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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1991

ENROLLED

Committee Substitute for
SENATE BILL NO. 354

(By Senator Pritt)

PASSED March 8, **1991**

In Effect 90 days from Passage

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 354

(By SENATOR PRITT, *original sponsor*)

[Passed March 8, 1991; in effect ninety days from passage.]

AN ACT to amend and reenact section fifteen, article two, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to granting circuit courts the authority to revise or alter an order of annulment or divorce or a decree of separate maintenance, to enjoin either party from molesting or interfering with the other, or imposing any restraint on the personal liberty of the other, or interfering with the custodial or visitation rights of the other; and requiring orders revising or altering prior orders to be issued forthwith.

Be it enacted by the Legislature of West Virginia:

That section fifteen, article two, 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 2. DIVORCE, ANNULMENT AND SEPARATE MAINTENANCE.

§48-2-15. Relief upon ordering divorce or annulment or granting decree of separate maintenance.

- 1 (a) Upon ordering a divorce or granting a decree of
- 2 separate maintenance, the court may require either

3 party to pay alimony in the form of periodic install-
4 ments, or a lump sum, or both, for the maintenance of
5 the other party. Payments of alimony and child
6 support are to be ordinarily made from a party's
7 employment income and other recurring earnings, but
8 in cases where the employment income and other
9 recurring earnings are not sufficient to adequately
10 provide for payments of alimony and child support,
11 the court may, upon specific findings set forth in the
12 order, order the party required to make such pay-
13 ments to make the same from the corpus of his or her
14 separate estate. An award of such relief shall not be
15 disproportionate to a party's ability to pay as disclosed
16 by the evidence before the court.

17 (b) Upon ordering the annulment of a marriage or a
18 divorce or granting of decree of separate maintenance,
19 the court may further order all or any part of the
20 following relief:

21 (1) The court may provide for the custody of minor
22 children of the parties, subject to such rights of
23 visitation, both in and out of the residence of the
24 custodial parent or other person or persons having
25 custody, as may be appropriate under the circumstan-
26 ces. In addition, the court may, in its discretion, make
27 such further order as it shall deem expedient, con-
28 cerning the grant of reasonable visitation rights to any
29 grandparent or grandparents of the minor children
30 upon application, if the grandparent or grandparents
31 are related to such minor child through a party:

32 (A) Whose whereabouts are unknown, or

33 (B) Who did not answer or otherwise appear and
34 defend the cause of action.

35 (2) The court may require either party to pay child
36 support in the form of periodic installments for the
37 maintenance of the minor children of the parties.

38 (3) As an incident to requiring the payment of
39 alimony or child support, the court may order either

40 party to continue in effect existing policies of insur-
41 ance covering the costs of health care and hospitaliza-
42 tion of the other party and the minor children of the
43 parties: *Provided*, That if the other party is no longer
44 eligible to be covered by such insurance because of the
45 granting of an annulment or divorce, the court may
46 require a party to substitute such insurance with a
47 new policy to cover the other party, or may consider
48 the prospective cost of such insurance in awarding
49 alimony to be paid in periodic installments. If there is
50 no such existing policy or policies, the court shall
51 order such health care insurance coverage to be paid
52 for by the noncustodial parent, if the court determines
53 that such health care insurance coverage is available
54 to the noncustodial parent at a reasonable cost.
55 Payments made to an insurer pursuant to this subdi-
56 vision, either directly or by a deduction from wages,
57 shall be deemed to be alimony, child support or
58 installment payments for the distribution of marital
59 property, in such proportion as the court shall direct:
60 *Provided, however*, That if the court does not set forth
61 in the order that a portion of such payments is to be
62 deemed child support or installment payments for the
63 distribution of marital property, then all such pay-
64 ments made pursuant to this subdivision shall be
65 deemed to be alimony: *Provided further*, That the
66 designation of insurance coverage as alimony under
67 the provisions of this subdivision shall not, in and of
68 itself, give rise to a subsequent modification of the
69 order to provide for alimony other than insurance for
70 covering the costs of health care and hospitalization.

