

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1969

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## ENROLLED

SENATE BILL NO. 42

(By Mr. Jackson, Mr. President,  
and Mr. Burkett)

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PASSED Feb. 28, 1969

In Effect July 1, 1969 — ~~Passage~~

FILED IN THE OFFICE  
JOHN D. ROCKEFELLER, IV  
SECRETARY OF STATE

THIS DATE 3-14-69

2442

**ENROLLED**

**Senate Bill No. 42**

(By MR. JACKSON, MR. PRESIDENT, and MR. BROTHERTON)

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[Passed February 28, 1969; in effect July 1, 1969.]

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AN ACT to amend and reenact sections nine, thirteen and nineteen, article three; sections one, three, four, five, six and seven, article four; sections one and three, article five; and sections one, four, five, six and eight, article seven, all of chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to domestic relations, including the rights of married women, procedures for adoption, change of name, and the maintenance of illegitimate children.

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

That sections nine, thirteen and nineteen, article three; sections one, three, four, five, six and seven, article four; sections

one and three, article five; and sections one, four, five, six and eight, article seven, all of chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 3. PROPERTY, RIGHTS AND LIABILITIES OF MARRIED  
WOMEN; HUSBAND AND WIFE.**

**§48-3-9. Contracts between husband and wife unenforceable  
unless in writing and signed.**

1 A contract between a husband and wife shall not be  
2 enforceable at law, unless such contract, or some mem-  
3 orandum or note thereof, be in writing and signed by the  
4 party to be charged thereby.

**§48-3-13. Restraints on alienation of married woman's prop-  
erty.**

1 Any property to which a married woman is entitled  
2 may not be subjected to any restraints upon alienation  
3 or other restrictions that may not lawfully be placed  
4 upon the property of persons not married.

**§48-3-19. Actions by and against married woman; joinder of  
husband.**

1 A married woman may sue or be sued alone in any  
2 court in this state that may have jurisdiction of the

3 subject matter, the same in all cases as if she were a  
4 single woman, and her husband shall not be joined with  
5 her in any case unless, for reasons other than the marital  
6 relation, it is proper or necessary, because of his interest  
7 or liability, to make him a party. In no case need a  
8 married woman, because of being such, prosecute or  
9 defend by guardian or next friend.

**ARTICLE 4. ADOPTION.**

**§48-4-1. Who may adopt; petition; consent required; when  
notice required.**

1 (a) It shall be lawful for any person not married, or  
2 any husband with his wife's consent, or any wife with  
3 her husband's consent, or any husband and wife jointly,  
4 to petition the circuit court or any other court of record  
5 having jurisdiction of adoption proceedings of the county  
6 wherein he, she or they may reside, or the judge of such  
7 court in vacation, for permission to adopt any minor  
8 child, and also to petition for a change of name of such  
9 child. Consent to the adoption of a minor child shall be  
10 required and obtained as follows:

11 (1) In the case of a legitimate child sought to be  
12 adopted, the written consent, duly acknowledged, of both

13 parents, or the surviving parent, of such legitimate child  
14 sought to be adopted must be obtained and presented with  
15 the petition: *Provided*, That, if both parents are living  
16 and one parent is insane or has abandoned the child  
17 sought to be adopted, only the consent of the other parent  
18 shall be required, but the parent who is alleged to have  
19 abandoned the child must be personally served, either  
20 within or without the state, with a copy of the petition  
21 and notice of the date, time and place of the hearing on  
22 said petition at least twenty days prior to the date set  
23 for the hearing; and if after due diligence personal service  
24 cannot be obtained, then the copy of the petition and the  
25 notice of the hearing may be sent by registered mail to  
26 the last known address of such surviving parent, such  
27 service to be complete upon mailing. If both parents are  
28 either dead, unknown, insane, have abandoned the child  
29 sought to be adopted or have been deprived of the custody  
30 of the person of such child by law, then and in such case,  
31 the written consent, acknowledged as aforesaid, of the  
32 legal guardian of such child or those having at the time  
33 the legal custody of the child shall be obtained and so

34 presented, and if there be no legal guardian nor any per-  
35 son having the legal custody of the child, then such con-  
36 sent must be obtained from some discreet and suitable  
37 person appointed by the court or judge thereof to act as  
38 the next friend of such child in the adoption proceedings.

