective date of this section: Provided, however, That as to third parties nothing in this section shall be construed to limit or otherwise defeat the interests or rights to property which any husband or wife would have had in property prior to the enactment of this section or prior to the adoption of the doctrine of equitable distribution by the supreme court of appeals on the twenty-fifth day of May, one thousand nine hundred eighty-three: Provided further, That no order entered under this article shall be construed to defeat the title of a third party transferee thereof except to the extent that the power to effect such a transfer of title or interest in such property is secured by a valid and duly perfected lien and, as to any personal property, secured by a duly perfected security interest.

**§48-7-109. Tax consequences of transfer of interest or title.**

Notwithstanding the provisions of chapter eleven of this code, no transfer of interest in or title to property under this article is taxable as a transfer of property without consideration nor, except as to spousal support, create liability for sales, use, inheritance and transfer or income taxes due the state or any political subdivision nor require the payment of the excise tax imposed under article twenty-two, chapter eleven of this code.

**§48-7-110. Requiring sums to be paid out of disposable retired or retainer pay.**

Whenever under the terms of this article a court enters an order requiring a division of property, if the court anticipates the division of property will be effected by requiring sums to be paid out of "disposable retired or retainer pay" as that term is defined in 10 U.S.C. §1408, relating to members or former members of the uniformed services of the United States, the court shall specifically provide for the payment of an amount, expressed in dollars or as a percentage of

disposable retired or retainer pay, from the disposable retired or retainer pay of the payor party to the payee party.

**§48-7-111. No equitable distribution of property between individuals not married to one another.**

A court may not award spousal support or order equitable distribution of property between individuals who are not married to one another in accordance with the provisions of article one of this chapter.

**§48-7-112. Prospective effect of prior amendments.**

The amendments to this section effected by the reenactment of section 48-2-32 during the regular session of the Legislature, 1996, are to be applied prospectively and have no application to any action for annulment, divorce or separate maintenance that was commenced on or before June 7, 1996.

**PART 2. DISCLOSURE OF ASSETS REQUIRED.**

**§48-7-201. Required disclosure and updates.**

In all divorce actions and in any other action involving child support, all parties shall fully disclose their assets and liabilities within forty days after the service of summons or at such earlier time as ordered by the court. The information contained on these forms shall be updated on the record to the date of the hearing.

**§48-7-202. Assets that are required to be disclosed.**

The disclosure required by this part 2 may be made by each party individually or by the parties jointly. Assets required to be disclosed shall include, but are not limited to, real property, savings accounts, stocks and bonds, mortgages and notes, life insurance, health insurance coverage, interest in a partnership or corporation, tangible personal property, income from employment, future interests whether vested or nonvested and any other financial interest or source.

**§48-7-203. Forms for disclosure of assets.**

The supreme court of appeals shall prepare and make available a standard form for the disclosure of assets and liabilities required by this part. The clerk of the circuit court and the secretary-clerk of the family court shall make these forms available to all parties in any divorce action or other action involving child support. All disclosure required by this part shall be on a form that substantially complies with the form promulgated by the supreme court of appeals. The form used shall contain a statement in conspicuous print that complete disclosure of assets and liabilities is required by law and deliberate failure to provide complete disclosure as ordered by the court constitutes false swearing.

**§48-7-204. Discovery under rules; optional disclosure of tax returns.**

Nothing contained in this part 2 shall be construed to prohibit the court from ordering discovery pursuant to rule eighty-one of the rules of civil procedure. Additionally, the court may on its own initiative and shall at the request of either party require the parties to furnish copies of all state and federal income tax returns filed by them for the past two years and may require copies of such returns for prior years.

**§48-7-205. Confidentiality of disclosed information.**

Information disclosed under this part 2 is confidential and may not be made available to any person for any purpose other than the adjudication, appeal, modification or enforcement of judgment of an action affecting the family of the disclosing parties. The court shall include in any order compelling disclosure of assets such provisions as the court considers necessary to preserve the confidentiality of the information ordered disclosed.

**§48-7-206. Failure to disclose required financial information.**

Any failure to timely or accurately disclose financial information required by this part 2 may be considered as follows:

(1) Upon the failure by either party timely to file a complete disclosure statement as required by this part 2 or as ordered by the court, the court may accept the statement of the other party as accurate.

(2) If any party deliberately or negligently fails to disclose information which is required by this part 2 and in consequence thereof any asset or assets with a fair market value of five hundred dollars or more is omitted from the final distribution of property, the party aggrieved by the nondisclosure may at any time petition a court of competent jurisdiction to declare the creation of a constructive trust as to all undisclosed assets, for the benefit of the parties and their minor or dependent children, if any, with the party in whose name the assets are held declared the constructive trustee, such trust to include such terms and conditions as the court may determine. The court shall impose the trust upon a finding of a failure to disclose such assets as required under this part 2 .

(3) Any assets with a fair market value of five hundred dollars or more which would be considered part of the estate of either or both of the parties if owned by either or both of them at the time of the action, but which was transferred for inadequate consideration, wasted, given away or otherwise unaccounted for by one of the parties, within five years prior to the filing of the petition or length of the marriage, whichever is shorter, shall be presumed to be part of the estate and shall be subject to the disclosure requirement contained in this part 2. With respect to such transfers the spouse shall have the same right and remedies as a creditor whose debt was contracted at the time the transfer was made under article one-a, chapter forty of this code. Transfers which resulted in an exchange of assets of substantially equivalent value need not be specifically disclosed when such assets are otherwise identified in the statement of net worth.

(4) A person who knowingly provides incorrect information or who deliberately fails to disclose information pursuant to the provisions of this part 2 is guilty of false swearing.

**PART 3. INJUNCTION; SETTING ASIDE CERTAIN TRANSFERS.**

**§48-7-301. Injunction to prevent removal or disposition of property.**

Where it appears to the court that a party is about to remove himself or herself or his or her property from the jurisdiction of the court or is about to dispose of, alienate or encumber property in order to defeat a fair distribution of marital property, or the payment of alimony, child support or separate maintenance, an injunction may issue to prevent the removal or disposition and the property may be attached as provided by this code. The court may issue such injunction or attachment without bond.

**§48-7-302. Notice of hearing for injunction; temporary injunction.**

Any such injunction may be granted upon proper hearing after notice. For good cause shown, a temporary injunction may be issued after an ex parte proceeding with notice and proper hearing for a permanent injunction to be held forthwith thereafter.

