

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2931

BY DELEGATES FOSTER, KIMES, STEELE, AND BARRETT

[Introduced March 05, 2021; Referred to the
Committee on the Judiciary]

1 A BILL to amend and reenact § 48-8-103 of the Code of West Virginia, 1931, as amended, relating
 2 to standardization of the criteria for awarding spousal support in cases of separation and
 3 divorce.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8. SPOUSAL SUPPORT.

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

1 (a) Upon ordering a divorce or granting a decree of separate maintenance, the court may
 2 require either party to pay spousal support in the form of periodic installments, or a lump sum
 3 based on a discounted present value from the calculated monthly amount for a period to be
 4 determined by the court or agreed to by the parties, or both, for the maintenance of the other
 5 party. Payments of spousal support are to be ~~ordinarily~~ made from a party's income, but when the
 6 income is not sufficient to adequately provide for those payments, the court may, upon specific
 7 findings set forth in the order, order the party required to make those payments to make them
 8 from the corpus of his or her separate estate. An award of spousal support shall not be
 9 disproportionate to a party's ability to pay as disclosed by the evidence before the court. Spousal
 10 support, also called alimony, shall be calculated in all instances as follows:

11 (1) If there are no children for whom support is paid, then the following formula shall be
 12 applied:

13 Payor's Gross Monthly Income: _____

14 Multiply Payor's Gross Monthly Income by 0.3 = _____

15 Recipient's Gross Monthly Income: _____

16 Multiply Recipient's Gross Monthly Income by 0.5 = _____

17 Subtract Recipient's adjusted Gross Monthly Income from Payor's Gross Monthly Income:

18 _____

19 If the difference is a positive number, the Payor pays this monthly spousal support/alimony
 20 amount, if the difference is zero or a negative number, then no monthly spousal support/alimony

21 is paid.

22 (2) If there are children for whom child support is paid, then the following formula shall be
23 applied:

24 Payor's Gross Monthly Income: _____

25 Multiply Payor's Gross Monthly Income by 0.28 = _____

26 Recipient's Gross Monthly Income: _____

27 Multiply Recipient's Gross Monthly Income by 0.58 = _____

28 Subtract Recipient's adjusted Gross Monthly Income from Payor's Gross Monthly Income:
29 _____

30 If the difference is a positive number, the Payor pays this monthly spousal support/alimony
31 amount, if the difference is zero or a negative number, then no monthly spousal support/alimony
32 is paid.

33 (b) The legislature does not find that an award of spousal support is necessary or
34 recommended in each case. However, if a court finds that an award of spousal support is in order,
35 the court shall calculate such spousal support in accordance with the formula set forth in §48-1-
36 103(a) of this code.

37 ~~(b)~~ (c) At any time after the entry of an order pursuant to the provisions of this article, the
38 court may, upon motion of either party, revise or alter the order concerning the maintenance of
39 the parties, or either of them, and make a new order concerning the same, issuing it forthwith, as
40 the altered circumstances or needs of the parties may render necessary to meet the ends of
41 justice.

42 ~~(e)~~ (d)(1) For the purposes of subsection (b) of this section, "altered circumstances"
43 includes evidence in the form of genetic testing that establishes that a child conceived during the
44 marriage of the parties is not the child of the former husband, or that a child was born to a woman
45 other than the former wife because of the adultery of the former husband.

46 (2) Prior to admitting evidence of genetic testing, the court shall preliminarily determine

47 whether genetic testing evidence should be admitted for the purpose of disproving or establishing
48 paternity. The facts that may be considered by the court at this hearing include the following:

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

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

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

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

57 (E) The age of the child;

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

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

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

63 ~~(d)~~ (e) For the purposes of subsection ~~(e)~~ (d), genetic testing must be performed pursuant
64 to the following guidelines:

65 (1) The tests show that the inherited characteristics including, but not limited to, blood
66 types, have been determined by appropriate testing procedures at a hospital, independent
67 medical institution or independent medical laboratory duly licensed under the laws of this state,
68 or any other state, and an expert qualified as an examiner of genetic markers has analyzed,
69 interpreted and reported on the results; and

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

NOTE: The purpose of this bill is to standardize the criteria for awarding spousal support

in cases of separation and divorce in the courts of the State of West Virginia.

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