

No. 387

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SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1989



ENROLLED
Committee Substitute for
SENATE BILL NO. 387

(By Senator *Tucker, Mr. President*)



PASSED April 8, 1989
In Effect 90 days from Passage

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 387

(BY SENATORS TUCKER, MR. PREDIDENT, AND HARMAN,
BY REQUEST OF THE EXECUTIVE)

[Passed April 8, 1989; in effect ninety days from passage.]

AN ACT to amend and reenact sections one, two, three, four and five, article six, chapter forty-eight-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article six by adding thereto a new section, designated section six, all relating to allowing a man to bring a paternity action; jurisdiction; default judgment; statute of limitations; scope of representation of the child advocate; and establishment of paternity upon acknowledgment.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. ESTABLISHMENT OF PATERNITY.

§48A-6-1. Action for establishment of paternity.

1 (a) A civil action to establish the paternity of a child
2 and to obtain an order of support for the child may be
3 instituted, by verified complaint, in the circuit court of
4 the county where the plaintiff, the defendant or the
5 child resides. Such action may be brought by any of
6 the following persons:

7 (1) An unmarried woman with physical or legal
8 custody of a child to whom she gave birth;

9 (2) A married woman with physical or legal custody
10 of a child to whom she gave birth, if the complaint
11 alleges that:

12 (A) Such married woman lived separate and apart
13 from her husband for a period of one year or more
14 immediately preceding the birth of the child;

15 (B) Such married woman did not cohabit with her
16 husband at any time during such separation and that
17 such separation has continued without interruption;
18 and

19 (C) The defendant, rather than her husband, is the
20 father of the child.

21 (3) Any person, including the state of West Virginia
22 or the department of human services, who is not the
23 mother of the child, but who has physical or legal
24 custody of such child;

25 (4) The guardian or committee of such child;

26 (5) The next friend of such child when the child is
27 a minor;

28 (6) By such child in his own right at any time after
29 the child's eighteenth birthday but prior to the child's
30 twenty-first birthday; or

31 (7) A man purporting to be the father of a child born
32 out-of-wedlock, when there has been no prior judicial
33 determination of paternity.

34 (b) A person who has sexual intercourse in this state

35 submits to the jurisdiction of the courts of this state
36 for an action brought under this article with respect to
37 a child who was conceived by that act of intercourse.
38 Service of process may be perfected according to the
39 rules of civil procedure.

40 (c) If the person against whom the action is brought
41 has failed to plead or otherwise defend the action after
42 proper service has been obtained, judgment by default
43 may be issued by the court as provided by the rules of
44 civil procedure.

**§48A-6-2. Statute of limitations; prior statute of limitations
not a bar to action under this article; effect
of prior adjudication between husband and
wife.**

1 (a) Except for an action brought by a child in his or
2 her own right under the provisions of subdivision (6),
3 subsection (a), section one of this article, an action for
4 the establishment of the paternity of a child shall be
5 brought prior to such child's eighteenth birthday.

6 (b) An action to establish paternity under the
7 provisions of this article may be brought by or on
8 behalf of a child notwithstanding the fact that, prior to
9 the effective date of this section, an action to establish
10 paternity may have been barred by a prior statute of
11 limitations set forth in this code or otherwise provided
12 for by law.

13 (c) An action to establish paternity under the
14 provisions of this article may be brought for any child
15 who was not yet eighteen years of age on the sixteenth
16 day of August, one thousand nine hundred eighty-
17 four, regardless of the current age.

18 (d) An action to establish paternity under the
19 provisions of this article may be brought for any child
20 who was not yet eighteen years of age on the sixteenth
21 day of August, one thousand nine hundred eighty-
22 four, and for whom a paternity action was brought but
23 dismissed because a statute of limitations of less than
24 eighteen years was then in effect.

25 (e) Any other provision of law to the contrary

26 notwithstanding, when a husband and wife or former
27 husband and wife, in an action for divorce or an action
28 to obtain a support order, have litigated the issue of
29 the paternity of a child conceived during their mar-
30 riage to the end that the husband has been adjudged
31 not to be the father of such child, such prior adjudi-
32 cation of the issue of paternity between the husband
33 and the wife shall not preclude the mother of such
34 child from bringing an action against another person
35 to establish paternity under the provisions of this
36 article.

**§48A-6-3. Medical testing procedures to aid in the determi-
nation of paternity.**

1 (a) The court may, on its own motion, or shall upon
2 the motion of any party, order the mother, her child
3 and the man to submit to blood tests or tissue tests to
4 aid the court in proving or disproving paternity. If
5 such tests are ordered, the court shall direct that the
6 inherited characteristics, including, but not limited to,
7 blood types, be determined by appropriate testing
8 procedures at a hospital, independent medical institu-
9 tion or independent medical laboratory, duly licensed
10 under the laws of this state, or any other state, and
11 shall appoint an expert qualified as an examiner of
12 genetic markers to analyze and interpret the results
13 and to report to the court. The court shall consider the
14 results as follows:

15 (1) Blood or tissue test results which exclude the
16 man as the father of the child are admissible and shall
17 be clear and convincing evidence of nonpaternity and
18 the court shall, upon considering such evidence,
19 dismiss the action.

