

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 51**

5 (SENATORS BOLEY AND NOHE, *original sponsors*)

6 _____
7 [Passed March 10, 2012; in effect ninety days from passage.]
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11 AN ACT to amend and reenact §48-8-103 of the Code of West Virginia,
12 1931, as amended, relating to modifying or terminating spousal
13 support based upon the results of genetic testing; defining
14 "altered circumstances"; requiring a preliminary determination
15 by the court as to whether genetic testing evidence should be
16 admitted; providing facts which may be considered by the court
17 in making the preliminary determination; and providing
18 guidelines for genetic testing.

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

20 That §48-8-103 the Code of West Virginia, 1931, as amended, be
21 amended and reenacted to read as follows:

22 **ARTICLE 8. SPOUSAL SUPPORT.**

23 **§48-8-103. Payment of spousal support.**

24 (a) Upon ordering a divorce or granting a decree of separate
25 maintenance, the court may require either party to pay spousal

1 support in the form of periodic installments, or a lump sum, or
2 both, for the maintenance of the other party. Payments of spousal
3 support are to be ordinarily made from a party's income, but when
4 the income is not sufficient to adequately provide for those
5 payments, the court may, upon specific findings set forth in the
6 order, order the party required to make those payments to make them
7 from the corpus of his or her separate estate. An award of spousal
8 support shall not be disproportionate to a party's ability to pay
9 as disclosed by the evidence before the court.

10 (b) At any time after the entry of an order pursuant to the
11 provisions of this article, the court may, upon motion of either
12 party, revise or alter the order concerning the maintenance of the
13 parties, or either of them, and make a new order concerning the
14 same, issuing it forthwith, as the altered circumstances or needs
15 of the parties may render necessary to meet the ends of justice.

16 (c) (1) For the purposes of subsection (b) of this section,
17 "altered circumstances" includes evidence in the form of genetic
18 testing that establishes that a child conceived during the marriage
19 of the parties is not the child of the former husband, or that a
20 child was born to a woman other than the former wife because of the
21 adultery of the former husband.

22 (2) Prior to admitting evidence of genetic testing, the court
23 shall preliminarily determine whether genetic testing evidence
24 should be admitted for the purpose of disproving or establishing
25 paternity. The facts that may be considered by the court at this
26 hearing include the following:

1 (A) The length of time that has elapsed since the party was
2 first placed on notice that a child conceived during the marriage
3 of the parties is not the child of the former husband, or that a
4 child was born to a woman other than the former wife because of the
5 adultery of the former husband;

6 (B) The length of time during which the individual desiring to
7 challenge paternity assumed the role of parent to the child;

8 (C) The facts surrounding the party's discovery of
9 nonpaternity;

10 (D) The nature of the parent/child relationship;

11 (E) The age of the child;

12 (F) The harm which may result to the child if paternity were
13 successfully disproved;

14 (G) The extent to which the passage of time reduced the
15 chances of establishing paternity in favor of the child; and

16 (H) All other factors which may affect the equities involved
17 in the potential disruption of the parent/child relationship or the
18 chances of undeniable harm to the child.

19 (d) For the purposes of subsection (c), genetic testing must
20 be performed pursuant to the following guidelines:

21 (1) The tests show that the inherited characteristics
22 including, but not limited to, blood types, have been determined by
23 appropriate testing procedures at a hospital, independent medical
24 institution or independent medical laboratory duly licensed under
25 the laws of this state, or any other state, and an expert qualified
26 as an examiner of genetic markers has analyzed, interpreted and

1 reported on the results; and

2 (2) The genetic test results exclude the former husband as the
3 father of the child.