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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2004



ENROLLED

COMMITTEE SUBSTITUTE
FOR

House Bill No. 4273

(By Delegates Foster, Palumbo, Brown and Faircloth)



Passed March 8, 2004

In Effect Ninety Days from Passage

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FOR

H. B. 4273

(BY DELEGATES FOSTER, PALUMBO, BROWN AND FAIRCLOTH)

[Passed March 8, 2004; in effect ninety days from passage.]

AN ACT to amend and reenact §44-10-3, §44-10-4, §44-10-5 and §44-10-6 of the code of West Virginia, 1931, as amended; to amend and reenact §51-2A-2 of said code, all relating to the modification of procedures for the appointment of guardians for minor children.

Be it enacted by the Legislature of West Virginia:

That §44-10-3, §44-10-4, §44-10-5 and §44-10-6 of the code of West Virginia, 1931, as amended, be amended and reenacted; and §51-2A-2 of said code be amended and reenacted, all to read as follows:

**CHAPTER 44. ADMINISTRATION OF
ESTATES AND TRUSTS.**

ARTICLE 10. GUARDIANS AND WARDS GENERALLY.

§44-10-3. Appointment and revocation of guardian by county commission.

1 (a) The circuit court or family court of the county in which
2 the minor resides, or if the minor is a nonresident of the state,
3 the county in which the minor has an estate, may appoint as the
4 minor's guardian a suitable person. The father or mother shall
5 receive priority. However, in every case, the competency and
6 fitness of the proposed guardian and the welfare and best
7 interests of the minor shall be given precedence by the court
8 when appointing the guardian.

9 (b) Within five days of the filing of a petition for the
10 appointment of a guardian, the circuit clerk shall notify the
11 court. The court shall hear the petition for the appointment of
12 a guardian within ten days after the petition is filed.

13 (c) The court, the guardian or the minor may revoke or
14 terminate the guardianship appointment when:

15 (1) The minor reaches the age of eighteen and executes a
16 release stating that the guardian estate was properly adminis-
17 tered and that the minor has received the assets of the estate
18 from the guardian;

19 (2) The guardian or the minor dies;

20 (3) The guardian petitions the court to resign and the court
21 enters an order approving the resignation; or

22 (4) A petition is filed by the guardian, the minor, an
23 interested person or upon the motion of the court stating that the
24 minor is no longer in need of the assistance or protection of a
25 guardian.

26 (d) A guardianship may not be terminated by the court if
27 there are any assets in the estate due and payable to the minor:

28 *Provided*, That another guardian may be appointed upon the
29 resignation of a guardian whenever there are assets in the estate
30 due and payable to the minor.

§44-10-4. Right of minor to nominate guardian.

1 (a) If the minor is above the age of fourteen years, he or she
2 may in the presence of the circuit or family court, or in writing
3 acknowledged before any officer authorized to take the ac-
4 knowledgment of a deed, nominate his or her own guardian,
5 who, if approved by the court, shall be appointed accordingly.

6 (b) If the guardian nominated by the minor is not appointed
7 by the court, or if the minor resides outside the state, or if, after
8 being summoned, the minor neglects to nominate a suitable
9 person, the court may appoint the guardian in the same manner
10 as if the minor were under the age of fourteen years.

§44-10-5. Bond of guardian.

1 (a) Every guardian, except in the case of a testamentary
2 guardian where the will otherwise directs and the court in which
3 the will is recorded deems it unnecessary for the safety of the
4 ward, shall give bond with security to be approved by the court
5 by whom he or she is appointed, or before whom he or she
6 accepts the trust, in such penalty as shall be prescribed by the
7 court.

8 (b) The bond shall be given before the clerk of the court in
9 which the petition is filed.

§44-10-6. Curator; bond; powers and duties.

1 Until a guardian gives bond, or while there is no guardian,
2 the circuit or family court, may, from time to time, appoint a
3 curator, who shall give bond, and during the continuance of his

4 or her trust, have all the powers and perform all the duties of a
5 guardian, and be responsible in the same way.

