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SENATE OF WEST VIRGINIA

WEST VIRGINIA LEGISLATURE

Regular Session, 2003

ENROLLED

Committee Substitute for

SENATE BILL NO. 178

(By Senator Oliverio, et al)

PASSED March 8, 2003

In Effect 90 days from **Passage**

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SENATE OF WEST VIRGINIA

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COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 178

(SENATORS OLIVERIO, MCKENZIE AND ROWE, *original sponsors*)

[Passed March 16, 2003; in effect ninety days from passage.]

AN ACT to amend and reenact section one hundred one, article twenty-five, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section two, article two-a, chapter fifty-one of said code, all relating to defining and clarifying the family court's jurisdiction over petitions for a change of name, proceedings for the payment of attorney fees, proceedings for property distribution, and actions or proceedings to obtain spousal support.

Be it enacted by the Legislature of West Virginia:

That section one hundred one, article twenty-five, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and

that section two, article two-a, chapter fifty-one of said code be amended and reenacted, all to read as follows:

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 25. CHANGE OF NAME.

§48-25-101. Petition to circuit court or family court for change of name; contents thereof; notice of application.

1 (a) Any person desiring a change of his or her own name,
2 or that of his or her child or ward, may apply therefor to
3 the circuit court or family court of the county in which he
4 or she resides, by petition setting forth:

5 (1) That he or she has been a bona fide resident of the
6 county for at least one year prior to the filing of the
7 petition;

8 (2) The cause for which the change of name is sought;
9 and

10 (3) The new name desired.

11 (b) Previous to the filing of the petition the person shall
12 cause a notice of the time and place that the application
13 will be made, to be published as a Class I legal advertise-
14 ment in compliance with the provisions of article three,
15 chapter fifty-nine of this code. The publication area for
16 the publication is the county.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 2A. FAMILY COURTS.

§51-2A-2. Family court jurisdiction; exceptions; limitations.

1 (a) The family court shall exercise jurisdiction over the
2 following matters:

3 (1) All actions for divorce, annulment or separate
4 maintenance brought under the provisions of article three,
5 four or five, chapter forty-eight of this code except as
6 provided in subsections (b) and (c) of this section;

7 (2) All actions to obtain orders of child support brought
8 under the provisions of articles eleven, twelve and four-
9 teen, chapter forty-eight of this code;

10 (3) All actions to establish paternity brought under the
11 provisions of article twenty-four, chapter forty-eight of
12 this code and any dependent claims related to such actions
13 regarding child support, parenting plans or other alloca-
14 tion of custodial responsibility or decision-making respon-
15 sibility for a child;

16 (4) All actions for grandparent visitation brought under
17 the provisions of article ten, chapter forty-eight of this
18 code;

19 (5) All actions for the interstate enforcement of family
20 support brought under article sixteen, chapter forty-eight
21 of this code and for the interstate enforcement of child
22 custody brought under the provisions of article twenty,
23 chapter forty-eight of this code;

24 (6) All actions for the establishment of a parenting plan
25 or other allocation of custodial responsibility or decision-
26 making responsibility for a child, including actions
27 brought under the uniform child custody jurisdiction and
28 enforcement act, as provided in article twenty, chapter
29 forty-eight of this code;

30 (7) All petitions for writs of habeas corpus wherein the
31 issue contested is custodial responsibility for a child;

32 (8) All motions for temporary relief affecting parenting
33 plans or other allocation of custodial responsibility or
34 decision-making responsibility for a child, child support,
35 spousal support or domestic violence;

36 (9) All motions for modification of an order providing for
37 a parenting plan or other allocation of custodial responsi-
38 bility or decision-making responsibility for a child or for
39 child support or spousal support;

40 (10) All actions brought, including civil contempt
41 proceedings, to enforce an order of spousal or child
42 support or to enforce an order for a parenting plan or
43 other allocation of custodial responsibility or decision-
44 making responsibility for a child;

45 (11) All actions brought by an obligor to contest the
46 enforcement of an order of support through the withhold-
47 ing from income of amounts payable as support or to
48 contest an affidavit of accrued support, filed with the
49 circuit clerk, which seeks to collect an arrearage;

50 (12) All final hearings in domestic violence proceedings;

51 (13) Petitions for a change of name, exercising concur-
52 rent jurisdiction with the circuit court;

53 (14) All proceedings for payment of attorney fees if the
54 family court judge has jurisdiction of the underlying
55 action;

56 (15) All proceedings for property distribution brought
57 under article seven, chapter forty-eight of this code; and

58 (16) All proceedings to obtain spousal support brought
59 under article eight, chapter forty-eight of this code.

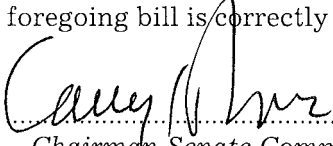
60 (b) If an action for divorce, annulment or separate
61 maintenance does not require the establishment of a
62 parenting plan or other allocation of custodial responsibil-
63 ity or decision-making responsibility for a child and does
64 not require an award or any payment of child support, the
65 circuit court has concurrent jurisdiction with the family
66 court over the action if, at the time of the filing of the
67 action, the parties also file a written property settlement
68 agreement executed by both parties.

69 (c) If an action for divorce, annulment or separate
70 maintenance is pending and a petition is filed pursuant to
71 the provisions of article six, chapter forty-nine of this code
72 alleging abuse or neglect of a child by either of the parties
73 to the divorce, annulment or separate maintenance action,

74 the orders of the circuit court in which the abuse or
75 neglect petition is filed shall supercede and take prece-
76 dence over an order of the family court respecting the
77 allocation of custodial and decision-making responsibility
78 for the child between the parents. If no order for the
79 allocation of custodial and decision-making responsibility
80 for the child between the parents has been entered by the
81 family court in the pending action for divorce, annulment
82 or separate maintenance, the family court shall stay any
83 further proceedings concerning the allocation of custodial
84 and decision-making responsibility for the child between
85 the parents and defer to the orders of the circuit court in
86 the abuse or neglect proceedings.

87 (d) A family court is a court of limited jurisdiction. A
88 family court is a court of record only for the purpose of
89 exercising jurisdiction in the matters for which the
90 jurisdiction of the family court is specifically authorized
91 in this section and in chapter forty-eight of this code. A
92 family court may not exercise the powers given courts of
93 record in section one, article five, chapter fifty-one of this
94 code or exercise any other powers provided for courts of
95 record in this code unless specifically authorized by the
96 Legislature. A family court judge is not a “judge of any
97 court of record” or a “judge of a court of record” as the
98 terms are defined and used in article nine of this chapter.

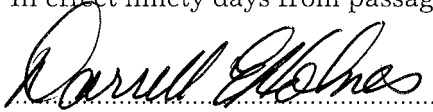
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

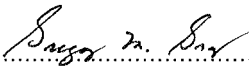

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Chairman Senate Committee


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Chairman House Committee


Originated in the Senate.

In effect ninety days from passage.

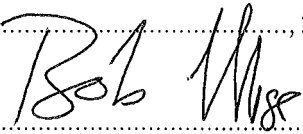

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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


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Speaker House of Delegates

The within is approved this the 1st
Day of April, 2003.


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Governor

PRESENTED TO THE
GOVERNOR

Date 3/27/03

Time 10:10am