**§48-7-303. Applicability of injunction procedures to sale of goods or disposition of major business assets.**

The procedures of this part 3 are not intended to apply to the sale of goods in the ordinary course of operating a business but shall apply to the disposition of the major assets of a business.

**§48-7-304. Setting aside encumbrance or disposition of property to third persons.**

Any encumbrance or disposition of property to third persons, except to bona fide purchasers without notice for full and adequate consideration, may be set aside by the court.

**ARTICLE 9. ALLOCATION OF CUSTODIAL RESPONSIBILITY AND DECISION-MAKING RESPONSIBILITY OF CHILDREN.**

**§48-9-101. Scope of article; legislative findings and declarations.**

(a) This article sets forth principles governing the allocation of custodial and decision-making responsibility for a minor child when the parents do not live together.

(b) The Legislature finds and declares that it is the public policy of this state to assure that the best interest of children is the court's primary concern in allocating custodial and decision-making responsibilities between parents who do not live together. In furtherance of this policy, the Legislature declares that a child's best interest will be served by assuring that minor children have frequent and continuing contact with parents who have shown the ability to act in the best interest of their children, to educate parents on their rights and responsibilities and the effect their separation may have on children, to encourage mediation of disputes, and to encourage parents to share in the rights and responsibilities of rearing their children after the parents have separated or divorced.

**§48-9-102. Objectives; best interests of the child.**

(a) The primary objective of this article is to serve the child's best interests, by facilitating:

- (1) Stability of the child;
- (2) Parental planning and agreement about the child's custodial arrangements and upbringing;
- (3) Continuity of existing parent-child attachments;
- (4) Meaningful contact between a child and each parent;
- (5) Caretaking relationships by adults who love the child, know how to provide for the child's needs, and who place a high priority on doing so;
- (6) Security from exposure to physical or emotional harm; and
- (7) Expedient, predictable decision-making and avoidance of prolonged uncertainty respecting arrangements for the child's care and control.

(b) A secondary objective of article is to achieve fairness between the parents.

**§48-9-103. Parties to an action under this article.**

(a) Persons who have a right to be notified of and participate as a party in an action filed by another are:

- (1) A legal parent of the child, as defined in section 1-232 of this chapter;
- (2) An adult allocated custodial responsibility or decision-making responsibility under a parenting plan regarding the child that is then in effect; or
- (3) Persons who were parties to a prior order establishing custody and visitation, or who, under a parenting plan, were allocated custodial responsibility or decision-making responsibility.

(b) In exceptional cases the court may, in its discretion, grant permission to intervene to other persons or public agencies whose participation in the proceedings under this article it determines is likely to serve the child's best interests. The court may place limitations on participation by the intervening party as the court determines to be appropriate. Such persons or public agencies do not have standing to initiate an action under this article.

**PART 1. SCOPE; OBJECTIVES; PARTIES AND PARENT EDUCATION CLASSES.**

**§48-9-104. Parent education classes.**

(a) The family court shall, by order, and with the approval of the supreme court of appeals, designate an organization or agency to establish and operate education programs designed for parents who have filed an action for divorce, paternity, support, separate maintenance or other custody proceeding and who have minor children. The education programs shall be designed to instruct and educate parents about the effects of divorce and custody disputes on their children and to teach parents ways to help their children and minimize their trauma.

(b) The family court shall issue an order requiring parties to an action for divorce involving a minor child or children to attend parent education classes established pursuant to subsection (a) of this section unless the court determines that attendance is not appropriate or necessary based on the conduct or circumstances of the parties. The court may, by order, establish sanctions for failure to attend. The court may also order parties to an action involving paternity, separate maintenance or modification of a divorce decree to attend such classes.

(c) The family court may require that each person attending a parent education class pay a fee, not to exceed twenty-five dollars, to the clerk of the circuit court to defray the cost of materials and of hiring teachers: Provided, That where it is determined that a party is indigent and unable to pay for such classes, the court shall waive the payment of the fee for such party. The clerk of the circuit court shall, on or before the tenth day of each month, transmit all fees collected under this subsection to the state treasurer for deposit in the state treasury to the credit of special revenue fund to be known as the "parent education fund" which is hereby created. All moneys collected and received under this subsection and paid into the state treasury and credited to the parent education fund shall be used by the administrative office of the supreme court of appeals solely for reimbursing the provider of parent education classes for the costs of materials and of providing such classes. Such moneys shall not be treated by the auditor and treasurer as part of the general revenue of the state.

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

## **PART 2. PARENTING PLANS.**

### **§48-9-201. Parenting agreements.**

(a) If the parents agree to one or more provisions of a parenting plan, the court shall so order, unless it makes specific findings that:

- (1) The agreement is not knowing or voluntary; or
- (2) The plan would be harmful to the child.

(b) The court, at its discretion and on any basis it deems sufficient, may conduct an evidentiary hearing to determine whether there is a factual basis for a finding under subdivision (1) or (2), subsection (a) of this section. When there is credible information that child abuse as defined by section 49-1-3 of this code or domestic violence as defined by section 27-202 of this code has occurred, a hearing is mandatory and if the court determines that abuse has occurred, appropriate protective measures shall be ordered.

(c) If an agreement, in whole or in part, is not accepted by the court under the standards set forth in subsection (a) of this section, the court shall allow the parents the opportunity to negotiate another agreement.

### **§48-9-202. Court-ordered services.**

(a)(1) The court shall inform the parents, or require them to be informed, about:

- (A) How to prepare a parenting plan;
- (B) The impact of family dissolution on children and how the needs of children facing family dissolution can best be addressed;
- (C) The impact of domestic abuse on children and resources for addressing domestic abuse; and
- (D) Mediation or other nonjudicial procedures designed to help them achieve an agreement.

(2) The court shall require the parents to attend parent education classes.

(3) If parents are unable to resolve issues and agree to a parenting plan, the court shall require mediation unless application of the procedural rules promulgated pursuant to the provisions of subsection (b) of this section indicates that mediation is inappropriate in the particular case.

(b) The supreme court of appeals shall make and promulgate rules that will provide for premediation screening procedures to determine whether domestic violence, child abuse or neglect, acts or threats of duress or coercion, substance abuse, mental illness or other such elements would adversely affect the safety of a party, the ability of a party to meaningfully participate in the mediation or the capacity of a party to freely and voluntarily consent to any proposed agreement reached as a result of the mediation. Such rules shall authorize a family court judge to consider alternatives to mediation which may aid the parties in establishing a parenting plan. Such rules shall not establish a per se bar to mediation if domestic violence, child abuse or neglect, acts or threats of duress or coercion, substance abuse, mental illness or other such elements exist, but may be the basis for the court, in its discretion, not to order services under subsection (a) of this section or not to require a parent to have face-to-face meetings with the other parent.