39 (2) In the case of an illegitimate child sought to be  
40 adopted, the written consent, duly acknowledged, of the  
41 mother of such illegitimate child sought to be adopted  
42 must be obtained and presented with the petition. If the  
43 mother of such illegitimate child is dead, insane, has  
44 abandoned the child sought to be adopted or has been  
45 deprived of the custody of the person of such child by law,  
46 then and in such case the written consent, acknowledged  
47 as aforesaid, of the legal guardian of such child or those  
48 having at the time the legal custody of the child shall  
49 be obtained and so presented, and if there be no legal  
50 guardian nor any person having the legal custody of the  
51 child, then such consent must be obtained from some  
52 discreet and suitable person appointed by the court or  
53 judge thereof to act as the next friend of such child in  
54 the adoption proceedings.

55     (3) In addition to the consent required in subdivisions  
56     (1) and (2) of this section, in any case where the child  
57     sought to be adopted be twelve years of age or over, the  
58     written consent of such child to such adoption, given in  
59     the presence of the judge having jurisdiction thereof,  
60     must also be obtained and presented with the petition,  
61     unless for extraordinary cause such is waived by court  
62     order.

63     (b) No petition for an adoption shall be made or pre-  
64     sented until after the child sought to be adopted shall  
65     have lived in the home of the adopting parent or parents  
66     for a period of six months.

**§48-4-3. Proceedings on petition; appointment of next friend;  
contents of order.**

1     Upon the presentation of such petition to the court, or  
2     the judge of such court in vacation, the same shall be  
3     ordered filed with the clerk of such court, and the court  
4     or judge thereof shall appoint a day for the hearing of  
5     such petition and the examination under oath of the  
6     parties in interest. The court or judge thereof may  
7     adjourn the hearing of such petition or the examination

8 of the parties in interest from time to time, as the nature  
9 of the case may require. Between the time of the filing  
10 of the petition for adoption and the hearing thereon, the  
11 court or judge thereof shall, unless the court or judge  
12 otherwise directs, cause a discreet inquiry to be made  
13 to determine whether such child is a proper subject for  
14 adoption and whether the home of the petitioner or peti-  
15 tioners is a suitable home for such child. Any such in-  
16 quiry, if directed, shall be made by any suitable person  
17 or agency designated by the court, or judge thereof, and  
18 the results thereof shall be submitted to the court or  
19 judge thereof at or prior to the hearing upon the petition  
20 and shall be filed with the records of the proceeding and  
21 become a part thereof. If it shall be necessary, under  
22 the provisions of this article, that a discreet and suitable  
23 person shall be appointed to act as the next friend of  
24 the child sought to be adopted, then and in that case  
25 the court or judge thereof shall order a notice of the  
26 petition and of the time and place when and where the  
27 appointment of next friend will be made, to be published  
28 as a Class II legal advertisement in compliance with the



29 provisions of article three, chapter fifty-nine of this code,  
30 and the publication area for such publication shall be  
31 the county where such court is located. At the time and  
32 place so named and upon due proof of the publication  
33 of such notice, the court or judge thereof shall make  
34 such appointment, and shall thereupon assign a day for  
35 the hearing of such petition and the examination of the  
36 parties interested. Upon the day so appointed the court  
37 or judge thereof shall proceed to a full hearing of the  
38 petition and examination of the parties in interest, under  
39 oath and of such other witnesses as the court or judge  
40 thereof may deem necessary to develop fully the stand-  
41 ing of the petitioners and their responsibility, and the  
42 status of the child sought to be adopted; and if the court  
43 or judge thereof shall be of the opinion from the testi-  
44 mony that the facts stated in the petition are true, and  
45 if upon examination the court or judge thereof is satis-  
46 fied that the petitioner is, or the petitioners are, of good  
47 moral character, and of respectable standing in the com-  
48 munity, and are able properly to maintain and educate  
49 the child sought to be adopted, and that the best interests

50 of the child would be promoted by such adoption, then  
51 and in such case the court or judge thereof shall make  
52 an order reciting at length the facts proved and the name  
53 by which the child shall thereafter be known, and de-  
54 claring and adjudging that from the date of such order,  
55 the rights, duties, privileges and relations, theretofore  
56 existing between the child and his or her parents, shall  
57 be in all respects at an end, and that the rights, duties,  
58 privileges and relations between the child and his or her  
59 parent or parents by adoption shall thenceforth in all re-  
60 spects be the same, including the rights of inheritance, as  
61 if the child had been born to such adopting parent or  
62 parents in lawful wedlock, except only as otherwise pro-  
63 vided in this article.