20 (2) Blood or tissue test results which show a statis-
21 tical probability of paternity of more than seventy-five
22 percent are admissible and shall be weighed along
23 with other evidence of the defendant's paternity.

24 (3) If the results of the blood or tissue tests or the
25 expert's analysis of inherited characteristics is
26 disputed, the court, upon reasonable request of a
27 party, shall order that additional tests be made by the

28 same laboratory or another laboratory at the expense
29 of the party requesting additional testing.

30 (b) Documentation of the chain of custody of the
31 blood or tissue specimens is competent evidence to
32 establish such chain of custody. A verified expert's
33 report shall be admitted at trial unless a challenge to
34 the testing procedures or a challenge to the results of
35 test analysis has been made before trial. The costs and
36 expenses of making such tests shall be paid by the
37 parties in proportions and at times determined by the
38 court.

§48A-6-4. Establishment of paternity and duty of support.

1 If the defendant, by verified responsive pleading
2 shall admit that the man is the father of the child and
3 owes a duty of support, or if after a trial on the merits,
4 the court or jury shall find, by clear and convincing
5 evidence that the man is the father of the child, the
6 court shall order support in accordance with the
7 provisions of this chapter.

§48A-6-5. Representation of parties.

1 (a) The children's advocate of the county where the
2 action under this section is brought shall litigate the
3 action in the best interests of the child although the
4 action is commenced in the name of a plaintiff listed
5 in section one of this article.

6 (b) The defendant shall be advised of his right to
7 counsel. In the event he files an affidavit that he is a
8 poor person within the meaning of section one, article
9 two, chapter fifty-nine of this code, counsel shall be
10 appointed to represent him. The service and expenses
11 of counsel shall be paid in accordance with the
12 provisions of article twenty-one, chapter twenty-nine
13 of this code: *Provided*, That the court shall make a
14 finding of eligibility for appointed counsel in accor-
15 dance with the requirements of said article and, if the
16 person qualifies, any blood or tissue tests ordered to be
17 taken shall be paid as part of the costs of the
18 proceeding.

19 (c) The children's advocate shall litigate the action

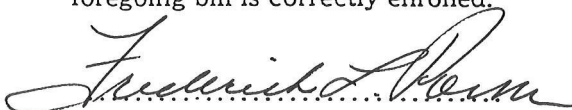
20 only to the extent of establishing paternity and
21 establishing and enforcing a child support order. The
22 children's advocate shall participate in matters of
23 custody and visitation only to the extent provided by
24 article three of this chapter.

§48A-6-6. Establishing paternity by acknowledgement of natural father.

1 (a) The natural father of a child may file an appli-
2 cation to establish paternity in circuit court when he
3 acknowledges that the child is his or when he has
4 married the mother of the child after the child's birth
5 and upon consent of the mother, or if she is deceased
6 or incompetent, or has surrendered custody, upon the
7 consent of the person or agency having custody of the
8 child or of a court having jurisdiction over the child's
9 custody. The application may be filed in the county
10 where the natural father resides, the child resides, or
11 the child was born. The circuit court, if satisfied that
12 the applicant is the natural father and that establish-
13 ment of the relationship is for the best interest of the
14 child, shall enter the finding of fact and an order upon
15 its docket, and thereafter the child is the child of the
16 applicant, as though born to him in lawful wedlock.

17 (b) A written acknowledgement by both the man
18 and woman that the man is the father of the named
19 child legally establishes the man as the father of the
20 child for all purposes and child support can be
21 established under the provisions of this chapter.

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

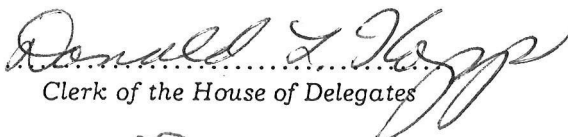

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Chairman Senate Committee

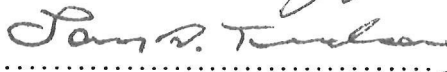

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Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

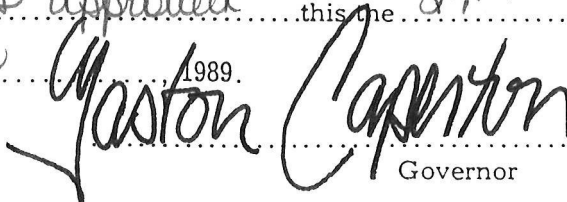

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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


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Speaker House of Delegates

The within *is approved* this the *27th*
day of *April* 1989.


.....
Governor

PRESENTED TO THE

GOVERNOR

Date 4/24/89

Time 2:38