71 (4) As an incident to requiring the payment of
72 alimony or child support, the court may grant the
73 exclusive use and occupancy of the marital home to
74 one of the parties, together with all or a portion of the
75 household goods, furniture and furnishings reasonably
76 necessary for such use and occupancy. Such use and
77 occupancy shall be for a definite period, ending at a
78 specific time set forth in the order, subject to modifi-
79 cation upon the petition of either party. Except in
80 extraordinary cases supported by specific findings set
81 forth in the order granting relief, a grant of the

82 exclusive use and occupancy of the marital home shall
83 be limited to those situations where such use and
84 occupancy is reasonably necessary to accommodate the
85 rearing of minor children of the parties. The court
86 may require payments to third parties in the form of
87 home loan installments, land contract payments, rent,
88 payments for utility services, property taxes, insur-
89 ance coverage, or other expenses or charges reasona-
90 bly necessary for the use and occupancy of the marital
91 domicile. Payments made to a third party pursuant to
92 this subdivision for the benefit of the other party shall
93 be deemed to be alimony, child support or installment
94 payments for the distribution of marital property, in
95 such proportion as the court shall direct: *Provided*,
96 That if the court does not set forth in the order that
97 a portion of such payments is to be deemed child
98 support or installment payments for the distribution of
99 marital property, then all such payments made pursu-
100 ant to this subdivision shall be deemed to be alimony.
101 Nothing contained in this subdivision shall abrogate an
102 existing contract between either of the parties and a
103 third party, or affect the rights and liabilities of either
104 party or a third party under the terms of such
105 contract.

106 (5) As an incident to requiring the payment of
107 alimony, the court may grant the exclusive use and
108 possession of one or more motor vehicles to either of
109 the parties. The court may require payments to third
110 parties in the form of automobile loan installments or
111 insurance coverage if available at reasonable rates,
112 and any such payments made pursuant to this subdivi-
113 sion for the benefit of the other party shall be
114 deemed to be alimony or installment payments for the
115 distribution of marital property, as the court may
116 direct. Nothing contained in this subdivision shall
117 abrogate an existing contract between either of the
118 parties and a third party, or affect the rights and
119 liabilities of either party or a third party under the
120 terms of such contract.

121 (6) Where the pleadings include a specific request for
122 specific property or raise issues concerning the equita-

123 ble division of marital property as defined in section
124 one of this article, the court shall order such relief as
125 may be required to effect a just and equitable distri-
126 bution of the property and to protect the equitable
127 interests of the parties therein.

128 (7) Unless a contrary disposition be found appropri-
129 ate and ordered pursuant to other provisions of this
130 section, then upon the motion of either party, the
131 court may compel the other party to deliver to the
132 movant party any of his or her separate estate which
133 may be in the possession or control of the respondent
134 party, and may make such further order as is neces-
135 sary to prevent either party from interfering with the
136 separate estate of the other.

137 (8) The court may enjoin either party from the
138 molesting or interfering with the other, or otherwise
139 imposing any restraint on the personal liberty of the
140 other, or interfering with the custodial or visitation
141 rights of the other.

142 (9) The court may order either party to take neces-
143 sary steps to transfer utility accounts and other
144 accounts for recurring expenses from the name of one
145 party into the name of the other party or from the
146 joint names of the parties into the name of one party.
147 Nothing contained in this subdivision shall affect the
148 liability of the parties for indebtedness on any such
149 account incurred before the transfer of such account.

150 (c) In any case where an annulment or divorce is
151 denied, the court shall retain jurisdiction of the case
152 and may order all or any portion of the relief provided
153 for in subsections (a) and (b) of this section which has
154 been demanded or prayed for in the pleadings.

155 (d) In any case where a divorce or annulment is
156 granted in this state upon constructive service of
157 process, and personal jurisdiction is thereafter
158 obtained of the defendant in such case, the court may
159 order all or any portion of the relief provided for in
160 subsections (a) and (b) of this section which has been
161 demanded or prayed for in the pleadings.

162 (e) At any time after the entry of an order pursuant
163 to the provisions of this section, the court may, upon
164 the verified petition of either of the parties, revise or
165 alter such order concerning the maintenance of the
166 parties, or either of them, and make a new order
167 concerning the same, issuing it forthwith, as the
168 altered circumstances or needs of the parties may
169 render necessary to meet the ends of justice. The
170 court may also from time to time afterward, on the
171 verified petition of either of the parties, revise or alter
172 such order to grant relief pursuant to subdivision (8),
173 subsection (b) of this section, and make a new order
174 concerning the same, issuing it forthwith, as the
175 circumstances of the parties and the benefit of chil-
176 dren may require. The court may also from time to
177 time afterward, on the verified petition of either of the
178 parties or other proper person having actual or legal
179 custody of the minor child or children of the parties,
180 revise or alter such order concerning the custody and
181 support of the children, and make a new order
182 concerning the same, issuing it forthwith, as the
183 circumstances of the parents or other proper person or
184 persons and the benefit of the children may require:
185 *Provided*, That an order providing for child support
186 payments may be revised or altered for the reason,
187 *inter alia*, that the existing order provides for child
188 support payments in an amount that is less than
189 eighty-five percent or more than one hundred fifteen
190 percent of the amount that would be required to be
191 paid under the child support guidelines promulgated
192 pursuant to the provisions of section eight, article two,
193 chapter forty-eight-a of this code. In granting relief
194 under this subsection, the court may, where other
195 means are not conveniently available, alter any prior
196 order of the court with respect to the distribution of
197 marital property, if such property is still held by the
198 parties, and if necessary to give effect to a modification
199 of alimony, child support or child custody or necessary
200 to avoid an inequitable or unjust result which would
201 be caused by the manner in which the modification
202 will affect the prior distribution of marital property.