(c) A mediator shall not make a recommendation to the court and may not reveal information that either parent has disclosed during mediation under a reasonable expectation of confidentiality,

except that a mediator may reveal to the court credible information that he or she has received concerning domestic violence or child abuse.

(d) Mediation services authorized under subsection (a) of this section shall be ordered at an hourly cost that is reasonable in light of the financial circumstances of each parent, assessed on a uniform sliding scale. Where one parent's ability to pay for such services is significantly greater than the other, the court may order that parent to pay some or all of the expenses of the other. State revenues shall not be used to defray the costs for the services of a mediator: Provided, That the supreme court of appeals may use a portion of its budget to pay administrative costs associated with establishing and operating mediation programs: Provided, however, That grants and gifts to the state that may be used to fund mediation are not to be considered as state revenues for purposes of this subsection.

(e) The supreme court of appeals shall establish standards for the qualification and training of mediators.

**§48-9-203. Proposed temporary parenting plan; temporary order; amendment; vacation of order.**

(a) A parent seeking a temporary order relating to parenting shall file and serve a proposed temporary parenting plan by motion. The other parent, if contesting the proposed temporary parenting plan, shall file and serve a responsive proposed parenting plan. Either parent may move to have a proposed temporary parenting plan entered as part of a temporary order. The parents may enter an agreed temporary parenting plan at any time as part of a temporary order. The proposed temporary parenting plan may be supported by relevant evidence and shall be verified and shall state at a minimum the following:

(1) The name, address and length of residence with the person or persons with whom the child has lived for the preceding twelve months;

(2) The performance by each parent during the last twelve months of the parenting functions relating to the daily needs of the child;

(3) The parents' work and child-care schedules for the preceding twelve months;

(4) The parents' current work and child-care schedules; and

(5) Any of the circumstances set forth in section 9-209 that are likely to pose a serious risk to the child and that warrant limitation on the award to a parent of temporary residence or time with the child pending entry of a permanent parenting plan.

(b) At the hearing, the court shall enter a temporary parenting order incorporating a temporary parenting plan which includes:

(1) A schedule for the child's time with each parent when appropriate;

(2) Designation of a temporary residence for the child;

(3) Allocation of decision-making authority, if any. Absent allocation of decision-making authority consistent with section two hundred seven of this article, neither party shall make any decision for the child other than those relating to day-to-day or emergency care of the child, which shall be made by the party who is present with the child;

(4) Provisions for temporary support for the child; and

(5) Restraining orders, if applicable.

(c) A parent may make a motion for an order to show cause and the court may enter a temporary order, including a temporary parenting plan, upon a showing of necessity.

(d) A parent may move for amendment of a temporary parenting plan, and the court may order amendment to the temporary parenting plan, if the amendment conforms to the limitations of section 9-209 and is in the best interest of the child.

**§48-9-204. Criteria for temporary parenting plan.**

(a) After considering the proposed temporary parenting plan filed pursuant to section 9-203 and other relevant evidence presented, the court shall make a temporary parenting plan that is in the best interest of the child. In making this determination, the court shall give particular consideration to:

(1) Which parent has taken greater responsibility during the last twelve months for performing caretaking functions relating to the daily needs of the child; and

(2) Which parenting arrangements will cause the least disruption to the child's emotional stability while the action is pending.

(b) The court shall also consider the factors used to determine residential provisions in the permanent parenting plan.

(c) Upon credible evidence of one or more of the circumstances set forth in subsection 9-209(a), the court shall issue a temporary order limiting or denying access to the child as required by that section, in order to protect the child or the other party, pending adjudication of the underlying facts.

(d) Expedited procedures shall be instituted to facilitate the prompt issuance of a parenting plan.

#### **§48-9-205. Permanent parenting plan.**

(a) A party seeking a judicial allocation of custodial responsibility or decision-making responsibility under this article shall file a proposed parenting plan with the court. Parties may file a joint plan. A proposed plan shall be verified and shall state, to the extent known or reasonably discoverable by the filing party or parties:

(1) The name, address and length of residence of any adults with whom the child has lived for one year or more, or in the case of a child less than one year old, any adults with whom the child has lived since the child's birth;

(2) The name and address of each of the child's parents and any other individuals with standing to participate in the action under section 9-103;

(3) A description of the allocation of caretaking and other parenting responsibilities performed by each person named in subdivisions (1) and (2) of this subsection during the twenty-four months preceding the filing of an action under this article;

(4) A description of the work and child-care schedules of any person seeking an allocation of custodial responsibility, and any expected changes to these schedules in the near future;

(5) A description of the child's school and extracurricular activities;

(6) A description of any of the limiting factors as described in section 9-209 that are present, including any restraining orders against either parent to prevent domestic or family violence, by case number and jurisdiction;

(7) Required financial information; and

(8) A description of the known areas of agreement and disagreement with any other parenting plan submitted in the case.

The court shall maintain the confidentiality of any information required to be filed under this section when the person giving that information has a reasonable fear of domestic abuse and disclosure of the information would increase that fear.

(b) The court shall develop a process to identify cases in which there is credible information that child abuse or neglect, as defined in section 49-1-3 of this code, or domestic violence as defined in section 27-202 has occurred. The process shall include assistance for possible victims of domestic abuse in complying with subdivision (6), subsection (a) of this section, and referral to appropriate resources for safe shelter, counseling, safety planning, information regarding the potential impact of domestic abuse on children, and information regarding civil and criminal remedies for domestic abuse. The process shall also include a system for ensuring that jointly submitted parenting plans that are filed in cases in which there is credible information that child abuse or domestic abuse has occurred receive the court review that is mandated by subsection 9-201(b).

(c) Upon motion of a party and after consideration of the evidence, the court shall order a parenting plan consistent with the provisions of sections 9-206 through 9-209 of this article, containing:

(1) A provision for the child's living arrangements and each parent's custodial responsibility, which shall include either:

(A) A custodial schedule that designates in which parent's home each minor child will reside on given days of the year; or

(B) A formula or method for determining such a schedule in sufficient detail that, if necessary, the schedule can be enforced in subsequent proceedings by the court;

(2) An allocation of decision-making responsibility as to significant matters reasonably likely to arise with respect to the child; and

(3) A provision consistent with section 9-202 for resolution of disputes that arise under the plan, and remedies for violations of the plan.

