

RECEIVED  
1992 MAR -3 PM 3:39  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1992



# ENROLLED

Committee Substitute for  
**SENATE BILL NO.** 36

(By Senator Wiedebusch, et al)



**PASSED** February 20, 1992  
**In Effect** 90 days from **Passage**

**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 36**

(BY SENATORS WIEDEBUSCH, HUMPHREYS, CHAFIN,  
ANDERSON, CLAYPOLE, MINARD, FELTON, HELMICK,  
DITTMAR, DALTON, WEHRLE, HOLLIDAY, HECK, BAILEY,  
CHERNENKO, J. MANCHIN AND WHITLOW)

[Passed February 20, 1992; 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; to amend and reenact section one, article two-b of said chapter; and to further amend said article by adding thereto eight new sections, designated sections two, three, four, five, six, seven, eight and nine, relating to grandparent visitation; relief upon ordering divorce or annulment or granting decree of separate maintenance; legislative findings; intent; grandparent visitation where divorce or separate maintenance is ordered; grandparent visitation upon abandonment or abrogation of visitation rights by parent or judicial preclusion of visitation; grandparent visitation when parent deceased; grandparent visitation when minor child has resided

with grandparent; grandparent visitation where parents unwed; termination of grandparent visitation; attorney's fees, reasonable costs; and defining a misdemeanor offense of allowing contact between a minor and a person precluded visitation rights, and establishing the penalty therefor.

*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; that section one, article two-b of said chapter be amended and reenacted; and that said article be further amended by adding thereto eight new sections, designated sections two, three, four, five, six, seven, eight and nine, to read as follows:

**ARTICLE 2. DOMESTIC RELATIONS.**

**§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  
26 circumstances.

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

30 (3) As an incident to requiring the payment of  
31 alimony or child support, the court may order either  
32 party to continue in effect existing policies of insur-  
33 ance covering the costs of health care and hospitaliza-  
34 tion of the other party and the minor children of the  
35 parties: *Provided*, That if the other party is no longer  
36 eligible to be covered by such insurance because of the  
37 granting of an annulment or divorce, the court may  
38 require a party to substitute such insurance with a  
39 new policy to cover the other party, or may consider  
40 the prospective cost of such insurance in awarding  
41 alimony to be paid in periodic installments. If there is  
42 no such existing policy or policies, the court shall  
43 order such health care insurance coverage to be paid  
44 for by the noncustodial parent, if the court determines  
45 that such health care insurance coverage is available  
46 to the noncustodial parent at a reasonable cost.  
47 Payments made to an insurer pursuant to this subdivi-  
48 sion, either directly or by a deduction from wages,  
49 shall be deemed to be alimony, child support or  
50 installment payments for the distribution of marital  
51 property, in such proportion as the court shall direct:  
52 *Provided, however*, That if the court does not set forth  
53 in the order that a portion of such payments is to be  
54 deemed child support or installment payments for the  
55 distribution of marital property, then all such pay-  
56 ments made pursuant to this subdivision shall be  
57 deemed to be alimony: *Provided further*, That the  
58 designation of insurance coverage as alimony under

59 the provisions of this subdivision shall not, in and of  
60 itself, give rise to a subsequent modification of the  
61 order to provide for alimony other than insurance for  
62 covering the costs of health care and hospitalization.

63 (4) As an incident to requiring the payment of  
64 alimony or child support, the court may grant the  
65 exclusive use and occupancy of the marital home to  
66 one of the parties, together with all or a portion of the  
67 household goods, furniture and furnishings reasonably  
68 necessary for such use and occupancy. Such use and  
69 occupancy shall be for a definite period, ending at a  
70 specific time set forth in the order, subject to modifi-  
71 cation upon the petition of either party. Except in  
72 extraordinary cases supported by specific findings set  
73 forth in the order granting relief, a grant of the  
74 exclusive use and occupancy of the marital home shall  
75 be limited to those situations where such use and  
76 occupancy is reasonably necessary to accommodate the  
77 rearing of minor children of the parties. The court  
78 may require payments to third parties in the form of  
79 home loan installments, land contract payments, rent,  
80 payments for utility services, property taxes, insur-  
81 ance coverage, or other expenses or charges reasona-  
82 bly necessary for the use and occupancy of the marital  
83 domicile. Payments made to a third party pursuant to  
84 this subdivision for the benefit of the other party shall  
85 be deemed to be alimony, child support or installment  
86 payments for the distribution of marital property, in  
87 such proportion as the court shall direct: *Provided,*  
88 That if the court does not set forth in the order that  
89 a portion of such payments is to be deemed child  
90 support or installment payments for the distribution of  
91 marital property, then all such payments made pursu-  
92 ant to this subdivision shall be deemed to be alimony.  
93 Nothing contained in this subdivision shall abrogate an  
94 existing contract between either of the parties and a  
95 third party, or affect the rights and liabilities of either  
96 party or a third party under the terms of such  
97 contract.

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

113 (6) Where the pleadings include a specific request for  
114 specific property or raise issues concerning the equita-  
115 ble division of marital property as defined in section  
116 one of this article, the court shall order such relief as  
117 may be required to effect a just and equitable distri-  
118 bution of the property and to protect the equitable  
119 interests of the parties therein.