**§48-4-4. Recordation of order; fees; disposition of records;  
names of adopting parents not to be disclosed; certi-  
ficate for state registrar of vital statistics; birth  
certificate.**

1 The order shall be recorded in a book kept for that pur-  
2 pose, and the clerk shall receive the same fees as in other  
3 cases. All records of proceedings in adoption cases and all

4 papers and records relating to such proceedings shall be  
5 kept in the office of the clerk of the court in a sealed file,  
6 which file shall be kept in a locked or sealed cabinet, vault  
7 or other container and shall not be open to inspection or  
8 copy by anyone, except upon court order for good cause  
9 shown. No person in charge of adoption records shall dis-  
10 close the names of the adopting parent or parents or  
11 adopted child except by court order. The clerk of the  
12 court keeping and maintaining the records in adoption  
13 cases shall keep and maintain an index of such cases  
14 separate and distinct from all other indices kept or main-  
15 tained by him, and the index of adoption cases shall be  
16 kept in a locked or sealed cabinet, vault or other con-  
17 tainer and shall not be open to inspection or copy by  
18 anyone, except upon court order for good cause shown.  
19 Immediately upon the entry of such order of adoption,  
20 the court shall direct the clerk thereof forthwith to  
21 make and deliver to the state registrar of vital statistics  
22 a certificate under the seal of said court, showing:  
23 (1) The date and place of birth of the adoptee, if  
24 known;

25     (2) The names of the natural parents of the adoptee, if  
26     known;

27     (3) The name by which said child has previously been  
28     known;

29     (4) The names and addresses of the adopting parents;

30     (5) The name by which the child is to be thereafter  
31     known; and

32     (6) Such other information from the record of said  
33     adoption proceedings as may be required by the law  
34     of this state relating to vital statistics and as may enable  
35     the state registrar of vital statistics to carry out the duty  
36     imposed upon him by this section.

37     Upon receipt of said certificate, the said registrar of  
38     vital statistics shall forthwith issue and deliver by mail  
39     to the adopting parents at their last known address and to  
40     the clerk of the county court of the county wherein such  
41     order of adoption was entered a birth certificate in the  
42     form required by law, except that the name of the adop-  
43     tee shown in said certificate shall be the name given him  
44     by the order of adoption. Such county court clerk shall

45 record such birth in the manner provided by chapter six-  
46 teen, article five, section nineteen of this code.

**§48-4-5. Effect of order as to relations of parents and child and  
as to rights of inheritance; intestacy of adopted  
child.**

1 Upon the entry of such order of adoption, the natural  
2 parent or parents, any parent or parents by any previous  
3 legal adoption, and the lineal or collateral kindred of any  
4 such parent or parents, except any such parent who is  
5 the husband or wife of the petitioner for adoption, shall  
6 be divested of all legal rights, including the right of in-  
7 heritance from or through the adopted child under the  
8 statutes of descent and distribution of this state, and shall  
9 be divested of all obligations in respect to the said adopted  
10 child, and the said adopted child shall be free from all  
11 legal obligations, including obedience and maintenance,  
12 in respect to any such parent or parents. From and after  
13 the entry of such order of adoption, the adopted child  
14 shall be, to all intents and for all purposes, the legitimate  
15 issue of the person or persons so adopting him or her and  
16 shall be entitled to all the rights and privileges and

17 subject to all the obligations of a natural child of such  
18 adopting parent or parents.

19 For the purpose of descent and distribution, from and  
20 after the entry of such order of adoption, a legally  
21 adopted child shall inherit from and through the parent  
22 or parents of such child by adoption and from or through  
23 the lineal or collateral kindred of such adopting parent  
24 or parents in the same manner and to the same extent as  
25 though said adopted child were a natural child of such  
26 adopting parent or parents, but such child shall not in-  
27 herit from his or her natural parent or parents nor their  
28 lineal or collateral kindred, except that a child legally  
29 adopted by a husband or wife of the natural parent shall  
30 inherit from the natural parent of such child as well as  
31 from the adopting parent. If a legally adopted child shall  
32 die intestate, all property, including real and personal,  
33 of such adopted child shall pass, according to the statutes  
34 of descent and distribution of this state, to those persons  
35 who would have taken had the decedent been the natural  
36 child of the adopting parent or parents.