(d) A parenting plan may, at the court's discretion, contain provisions that address matters that are expected to arise in the event of a party's relocation, or provide for future modifications in the parenting plan if specified contingencies occur.

**§48-9-206. Allocation of custodial responsibility.**

(a) Unless otherwise resolved by agreement of the parents under section 9-201 or unless manifestly harmful to the child, the court shall allocate custodial responsibility so that the proportion of custodial time the child spends with each parent approximates the proportion of time each parent spent performing caretaking functions for the child prior to the parents' separation or, if the parents never lived together, before the filing of the action, except to the extent required under section 9-209 or necessary to achieve any of the following objectives:

- (1) To permit the child to have a relationship with each parent who has performed a reasonable share of parenting functions;
- (2) To accommodate the firm and reasonable preferences of a child who is fourteen years of age or older, and with regard to a child under fourteen years of age, but sufficiently matured that he or she can intelligently express a voluntary preference for one parent, to give that preference such weight as circumstances warrant;
- (3) To keep siblings together when the court finds that doing so is necessary to their welfare;
- (4) To protect the child's welfare when, under an otherwise appropriate allocation, the child would be harmed because of a gross disparity in the quality of the emotional attachments between each parent and the child or in each parent's demonstrated ability or availability to meet a child's needs;
- (5) To take into account any prior agreement of the parents that, under the circumstances as a whole including the reasonable expectations of the parents in the interest of the child, would be appropriate to consider;
- (6) To avoid an allocation of custodial responsibility that would be extremely impractical or that would interfere substantially with the child's need for stability in light of economic, physical or other circumstances, including the distance between the parents' residences, the cost and difficulty of transporting the child, the parents' and child's daily schedules, and the ability of the parents to cooperate in the arrangement;
- (7) To apply the principles set forth in 9-403(d) of this article if one parent relocates or proposes to relocate at a distance that will impair the ability of a parent to exercise the amount of custodial responsibility that would otherwise be ordered under this section; and
- (8) To consider the stage of a child's development.

(b) In determining the proportion of caretaking functions each parent previously performed for the child under subsection (a) of this section, the court shall not consider the divisions of functions arising from temporary arrangements after separation, whether those arrangements are consensual or by court order. The court may take into account information relating to the temporary arrangements in determining other issues under this section.

(c) If the court is unable to allocate custodial responsibility under subsection (a) of this section because the allocation under that subsection would be manifestly harmful to the child, or because there is no history of past performance of caretaking functions, as in the case of a newborn, or because the history does not establish a pattern of caretaking sufficiently dispositive of the issues of the case, the court shall allocate custodial responsibility based on the child's best interest, taking into account the factors in considerations that are set forth in this section and in section two hundred nine and 9-403(d) of this article and preserving to the extent possible this section's priority on the share of past caretaking functions each parent performed.

(d) In determining how to schedule the custodial time allocated to each parent, the court shall take account of the economic, physical and other practical circumstances such as those listed in subdivision (6), subsection (a) of this section.

**§48-9-207. Allocation of significant decision-making responsibility.**

(a) Unless otherwise resolved by agreement of the parents under section 9-201, the court shall allocate responsibility for making significant life decisions on behalf of the child, including the child's education and health care, to one parent or to two parents jointly, in accordance with the child's best interest, in light of:

- (1) The allocation of custodial responsibility under section 9-206 of this article;
- (2) The level of each parent's participation in past decision-making on behalf of the child;
- (3) The wishes of the parents;
- (4) The level of ability and cooperation the parents have demonstrated in decision-making on behalf of the child;
- (5) Prior agreements of the parties; and
- (6) The existence of any limiting factors, as set forth in section 9-209 of this article.

(b) If each of the child's legal parents has been exercising a reasonable share of parenting functions for the child, the court shall presume that an allocation of decision-making responsibility to both parents jointly is in the child's best interests. The presumption is overcome if there is a history of domestic abuse, or by a showing that joint allocation of decision-making responsibility is not in the child's best interest.

(c) Unless otherwise provided or agreed by the parents, each parent who is exercising custodial responsibility shall be given sole responsibility for day-to-day decisions for the child, while the child is in that parent's care and control, including emergency decisions affecting the health and safety of the child.

#### **§48-9-208. Criteria for parenting plan; dispute resolution.**

(a) If provisions for resolving parental disputes are not ordered by the court pursuant to parenting agreement under section 9-201, the court shall order a method of resolving disputes that serves the child's best interest in light of:

- (1) The parents' wishes and the stability of the child;
- (2) Circumstances, including, but not limited to, financial circumstances, that may affect the parents ability to participate in a prescribed dispute resolution process; and
- (3) The existence of any limiting factor, as set forth in section 9-209 of this article.

(b) The court may order a nonjudicial process of dispute resolution by designating with particularity the person or agency to conduct the process or the method for selecting such a person or agency. The disposition of a dispute through a nonjudicial method of dispute resolution that has been ordered by the court without prior parental agreement is subject to de novo judicial review. If the parents have agreed in a parenting plan or by agreement thereafter to a binding resolution of their dispute by nonjudicial means, a decision by such means is binding upon the parents and must be enforced by the court, unless it is shown to be contrary to the best interests of the child, beyond the scope of the parents' agreement, or the result of fraud, misconduct, corruption or other serious irregularity.

(c) This section is subject to the limitations imposed by section two hundred two of this article.

#### **§48-9-209. Parenting plan; limiting factors.**

(a) If either of the parents so requests, or upon receipt of credible information thereof, the court shall determine whether a parent who would otherwise be allocated responsibility under a parenting plan:

- (1) Has abused, neglected or abandoned a child, as defined by state law;
- (2) Has sexually assaulted or sexually abused a child as those terms are defined in articles eight-b and eight-d, chapter sixty-one of this code;
- (3) Has committed domestic violence, as defined in section 27-202;
- (4) Has interfered persistently with the other parent's access to the child, except in the case of actions taken for the purpose of protecting the safety of the child or the interfering parent or another family member, pending adjudication of the facts underlying that belief; or
- (5) Has repeatedly made fraudulent reports of domestic violence or child abuse.