203 (f) In every case where a separation agreement is

204 the basis for an award of alimony, the court, in
205 approving the agreement, shall examine the agree-
206 ment to ascertain whether it clearly provides for
207 alimony to continue beyond the death of the payor
208 party or to cease in such event. Where alimony is to
209 be paid pursuant to the terms of a separation agree-
210 ment which does not state whether the payment of
211 alimony is to continue beyond the death of the payor
212 party or is to cease, or where the parties have not
213 entered into a separation agreement and alimony is to
214 be awarded, the court shall specifically state as a part
215 of its order whether such payments of alimony are to
216 be continued beyond the death of the payor party or
217 cease.

218 (g) In every case where a separation agreement is
219 the basis for an award of alimony, the court, in
220 approving the agreement, shall examine the agree-
221 ment to ascertain whether it clearly provides for
222 alimony to continue beyond the remarriage of the
223 payee party or to cease in such event. Where alimony
224 is to be paid pursuant to the terms of a separation
225 agreement which does not state whether the payment
226 of alimony is to continue beyond the remarriage of the
227 payee party or is to cease, or where the parties have
228 not entered into a separation agreement and alimony
229 is to be awarded, the court shall specifically state as a
230 part of its order whether such payments of alimony
231 are to be continued beyond the remarriage of the
232 payee party or cease.

233 (h) In addition to the statement provided for in
234 subsection (d), section thirteen of this article and in
235 addition or in lieu of the disclosure requirements set
236 forth in section thirty-three of this article, the court
237 may order accounts to be taken as to all or any part
238 of marital property or the separate estates of the
239 parties, and may direct that the accounts be taken as
240 of the date of the marriage, the date upon which the
241 parties separated, or any other time deemed to be
242 appropriate in assisting the court in the determination
243 and equitable division of property.

244 (i) In determining whether alimony is to be

245 awarded, or in determining the amount of alimony, if
246 any, to be awarded under the provisions of this
247 section, the court shall consider and compare the fault
248 or misconduct of either or both of the parties and the
249 effect of such fault or misconduct as a contributing
250 factor to the deterioration of the marital relationship.
251 However, alimony shall not be awarded in any case
252 where both parties prove grounds for divorce and are
253 denied a divorce, nor shall an award of alimony under
254 the provisions of this section be ordered which directs
255 the payment of alimony to a party determined to be at
256 fault, when, as a grounds granting the divorce, such
257 party is determined by the court:

258 (1) To have committed adultery; or

259 (2) To have been convicted for the commission of a
260 crime which is a felony, subsequent to the marriage if
261 such conviction has become final; or

262 (3) To have actually abandoned or deserted his or
263 her spouse for six months.

264 (j) Whenever under the terms of this section or
265 section thirteen of this article a court enters an order
266 requiring the payment of alimony or child support, if
267 the court anticipates the payment of such alimony or
268 child support or any portion thereof to be paid out of
269 "disposable retired or retainer pay" as that term is
270 defined in 10 U.S.C. §1408, relating to members or
271 former members of the uniformed services of the
272 United States, the court shall specifically provide for
273 the payment of an amount, expressed in dollars or as
274 a percentage of disposable retired or retainer pay,
275 from the disposable retired or retainer pay of the
276 payor party to the payee party.

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

Norman Leck
Chairman Senate Committee

Ernest C. Moore
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage

Parrell E. Adams
Clerk of the Senate

Donald L. Kopp
Clerk of the House of Delegates

Scott Sandate
President of the Senate

Bob C. Carr
Speaker House of Delegates

The within is approved this the 18th
day of March, 1991.

Gaston Caperton
Governor

PRESENTED TO THE

GOVERNOR

Date

3/14/91

Time

4:10 pm