**§48-4-6. Revocation of adoption.**

1     (a) Except when the consent to such adoption has been  
2 properly given by the department of welfare or a  
3 licensed child welfare agency, as provided in section  
4 one, article three, chapter forty-nine of this code, a parent  
5 or guardian of a legitimate child or the mother or guard-  
6 ian of an illegitimate child who did not consent to the  
7 adoption of such child, or any parent of a legitimate child  
8 entitled to notice as provided in subdivision (1) of sec-  
9 tion one of this article who was not served with notice as  
10 provided in said subdivision (1), may, at any time within  
11 one year after learning of the adoption, apply by petition  
12 to the court in which the adoption was granted, praying  
13 that the adoption be vacated. The court to which such  
14 application is made shall fix a date and time for a hear-  
15 ing, shall cause notice thereof to be given to the person  
16 or persons who were permitted to adopt such minor, and,  
17 at the time so fixed, shall hear the petitioner and all  
18 parties interested, and may vacate or affirm the adoption  
19 in its discretion. Any party interested may appeal to

20 the supreme court of appeals from the decision of the  
21 court in the matter, as in other civil cases.

22 (b) When any minor has been adopted, he may, with-  
23 in one year after becoming of age, sign, seal and acknowl-  
24 edge before proper authority, in the county in which the  
25 order of adoption was made, a dissent from such adoption,  
26 and file such instrument of dissent in the office of the clerk  
27 of the court which granted said adoption and the clerk of  
28 the county court of such county, and such clerks shall  
29 record and index the same. Upon the filing of such instru-  
30 ment of dissent the adoption shall be vacated.

**§48-4-7. Adoption of adults.**

1 Any adult person who is a resident of West Virginia  
2 may petition the circuit court or any other court of record  
3 having jurisdiction of adoption proceedings for permis-  
4 sion to adopt one who has reached the age of twenty-one  
5 years or over, and, if desired, to change the name of such  
6 person. The consent of the person to be adopted shall be  
7 the only consent necessary. The order of adoption shall  
8 create the same relationship between the adopting par-  
9 ent or parents and the person adopted and the same rights



10 of inheritance as in the case of an adopted minor child.

11 If a change in name is desired, the adoption order shall

12 so state.

**ARTICLE 5. CHANGE OF NAME.**

**§48-5-1. Petition to court for change of name; contents thereof;  
notice of application.**

1 Any person desiring a change of his own name, or  
2 that of his child or ward, may apply therefor to the cir-  
3 cuit court or any other court of record having juris-  
4 diction of the county in which he resides, or the judge  
5 thereof in vacation, by petition setting forth that he has  
6 been a bona fide resident of such county for at least  
7 one year prior to the filing of the petition, the cause for  
8 which the change of name is sought, and the new name  
9 desired; and previous to the filing of such petition such  
10 person shall cause to be published a notice of the time  
11 and place that such application will be made, which  
12 notice shall be published as a Class I legal advertisement  
13 in compliance with the provisions of article three, chapter  
14 fifty-nine of this code, and the publication area for such  
15 publication shall be the county.

**§48-5-3. When court may order change of name.**

1     Upon the filing of such petition, and upon proof of  
2     the publication of such notice and of the matters set  
3     forth in the petition, and being satisfied that no injury  
4     will be done to any person by reason of such change,  
5     that reasonable and proper cause exists for changing  
6     the name of petitioner, and that such change is not desired  
7     because of any fraudulent or evil intent on the part of  
8     the petitioner, the court or judge thereof in vacation may  
9     order a change of name as applied for.

**ARTICLE 7. MAINTENANCE OF ILLEGITIMATE CHILDREN.**

**§48-7-1. How accusation of paternity made; warrant; recognition.**

1     Any unmarried woman may go before a justice of the  
2     county in which she resides and accuse any person of  
3     being the father of a bastard child of which she has  
4     been delivered. Such justice shall examine her under  
5     oath, and reduce her examination to writing and sign it.  
6     On such examination, unless the child be three years  
7     old or upwards, the justice shall issue a warrant, directed

8 to the sheriff of, or a constable in, any county where the  
9 accused may be, requiring him to be apprehended and  
10 taken before a justice of the county in which he may  
11 be found; and it shall be the duty of such justice to  
12 require the accused to enter into a recognizance, with  
13 one or more good securities, in a sum not less than five  
14 hundred nor more than one thousand dollars, conditioned  
15 for his appearance at the next term of the circuit court or  
16 any other court of record having jurisdiction of the county  
17 in which such warrant issued, to answer such charge, and  
18 to abide by and perform the order of the court in relation  
19 thereto. If a married woman live separate and apart from  
20 her husband for the space of one year or more, and shall  
21 not at any time during such separation, cohabit with such  
22 husband she may, if she be delivered of a child at any time  
23 after such one year, and while such separation continues,  
24 accuse any person, other than her husband, of being the  
25 father of such child, in like manner, and the same pro-  
26 ceedings shall thereupon be had, as if she were an un-  
27 married woman.