(b) If a parent is found to have engaged in any activity specified by subsection (a) of this section, the court shall impose limits that are reasonably calculated to protect the child or child's parent from harm. The limitations that the court shall consider include, but are not limited to:

- (1) An adjustment of the custodial responsibility of the parents, including the allocation of exclusive custodial responsibility to one of them;
- (2) Supervision of the custodial time between a parent and the child;
- (3) Exchange of the child between parents through an intermediary, or in a protected setting;
- (4) Restraints on the parent from communication with or proximity to the other parent or the child;
- (5) A requirement that the parent abstain from possession or consumption of alcohol or nonprescribed drugs while exercising custodial responsibility and in the twenty-four hour period immediately preceding such exercise;
- (6) Denial of overnight custodial responsibility;
- (7) Restrictions on the presence of specific persons while the parent is with the child;
- (8) A requirement that the parent post a bond to secure return of the child following a period in which the parent is exercising custodial responsibility or to secure other performance required by the court;

(9) A requirement that the parent complete a program of intervention for perpetrators of domestic violence, for drug or alcohol abuse, or a program designed to correct another factor; or

(10) Any other constraints or conditions that the court deems necessary to provide for the safety of the child, a child's parent or any person whose safety immediately affects the child's welfare.

(c) If a parent is found to have engaged in any activity specified in subsection (a) of this section, the court may not allocate custodial responsibility or decision-making responsibility to that parent without making special written findings that the child and other parent can be adequately protected from harm by such limits as it may impose under subsection (b) of this section. The parent found to have engaged in the behavior specified in subsection (a) of this section has the burden of proving that an allocation of custodial responsibility or decision-making responsibility to that parent will not endanger the child or the other parent.

## **ARTICLE 11. SUPPORT OF CHILDREN.**

### **§48-11-101. General provisions relating to child support.**

(a) It is one of the purposes of the Legislature in enacting this chapter to improve and facilitate support enforcement efforts in this state, with the primary goal being to establish and enforce reasonable child support orders and thereby improve opportunities for children. It is the intent of the Legislature that to the extent practicable, the laws of this state should encourage and require a child's parents to meet the obligation of providing that child with adequate food, shelter, clothing, education, and health and child care.

(b) When the domestic relations action involves a minor child or children, the court shall require either party to pay child support in the form of periodic installments for the maintenance of the minor children of the parties in accordance with support guidelines promulgated pursuant to article 13-101, et seq., of this chapter. Payments of child support are to be ordinarily made from a party's income, but in cases when the income is not sufficient to adequately provide for those payments, the court may, upon specific findings set forth in the order, order the party required to make those payments to make them from the corpus of his or her separate estate.

### **§48-11-102. Required information in support orders.**

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

(1) The name of the custodian;

(2) The amount of the support payments;

(3) The date the first payment is due;

(4) The frequency of the support payments;

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

(6) A provision regarding wage withholding;

(7) The address where payments shall be sent;

(8) A provision for medical support;

(9) When child support guidelines are not followed, a specific written finding pursuant to section 13-702.

(b) Effective the first day of October, one thousand nine hundred ninety-nine, any order entered that provides for the payment of child support shall also include a statement that requires both parties to report any changes in gross income, either in source of employment or in the amount of gross income, to the bureau for child support enforcement and to the other party. The notice shall not be required if the change in gross income is less than a fifteen percent change in gross income.

(c) All child support orders shall contain a notice which contains language substantially similar to the following: "The amount of the monthly child support can be modified as provided by law based upon a change in the financial or other circumstances of the parties if those circumstances are among those considered in the child support formula. In order to make the modification a party must file a motion to modify the child support amount. Unless a motion to modify is filed, the child support amount will continue to be due and cannot later be changed retroactively even though there has been a change of circumstances since the entry of the order. Self help forms for modification can be found at the circuit clerk's office." The failure of an order to have such a provision does not alter the effectiveness of the order.

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

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

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

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

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

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

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

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

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

#### **§48-11-104. Payments out of disposable retired or retainer pay.**

Whenever under the terms of article 5-601, et seq., or article 5-501, et seq., a court enters an order requiring the payment of child support, if the court anticipates the payment of such child support or any portion thereof to be paid out of "disposable retired or retainer pay" as that term is defined in 10 U.S.C. §1408, relating to members or former members of the uniformed services of the United States, the court shall specifically provide for the payment of an amount, expressed in dollars or as a percentage of disposable retired or retainer pay, from the disposable retired or retainer pay of the payor party to the payee party.

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

(a) The court may modify a child support order, for the benefit of the child, when a motion is made that alleges a change in the circumstances of a parent or another proper person or persons. A motion for modification of a child support order may be brought by a custodial parent or any other lawful custodian or guardian of the child, by a parent or other person obligated to pay child support for the child or by the bureau for child support enforcement of the department of health and human resources of this state.

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

(c) An order that modifies the amount of child support to be paid shall conform to the support guidelines set forth in article 13-101, et seq., of this chapter unless the court disregards the guidelines or adjusts the award as provided for in section 13-702.

(d) The supreme court of appeals shall make available to the courts a standard form for a petition for modification of an order for support, which form will allege that the existing order should be altered or revised because of a loss or change of employment or other substantial change affecting income or that the amount of support required to be paid is not within fifteen percent of the child support guidelines. The clerk of the circuit court and the secretary-clerk of the family court shall

make the forms available to persons desiring to represent themselves in filing a motion for modification of the support award.

**§48-11-106. Expedited process for modification.**

- (a) An expedited process for modification of a child support order may be utilized if:
  - (1) Either parent experiences a substantial change of circumstances resulting in a decrease in income due to loss of employment or other involuntary cause;
  - (2) An increase in income due to promotion, change in employment or reemployment; or
  - (3) Other such change in employment status.
- (b) The party seeking the recalculation of support and modification of the support order shall file a description of the decrease or increase in income and an explanation of the cause of the decrease or increase on a standardized form to be provided by the secretary-clerk or other employee of the family court. The standardized form shall be verified by the filing party. Any available documentary evidence shall be filed with the standardized form. Based upon the filing and information available in the case record, the amount of support shall be tentatively recalculated.
- (c) The secretary-clerk shall serve a notice of the filing, a copy of the standardized form and the support calculations upon the other party by certified mail, return receipt requested, with delivery restricted to the addressee, in accordance with rule 4(d)(1)(D) of the West Virginia rules of civil procedure. The secretary-clerk shall also mail a copy, by first-class mail, to the local office of the bureau for child support enforcement for the county in which the family court is located in the same manner as original process under rule 4(d) of the rules of civil procedure.
- (d) The notice shall fix a date fourteen days from the date of mailing and inform the party that unless the recalculation is contested and a hearing request is made on or before the date fixed, the proposed modification will be made effective. If the filing is contested, the proposed modification shall be set for hearing; otherwise, the court shall enter an order for a judgment by default. Either party may move to set aside a judgment by default, pursuant to the provisions of rule 55 or rule 60(b) of the rules of civil procedure.
- (e) If an obligor uses the provisions of this section to expeditiously reduce his or her child support obligation, the order that effected the reduction shall also require the obligor to notify the obligee of reemployment, new employment or other such change in employment status that results in an increase in income. If an obligee uses the provisions of this section to expeditiously increase his or her child support obligation, the order that effected the increase shall also require the obligee to notify the obligor of reemployment, new employment or other such change in employment status that results in an increase in income of the obligee.
- (f) The supreme court of appeals shall develop the standardized form required by this section.

