

# **WEST VIRGINIA LEGISLATURE**

## **2017 REGULAR SESSION**

**Introduced**

### **House Bill 2855**

BY DELEGATE UPSON

[Introduced March 8, 2017; Referred  
to the Committee on the Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
 2 designated §48-1-235a; to amend and reenact §48-5-508 and §48-5-610 of said code;  
 3 and to amend and reenact §48-6-101 of said code, all relating to care, custody and  
 4 visitation of pets involved in separation and divorce proceedings; defining “pet”;  
 5 authorizing courts to provide both temporary and final relief involving the care, custody  
 6 and visitation of pets; directing that orders for pet care, custody and visitation consider the  
 7 well-being of the animal; and specifying that terms for pet care, custody and visitation may  
 8 be included within property settlements or separation agreements.

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

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new  
 2 section, designated §48-1-235a; that §48-5-508 and §48-5-610 of said code be amended and  
 3 reenacted; and that §48-6-101 of said code be amended and reenacted, all to read as follows:

**ARTICLE 1. GENERAL PROVISIONS; DEFINITIONS.**

**§48-1-235a. Pet defined.**

1 "Pet" means a living, vertebrate creature maintained for companionship or pleasure, but  
 2 does not include animals raised for sale, maintained for agricultural purposes or for transportation,  
 3 or animals maintained for other business purposes.

**ARTICLE 5. DIVORCE.**

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

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

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

7 third party.

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

16 (d) If, during the marriage, the parties have acquired any pets, the court may make  
17 provision within an order for the temporary custody and care of the pets including, but not limited  
18 to, joint custody, allocation of the costs of care and terms of visitation for the noncustodial party,  
19 taking into consideration the well-being of the animal.

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

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

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

10 (c) In any distribution of property in which a pet may be involved, the court shall consider  
11 the well-being of the animal in deciding which party may have custody of the pet and, if demanded,  
12 the court may, after taking into consideration the well-being of the animal, provide the other party

13 with reasonable and appropriate visitation.

**ARTICLE 6. APPENDICES.**

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

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

4 (1) Settle the property rights of the parties;

5 (2) Provide for child support;

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

8 (4) Provide for the custody and continued care of pets and establish terms for visitation of  
9 pets;

10 ~~(4)~~ (5) Provide for the payment or waiver of spousal support by either party; or

11 ~~(5)~~ (6) Otherwise settle and compromise issues arising from the marital rights and  
12 obligations of the parties.

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

NOTE: The purpose of this bill is to authorize courts to determine custody and visitation for  
pets in divorce proceedings and to allow for the inclusion of pet care, custody and visitation  
in property settlements and separation agreements.

Strike-throughs indicate language that would be stricken from a heading or the present law  
and underscoring indicates new language that would be added.