**§48-7-4. Proceedings in court.**

1     If the accused appear and plead not guilty, the issue  
2     shall be tried by a jury, if not waived by the parties, and,  
3     if the accused fail to appear, the court shall, unless a jury  
4     is demanded by the plaintiff, try and determine the issue;  
5     and if, in either event, the accused be found guilty, the  
6     court shall order him to pay to the county court, or as  
7     the court may otherwise direct, for the maintenance, edu-  
8     cation, and support of the child until such child shall at-  
9     tain the age of eighteen years, and all reasonable medical  
10    expenses incidental to the birth of the child, such sums  
11    as the court may deem proper for each year, fixing such  
12    times of payment as the court may deem proper, until  
13    such time as the court may appoint, which in no event  
14    shall extend beyond such child attaining the age of  
15    eighteen years, unless the child shall sooner die, and, if  
16    such father be then in court, the court shall order him to  
17    give bond in such penalty and with such sureties as the  
18    court may deem sufficient for the performance of such  
19    order; and shall order him to jail until such bond be given  
20    in the court or filed in the office of the clerk thereof, with

21 sufficient sureties to be approved by the court or clerk, or  
22 until the woman and the county court consent to his dis-  
23 charge, or until he be discharged by an order of the  
24 court, the court being satisfied that the prisoner cannot  
25 pay the judgment of the court or give the bond required,  
26 or until he be otherwise legally discharged; and in the  
27 case of forfeiture of such bond and enforcement thereof,  
28 the sum recovered may, in the discretion of the court  
29 wherein the forfeiture is enforced, be paid in whole or in  
30 part for the maintenance, education and support of the  
31 child, as the court may direct. If he be found not guilty,  
32 he shall be discharged, and shall recover his costs against  
33 the party in whose name the proceedings are had. In the  
34 event such judgment is rendered by the court against such  
35 father upon a trial had on the nonappearance of such  
36 father and in his absence, such judgment shall be render-  
37 ed against him and his sureties upon his bond given  
38 before the justice, required by section one of this article,  
39 and the court may likewise issue an attachment for  
40 such father to bring him into court, there to be dealt with  
41 as prescribed by this article, as if judgment had been

42 rendered against him when present in court and upon a  
43 finding of a jury that he is guilty as charged in the war-  
44 rant after trial had in his presence.

**§48-7-5. Power of court to change payments or require new  
bond.**

1     Until the child shall reach the age of eighteen years  
2     such court shall have and retain jurisdiction of any such  
3     proceedings to make, when circumstances justify it, any  
4     further order or orders increasing or decreasing the  
5     amount of money to be paid for the maintenance, educa-  
6     tion and support of the child, or requiring a new or addi-  
7     tional bond.

**§48-7-6. Recovery on bonds.**

1     As often as the condition of any bond or bonds given  
2     as provided in this article is broken, a motion may be  
3     made before the court and judgment may be given in the  
4     name of the county court, against such father and his  
5     sureties on any bond or bonds in force at the time of  
6     any breach, and against his and their personal representa-  
7     tives, for the money due, with lawful interest thereon  
8     from the time or times when the same ought to have been  
9     paid.

**§48-7-8. Defendant may request blood grouping tests; admissibility of tests; cost.**

1     The court or judge thereof in vacation, on motion of  
2     the defendant, if seasonably made, shall order the mother,  
3     her child and the defendant to submit to one or more  
4     blood grouping tests by a person duly qualified to make  
5     such tests to determine whether or not the defendant can  
6     be excluded as being the father of the child, and the  
7     results of such tests may be received in evidence but only  
8     in cases where definite exclusion is established. The cost  
9     and expense of making such tests shall be borne by the  
10    defendant.

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

William Tompkins  
Chairman Senate Committee

Phillip J. Rutledge  
Vice Chairman House Committee

Originated in the Senate.

To take effect July 1, 1969.

Howard Meyer  
Clerk of the Senate

C. A. Blankenship  
Clerk of the House of Delegates

Lyda DeLoach  
President of the Senate

Sam F. Bassily  
Speaker House of Delegates

The within approved this the 17<sup>th</sup>  
day of March, 1969.

Arch A. Shouse, Jr.  
Governor





PRESENTED TO THE  
GOVERNOR

Date 3/7/69

Time 2:30 p.m.

RECEIVED

MAR 14 9 23 AM '69

OFFICE OF  
SECRETARY OF STATE  
STATE OF WEST VIRGINIA