**§48-11-107. Modification resulting in reduction and overpayment of support.**

In any proceeding filed after the first day of January, two thousand one, where a petition to modify child support is granted which results in a reduction of child support owed so that the obligor has overpaid child support, the court shall grant a decretal judgment to the obligor for the amount of the overpayment. The court shall inquire as to whether a support arrearage was owed by the obligor for support due prior to the filing of the petition for modification. If an arrearage exists, the court shall order an offset of the overpayment against the child support arrearages. If no prior arrearage exists or if the arrearage is not sufficient to offset the overpayment, then the court may direct the bureau for child support enforcement to collect the overpayment through income withholding, if the person has, in the court's opinion, sufficient income other than the child support received. The income withholding shall be in all respects as provided for in part 14-401, et seq., except that in no circumstances may the amount withheld exceed thirty-five percent of the disposable earnings for the period, regardless of the length of time that the overpayment has been owed.

**ARTICLE 13. GUIDELINES FOR CHILD SUPPORT AWARDS.**

**§48-13-101. Guidelines to ensure uniformity and increase predictability; presumption of correctness.**

This article establishes guidelines for child support award amounts so as to ensure greater uniformity by those persons who make child support recommendations and enter child support

orders and to increase predictability for parents, children and other persons who are directly affected by child support orders. There is a rebuttable presumption, in any proceeding before a court for the award of child support, that the amount of the award which would result from the application of these guidelines is the correct amount of child support to be awarded.

**§48-13-102. Right of children to share in parents' level of living.**

The Legislature recognizes that children have a right to share in their natural parents' level of living. Expenditures in families are not made in accordance with subsistence level standards, but are made in proportion to household income, and as parental incomes increase or decrease, the actual dollar expenditures for children also increase or decrease correspondingly. In order to ensure that children properly share in their parents' resources, regardless of family structure, these guidelines are structured so as to provide that after a consideration of respective parental incomes, child support will be related, to the extent practicable, to the standard of living that children would enjoy if they were living in a household with both parents present.

**§48-13-103. Financial contributions of both parents to be considered.**

The guidelines promulgated under the provisions of this article take into consideration the financial contributions of both parents. The Legislature recognizes that expenditures in households are made in aggregate form and that total family income is pooled to determine the level at which the family can live. These guidelines consider the financial contributions of both parents in relationship to total income, so as to establish and equitably apportion the child support obligation.

**PART 2. CALCULATION OF CHILD SUPPORT ORDER.**

**§48-13-201. Use of both parents' income in determining child support.**

A child support order is determined by dividing the total child support obligation between the parents in proportion to their income. Both parents' adjusted gross income is used to determine the amount of child support.

**§48-13-202. Application of expenses and credits in determining child support.**

In determining the total child support obligation, the court shall:

- (1) Add to the basic child support obligation any unreimbursed child health care expenses, work-related child care expenses and any other extraordinary expenses agreed to by the parents or ordered by the court; and
- (2) Subtract any extraordinary credits agreed to by the parents or ordered by the court.

**§48-13-203. Amount determined by guidelines presumed to be correct.**

The amount of support resulting from the application of the guidelines is presumed to be the correct amount, unless the court, in a written finding or a specific finding on the record, disregards the guidelines or adjusts the award as provided for in section 13-702.

**§48-13-204. Use of worksheets.**

The calculation of the amount awarded by the support order requires the use of one of two worksheets which must be completed for each case. Worksheet A is used for a basic shared parenting arrangement. Worksheet B is used for an extended shared parenting arrangement.

**§48-13-205. Present income as monthly amounts.**

To the extent practicable, all information relating to income shall be presented to the court based on monthly amounts. For example, when a party is paid wages weekly, the pay should be multiplied by fifty-two and divided by twelve to arrive at a correct monthly amount. If the court deems appropriate, such information may be presented in such other forms as the court directs.

**PART 3. BASIC CHILD SUPPORT ORDER.**

**48-13-301. Determining the basic child support obligation.**

The basic child support obligation is determined from the following table of monthly basic child support obligations:

West Virginia  
Monthly Basic Child Support Obligations  
(Adjusted for West Virginia's Income Relative to U.S. Averages)

COMBINED GROSS ONE TWO THREE FOUR FIVE SIX MONTHLY CHILD CHILDREN CHILDREN CHILDREN CHILDREN CHILDREN INCOME						
550	127	185	219	242	263	281
600	137	200	237	262	284	304
650	147	214	253	280	303	325
700	156	227	268	296	321	344
750	163	238	282	311	337	361
800	171	249	295	326	353	378
850	179	261	309	341	370	395
900	188	273	323	357	387	414
950	197	286	338	374	405	433
1000	205	299	353	390	423	452
1050	214	311	368	406	440	471
1100	223	324	382	423	458	490
1150	231	336	397	439	476	509
1200	240	349	412	455	493	528
1250	248	361	426	471	511	547
1300	257	373	441	487	528	565
1350	265	386	456	503	546	584
1400	274	398	470	519	563	602
1450	282	410	484	534	579	620
1500	291	422	498	550	596	638
1550	299	434	512	565	613	656
1600	307	446	526	581	630	674
1650	316	458	540	596	646	692
1700	324	470	554	612	663	709
1750	332	482	568	627	680	727
1800	341	494	581	643	697	745
1850	349	506	595	658	713	763
1900	357	517	609	673	730	781
1950	366	529	623	689	747	799
2000	373	540	636	703	762	816
2050	381	551	649	717	778	832
2100	388	562	662	731	793	848
2150	395	573	674	745	808	864
2200	403	583	687	759	823	881
2250	410	594	700	773	838	897
2300	417	605	712	787	853	913
2350	425	616	725	801	869	929
2400	432	626	738	815	884	946
2450	440	637	750	829	899	962
2500	447	648	763	843	914	978
2550	454	658	776	857	929	994
2600	460	667	786	868	941	1007
2650	465	674	794	877	951	1018
2700	471	682	803	887	962	1029
2750	475	688	810	895	970	1038
2800	479	694	816	902	978	1046

