

APPROVED AND SIGNED BY THE GOVERNOR

Date 2-27-80

Time 4:30 p.m.

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1980

— ● —

# ENROLLED

HOUSE BILL No. 988

(By Mr. Shaffer and Mr. Stephens)

— ● —

Passed February 21, 1980

In Effect ninety days from Passage



No: 988

**ENROLLED**

**H. B. 988**

(By MR. SHAFFER and MR. STEPHENS)

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(Originating in the House Committee on the Judiciary)

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[Passed February 21, 1980; in effect ninety days from passage.]

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AN ACT to amend and reenact sections fifteen and twenty-three article two, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter by adding thereto a new article, designated article two-b, relating to removal of any presumption by which one natural parent may be awarded custody of minor children; providing for visitation rights of grandparents of minor children; and providing for restoration of former name of wife.

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

That sections fifteen and twenty-three, article two, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said chapter be further amended by adding thereto a new article, designated article two-b, all to read as follows:

**ARTICLE 2. DIVORCE, ANNULMENT AND SEPARATE MAINTENANCE.**

**§48-2-15. Alimony; custody and maintenance of children.**

- 1     Upon ordering a divorce, the court may make such further
- 2     order as it shall deem expedient, concerning the maintenance
- 3     of the parties, or either of them; and upon ordering the annul-

4 ment of a marriage, or a divorce, the court may make such  
5 further order as it shall deem expedient, concerning the care,  
6 custody, education and maintenance of the minor children,  
7 and may determine with which of the parents or other proper  
8 person or persons the children or any of them, may remain;  
9 and the court may, from time to time afterward, on the veri-  
10 fied petition of either of the parties, revise or alter such order  
11 concerning the maintenance of the parties, or either of them,  
12 and make a new order concerning the same, as the altered  
13 circumstances or needs of the parties may render necessary  
14 to meet the ends of justice; and the court may also from time  
15 to time afterward, on the verified petition of either of the  
16 parties or other proper person having actual or legal custody  
17 of such child or children, revise or alter such order concern-  
18 ing the care, custody, education and maintenance of the  
19 children, and make a new order concerning the same, as the  
20 circumstances of the parents or other proper person or per-  
21 sons and the benefit of the children may require. In making  
22 any such order respecting custody of minor children, there  
23 shall be no legal presumption that, as between the natural  
24 parents, either the father or the mother should be awarded  
25 custody of said children, but the court shall make an award  
26 of custody solely for the best interest of the children based  
27 upon the merits of each case. In any case where the divorce  
28 or the annulment is denied, if the parties are living separate  
29 and apart from each other, the court shall retain jurisdiction  
30 of the case for the purpose of determining with which of  
31 the parents or other proper person or persons the children  
32 or any of them may remain and of making such order concern-  
33 ing the care, custody, education and maintenance of the  
34 minor children, or any of them, as to the court may seem  
35 proper and the benefit of the child or children may require;  
36 and such order, may, from time to time afterward, on verified  
37 petition of either of the parties or other proper person having  
38 actual or legal custody of such child or children, be revised  
39 or altered, and a new order made, as the circumstances of  
40 the parties or the needs of the children may require. For the  
41 purpose of making effectual any order provided for in this  
42 section the court may make any order concerning the estate  
43 of the parties, or either of them, as it shall deem expedient.

*ok*  
*J.M.B.*

44 In any case where a divorce is granted in this state upon  
45 constructive service of process, and personal jurisdiction is  
46 thereafter obtained of the defendant in such case, the court  
47 may make such further order as it shall deem expedient, con-  
48 cerning the maintenance of the parties, or either of them, or  
49 concerning the care, custody, education and maintenance of  
50 the minor children, and in any case where an annulment is  
51 granted in this state upon constructive service of process, and  
52 personal jurisdiction is thereafter obtained of the defendant  
53 in such case, the court may make such further order as it  
54 shall deem expedient concerning the care, custody, education  
55 and maintenance of the minor children.

56 Upon ordering the annulment of a marriage or a divorce, the  
57 court may, in its discretion, make such further order as it  
58 shall deem expedient, concerning the grant of reasonable visi-  
59 tation rights to any grandparent of the minor children upon  
60 application, if the grandparent or grandparents are related to  
61 such minor child through a party to such action whose where-  
62 abouts are unknown or through a party who did not answer  
63 or otherwise appear and defend the cause of action in which  
64 such divorce or annulment is granted, and the court may issue  
65 any necessary order to enforce such order or decree.

**§48-2-23. Former name of wife; restoration.**

1 The court upon granting an annulment or divorce to the  
2 husband or wife, shall, if requested to do so by the wife,  
3 allow the wife to resume her maiden name. The court shall,  
4 if requested to do so by the wife, allow the wife to resume  
5 the name of a former husband if she has any living minor child  
6 or children by her marriage to such former husband.

**ARTICLE 2B. CHILD VISITATION.**

**§48-2B-1. Grandparents' visitation.**

1 Upon the verified petition by a parent of a deceased child  
2 seeking visitation rights with grandchildren of the petitioner,  
3 the court may order that the grandparent shall have such  
4 reasonable and seasonable visitation rights with said grand-  
5 child or grandchildren as the court may deem proper and in  
6 the best interest of the child or children.

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

*James L. Davis*  
Chairman Senate Committee

*Clarence C. Funchess Jr.*  
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

*Todd C. Wells*  
Clerk of the Senate

*W. Blankenship*  
Clerk of the House of Delegates

*H. J. B. Hester*  
President of the Senate

*Clyde M. Sorger Jr.*  
Speaker House of Delegates

The within *is approved* this the *27*  
day of *February*, 1980.

*John I. Roper*  
Governor



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