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 mainte-
4 nance brought under the provisions of article three, four or five,
5 chapter forty-eight of this code except as provided in subsec-
6 tions (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 fourteen,
9 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 this
12 code and any dependent claims related to such actions regard-
13 ing child support, parenting plans or other allocation of custo-
14 dial responsibility or decision-making responsibility for a child;

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

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

22 (6) All actions for the establishment of a parenting plan or
23 other allocation of custodial responsibility or decision-making

24 responsibility for a child, including actions brought under the
25 uniform child custody jurisdiction and enforcement act, as
26 provided in article twenty, chapter forty-eight of this code;

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

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

33 (9) All motions for modification of an order providing for
34 a parenting plan or other allocation of custodial responsibility
35 or decision-making responsibility for a child or for child
36 support or spousal support;

37 (10) All actions brought, including civil contempt proceed-
38 ings, to enforce an order of spousal or child support or to
39 enforce an order for a parenting plan or other allocation of
40 custodial responsibility or decision-making responsibility for a
41 child;

42 (11) All actions brought by an obligor to contest the
43 enforcement of an order of support through the withholding
44 from income of amounts payable as support or to contest an
45 affidavit of accrued support, filed with the circuit clerk, which
46 seeks to collect an arrearage;

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

48 (13) Petitions for a change of name, exercising concurrent
49 jurisdiction with the circuit court.

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

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

54 (16) All proceedings to obtain spousal support brought
55 under article eight, chapter forty-eight of this code; and

56 (17) All proceedings relating to the appointment of guard-
57 ians or curators of minor children brought pursuant to sections
58 three, four and six, article ten, chapter forty-four of this code,
59 exercising concurrent jurisdiction with the circuit court.

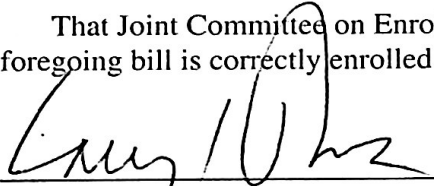
60 (b) If an action for divorce, annulment or separate mainte-
61 nance does not require the establishment of a parenting plan or
62 other allocation of custodial responsibility or decision-making
63 responsibility for a child and does not require an award or any
64 payment of child support, the circuit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

68 (c) If an action for divorce, annulment or separate mainte-
69 nance is pending and a petition is filed pursuant to the provi-
70 sions of article six, chapter forty-nine of this code alleging
71 abuse or neglect of a child by either of the parties to the
72 divorce, annulment or separate maintenance action, the orders
73 of the circuit court in which the abuse or neglect petition is filed
74 shall supercede and take precedence over an order of the family
75 court respecting the allocation of custodial and decision-making
76 responsibility for the child between the parents. If no order for
77 the allocation of custodial and decision-making responsibility
78 for the child between the parents has been entered by the family
79 court in the pending action for divorce, annulment or separate
80 maintenance, the family court shall stay any further proceedings
81 concerning the allocation of custodial and decision-making
82 responsibility for the child between the parents and defer to the
83 orders of the circuit court in the abuse or neglect proceedings.

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

Enr. Com. Sub. for H. B. 4273] 8

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



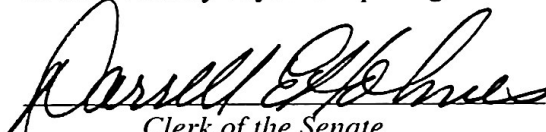
Chairwoman Senate Committee



Chairman House Committee

Originating in the House.

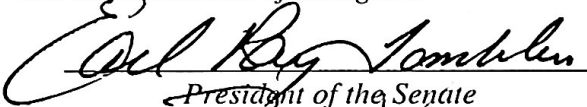
In effect ninety days from passage



Clerk of the Senate



Clerk of the House of Delegates

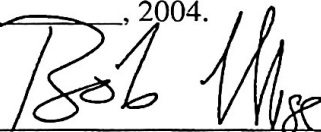


President of the Senate



Speaker of the House of Delegates

The within is approved this the 16th
day of March, 2004.



Governor

PRESENTED TO THE

GOVERNOR

DATE

3/11/04

TIME

4:15 pm