2850 484 700 823 909 986 1055  
2900 488 705 830 917 994 1063  
2950 492 711 836 924 1002 1072  
3000 496 717 843 931 1010 1080  
3050 500 723 850 939 1018 1089  
3100 504 729 856 946 1026 1097  
3150 509 735 863 953 1033 1106  
3200 513 740 869 961 1041 1114  
3250 517 746 876 968 1049 1123  
3300 521 752 882 975 1057 1131  
3350 524 757 888 981 1064 1138  
3400 527 761 893 987 1070 1145  
3450 531 766 899 993 1077 1152  
3500 534 771 904 999 1083 1159  
3550 537 775 910 1006 1090 1166  
3600 541 780 916 1012 1097 1173  
3650 544 785 921 1018 1103 1180  
3700 547 790 927 1024 1110 1187  
3750 550 794 932 1030 1116 1194  
3800 554 799 937 1036 1123 1201  
3850 557 803 943 1041 1129 1208  
3900 560 808 948 1047 1135 1215  
3950 563 812 953 1053 1142 1222  
4000 566 817 959 1059 1148 1229  
4050 570 822 964 1065 1155 1236  
4100 574 828 972 1074 1164 1245  
4150 579 834 979 1082 1172 1254  
4200 583 841 986 1090 1181 1264  
4250 588 847 993 1098 1190 1273  
4300 592 853 1001 1106 1199 1283  
4350 597 860 1008 1114 1207 1292  
4400 601 866 1015 1122 1216 1301  
4450 606 873 1023 1130 1225 1311  
4500 610 879 1030 1138 1234 1320  
4550 615 885 1037 1146 1242 1329  
4600 619 892 1044 1154 1251 1339  
4650 624 898 1052 1162 1260 1348  
4700 628 904 1059 1170 1269 1357  
4750 633 911 1066 1178 1277 1367  
4800 637 917 1074 1186 1286 1376  
4850 642 924 1082 1195 1296 1386  
4900 647 931 1090 1204 1305 1397  
4950 651 938 1098 1213 1315 1407  
5000 656 945 1106 1222 1325 1418  
5050 661 951 1114 1231 1335 1428  
5100 666 958 1123 1240 1345 1439  
5150 670 965 1131 1249 1354 1449  
5200 675 972 1139 1259 1364 1460  
5250 680 979 1147 1268 1374 1470  
5300 685 986 1155 1277 1384 1481  
5350 689 993 1163 1285 1393 1491  
5400 694 999 1171 1294 1403 1501  
5450 698 1006 1179 1302 1412 1511  
5500 703 1012 1186 1311 1421 1521  
5550 707 1019 1194 1319 1430 1530  
5600 712 1025 1201 1328 1439 1540  
5650 716 1031 1208 1335 1447 1548  
5700 719 1036 1214 1341 1454 1556  
5750 723 1042 1220 1348 1462 1564  
5800 727 1047 1226 1355 1469 1572

5850	731	1052	1233	1362	1477	1580
5900	735	1058	1239	1369	1484	1588
5950	739	1063	1245	1376	1492	1596
6000	743	1069	1251	1383	1499	1604
6050	747	1074	1258	1390	1506	1612
6100	751	1080	1265	1397	1515	1621
6150	755	1086	1272	1405	1523	1630
6200	760	1093	1279	1413	1531	1639
6250	764	1099	1286	1420	1540	1648
6300	768	1105	1292	1428	1548	1657
6350	773	1111	1299	1436	1556	1665
6400	777	1117	1306	1444	1565	1674
6450	781	1123	1313	1451	1573	1683
6500	785	1129	1320	1459	1582	1692
6550	789	1135	1327	1467	1590	1701
6600	793	1140	1334	1474	1598	1710
6650	797	1146	1341	1482	1607	1719
6700	801	1152	1348	1490	1615	1728
6750	806	1158	1355	1498	1623	1737
6800	810	1164	1362	1505	1632	1746
6850	814	1170	1369	1513	1640	1755
6900	818	1176	1376	1521	1649	1764
6950	822	1182	1383	1529	1657	1773
7000	826	1188	1390	1536	1665	1782
7050	830	1194	1397	1544	1674	1791
7100	834	1200	1404	1552	1682	1800
7150	838	1206	1411	1560	1691	1809
7200	842	1212	1418	1567	1699	1818
7250	847	1218	1425	1575	1707	1827
7300	851	1224	1432	1583	1716	1836
7350	855	1230	1439	1591	1724	1845
7400	859	1236	1446	1598	1733	1854
7450	863	1242	1453	1606	1741	1863
7500	867	1248	1460	1614	1749	1872
7550	871	1253	1468	1622	1758	1881
7600	875	1259	1475	1629	1766	1890
7650	879	1265	1482	1637	1775	1899
7700	883	1271				

**§48-13-302. Incomes below the table for determining basic child support obligations.**

If combined adjusted gross income is below five hundred fifty dollars per month, which is the lowest amount of income considered in the table of monthly basic child support obligations set forth in subsection (a) of this section, the basic child support obligation shall be set at fifty dollars per month or a discretionary amount determined by the court based on the resources and living expenses of the parents and the number of children due support.

**§48-13-303. Incomes above the table for determining basic child support obligations.**

If combined adjusted gross income is above fifteen thousand dollars per month, which is the highest amount of income considered in the table of monthly basic child support obligations set forth in subsection (a) of this section, the basic child support obligation shall not be less than it would be based on a combined adjusted gross income of fifteen thousand dollars. The court may also compute the basic child support obligation for combined adjusted gross incomes above fifteen thousand dollars by the following:

- (1) One child --  $\$1,338 + 0.088 \times$  combined adjusted gross income above fifteen thousand dollars per month;
- (2) Two children --  $\$1,934 + 0.129 \times$  combined adjusted gross income above fifteen thousand dollars per month;

- (3) Three children --  $\$2,276 + 0.153 \times$  combined adjusted gross income above fifteen thousand dollars per month;
- (4) Four children --  $\$2,515 + 0.169 \times$  combined adjusted gross income above fifteen thousand dollars per month;
- (5) Five children --  $\$2,726 + 0.183 \times$  combined adjusted gross income above fifteen thousand dollars per month; and
- (6) Six children --  $\$2,917 + 0.196 \times$  combined adjusted gross income above fifteen thousand dollars per month.

## **PART VIII. MISCELLANEOUS PROVISIONS RELATING TO CHILD SUPPORT ORDERS .**

### **§48-13-801. Tax exemption for child due support.**

Unless otherwise agreed to by the parties, the court shall allocate the right to claim dependent children for income tax purposes to the payee parent except in cases of extended shared parenting. In extended shared parenting cases, these rights shall be allocated between the parties in proportion to their adjusted gross incomes for child support calculations. In a situation where allocation would be of no tax benefit to a party, the court need make no allocation to that party. However, the tax exemptions for the minor child or children should be granted to the payor parent only if the total of the payee parent's income and child support is greater when the exemption is awarded to the payor parent.

### **§48-13-802. Investment of child support.**

(a) The court has the discretion, in appropriate cases, to direct that a portion of child support be placed in trust and invested for future educational or other needs of the child. The court may order such investment when all of the child's day-to-day needs are being met such that, with due consideration of the age of the child, the child is living as well as his or her parents.

(b) If the amount of child support ordered per child exceeds the sum of two thousand dollars per month, the court is required to make a finding, in writing, as to whether investments shall be made as provided for in subsection (a) of this section.

(c) A trustee named by the court shall use the judgment and care under the circumstances then prevailing that persons of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. A trustee shall be governed by the provisions of the uniform prudent investor act as set forth in article six-c, chapter forty-four of this code. The court may prescribe the powers of the trustee and provide for the management and control of the trust. Upon petition of a party or the child's guardian or next friend and upon a showing of good cause, the court may order the release of funds in the trust from time to time.

### **§48-13-803. Reimbursement or arrearage only support.**

When the payor is not paying any current support obligation but is required to pay for arrearages or reimbursement support, the court shall set a payment amount for the repayment of reimbursement support or of a support arrearage that is reasonable pursuant to the provisions of this article or section 6-301, but not to exceed the limits set out in section 14-408.

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

### **PART 1. ACTION TO OBTAIN AN ORDER FOR**

#### **SUPPORT OF MINOR CHILD.**

### **§48-14-101. When action may be brought for child support order.**

An action may be brought in family court to obtain an order for the support of a minor child when:

- (1) The child has a parent and child relationship with an obligor;
- (2) The obligor is not meeting an obligation to support the child;

- (3) An enforceable order for the support of the child by the obligor has not been entered by a court of competent jurisdiction; and
- (4) There is no pending action for divorce, separate maintenance or annulment in which the obligation of support owing from the obligor to the child is at issue.

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

An action may be brought under the provisions of section 14-101 by:

- (1) A custodial parent of a child, when the divorce order or other order which granted custody did not make provision for the support of the child by the obligor;
- (2) A primary caretaker of a child;
- (3) A guardian of the property of a child or the committee for a child; or
- (4) The bureau for child support enforcement, on behalf of the state, when the department of health and human resources is providing assistance on behalf of the child in the form of temporary assistance to needy families, and any right to support has been assigned to the department or in any other case wherein a party has applied for child support enforcement services from the bureau for child support enforcement.

**§48-14-103. Venue for action for child support order.**

An action under the provisions of this section may be brought in the county where the obligee, the obligor or the child resides.

**§48-14-104. Obligee may seek spousal support in addition to child support.**

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

**§48-14-105. Mandatory provision for wage withholding.**

Every order of support heretofore or hereafter entered or modified under the provisions of this section shall include a provision for the income withholding in accordance with the provisions of 12-101, et seq., and 14-401, et seq.

**PART I. ACTION TO OBTAIN AN ORDER FOR SUPPORT OF MINOR CHILD.**

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

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

(b) The supreme court of appeals shall make available to the family courts a standard form for a petition for modification of an order for support, which form will allege that the existing order should be altered or revised because of a loss or change of employment or other substantial change affecting income or that the amount of support required to be paid is not within fifteen percent of the child support guidelines. The clerk of the circuit court and the secretary-clerk of the family court shall make such forms available to persons desiring to petition the court pro se for a modification of the support award.

**PART 2. LIENS AGAINST PERSONAL PROPERTY**

**FOR OVERDUE SUPPORT.**

**§48-14-201. Arrearages stand by operation of law as judgment against support obligor.**

When an obligor is in arrears in the payment of support which is required to be paid by the terms of an order for support of a child, an obligee or the bureau for child support enforcement may file an abstract of the order giving rise to the support obligation and an "affidavit of accrued support,"

setting forth the particulars of such arrearage and requesting a writ of execution, suggestion or suggestee execution. The filing of the abstract and affidavit shall give rise, by operation of law, to a lien against personal property of an obligor who resides within this state or who owns property within this state for overdue support.

**§48-14-202. Registration of foreign order.**

If the duty of support is based upon an order from another jurisdiction, the obligee shall first register the order in accordance with the provisions of part 16-601, et seq., of this chapter: Provided, That nothing in this subsection shall prevent the bureau for child support enforcement from enforcing foreign orders for support without registration of the order in accordance with the provisions of part 16-501, et seq., of this chapter.

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

(a) The affidavit of accrued support may be filed with the clerk of the circuit court in the county in which the obligee or the obligor resides, or where the obligor's source of income is located.

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

(c) The affidavit shall:

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

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

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

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

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

**PART 2. LIENS AGAINST PERSONAL**

**PROPERTY FOR OVERDUE SUPPORT.**

**§48-14-204. Execution and notice.**

(a) Upon receipt of the affidavit, the clerk shall issue a writ of execution, suggestion or suggestee execution and shall mail a copy of the affidavit and a notice of the filing of the affidavit to the obligor at his or her last known address. If the bureau for child support enforcement is not acting on behalf of the obligee in filing the affidavit, the clerk shall forward a copy of the affidavit and the notice of the filing to the bureau for child support enforcement.

(b) The notice provided for in subsection (a) of this section must inform the obligor that if he or she desires to contest the affidavit on the grounds that the amount claimed to be in arrears is incorrect or that a writ of execution, suggestion or suggestee execution is not proper because of mistakes of fact, he or she must, within fourteen days of the date of the notice: (1) Inform the bureau for child support enforcement in writing of the reasons why the affidavit is contested and request a meeting with the bureau for child support enforcement; or (2) where a court of this state has jurisdiction over the parties, obtain a date for a hearing before the court and mail written notice of such hearing to the obligee and to the bureau for child support enforcement on a form prescribed by the administrative office of the supreme court of appeals and made available through the office of the clerk of the circuit court.

(c) Upon being informed by an obligor that he or she desires to contest the affidavit, the bureau for child support enforcement shall inform the court of such fact, and the court shall require the obligor to give security, post a bond or give some other guarantee to secure payment of overdue support.