120 (7) Unless a contrary disposition be found appropri-  
121 ate and ordered pursuant to other provisions of this  
122 section, then upon the motion of either party, the  
123 court may compel the other party to deliver to the  
124 movant party any of his or her separate estate which  
125 may be in the possession or control of the respondent  
126 party, and may make such further order as is neces-  
127 sary to prevent either party from interfering with the  
128 separate estate of the other.

129 (8) The court may enjoin either party from the  
130 molesting or interfering with the other, or otherwise  
131 imposing any restraint on the personal liberty of the  
132 other, or interfering with the custodial or visitation  
133 rights of the other.

134 (9) The court may order either party to take neces-

135 sary steps to transfer utility accounts and other  
136 accounts for recurring expenses from the name of one  
137 party into the name of the other party or from the  
138 joint names of the parties into the name of one party.  
139 Nothing contained in this subdivision shall affect the  
140 liability of the parties for indebtedness on any such  
141 account incurred before the transfer of such account.

142 (10) The court may, pursuant to the provisions of  
143 article two-b of this chapter, grant visitation rights to  
144 any grandparent of the minor children.

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

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

157 (e) At any time after the entry of an order pursuant  
158 to the provisions of this section, the court may, upon  
159 the verified petition of either of the parties, revise or  
160 alter such order concerning the maintenance of the  
161 parties, or either of them, and make a new order  
162 concerning the same, issuing it forthwith, as the  
163 altered circumstances or needs of the parties may  
164 render necessary to meet the ends of justice. The  
165 court may also from time to time afterward, on the  
166 verified petition of either of the parties, revise or alter  
167 such order to grant relief pursuant to subdivision (8),  
168 subsection (b) of this section, and make a new order  
169 concerning the same, issuing it forthwith, as the  
170 circumstances of the parties and the benefit of chil-  
171 dren may require. The court may also from time to

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

198 (f) In every case where a separation agreement is  
199 the basis for an award of alimony, the court, in  
200 approving the agreement, shall examine the agree-  
201 ment to ascertain whether it clearly provides for  
202 alimony to continue beyond the death of the payor  
203 party or to cease in such event. Where alimony is to  
204 be paid pursuant to the terms of a separation agree-  
205 ment which does not state whether the payment of  
206 alimony is to continue beyond the death of the payor  
207 party or is to cease, or where the parties have not  
208 entered into a separation agreement and alimony is to  
209 be awarded, the court shall specifically state as a part  
210 of its order whether such payments of alimony are to



211 be continued beyond the death of the payor party or  
212 cease.

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

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

239 (i) In determining whether alimony is to be  
240 awarded, or in determining the amount of alimony, if  
241 any, to be awarded under the provisions of this  
242 section, the court shall consider and compare the fault  
243 or misconduct of either or both of the parties and the  
244 effect of such fault or misconduct as a contributing  
245 factor to the deterioration of the marital relationship.  
246 However, alimony shall not be awarded in any case  
247 where both parties prove grounds for divorce and are  
248 denied a divorce, nor shall an award of alimony under  
249 the provisions of this section be ordered which directs

250 the payment of alimony to a party determined to be at  
251 fault, when, as a grounds granting the divorce, such  
252 party is determined by the court:

253 (1) To have committed adultery; or

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

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

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

## **ARTICLE 2B. GRANDPARENT VISITATION.**

### **§48-2B-1. Legislative findings; intent.**

1 The Legislature finds that circumstances may arise  
2 where it is appropriate for circuit courts of this state  
3 to have jurisdiction to grant to the grandparents of  
4 minor children a right of visitation to enhance the best  
5 interests of the minor child or children as well as the  
6 grandparent. The Legislature further finds that in  
7 such situations, as in all situations involving children,  
8 the best interests of children must be the paramount  
9 consideration. It is the express intent of the Legisla-  
10 ture that the provisions for grandparent visitation set

11 forth in this article shall be exclusive and under all  
12 circumstances the interests of the child or children  
13 involved shall be the court's first and paramount  
14 consideration.

**§48-2B-2. Grandparent visitation where divorce or separate  
maintenance is ordered.**

1 (a) A circuit court of this state, upon ordering a  
2 divorce or an annulment or upon the granting of  
3 separate maintenance pursuant to article two of this  
4 chapter, may grant reasonable visitation rights to a  
5 grandparent of a minor child of the parties to the  
6 divorce petitioning for visitation rights if the grand-  
7 parent is related to such minor child through a party,  
8 and:

9 (1) The party to the divorce through which the  
10 grandparent is related to the minor child fails to  
11 answer or otherwise appear and defend the cause of  
12 action; or

13 (2) The whereabouts of the party through which the  
14 grandparent is related to the minor child are unknown  
15 to the party bringing the action and to the grandpar-  
16 ent petitioning for visitation rights.

17 (b) Notwithstanding any provision of this code to the  
18 contrary, where service of process in a divorce action  
19 is made by means other than personal service and the  
20 whereabouts of the party-defendant are unknown or  
21 the party-defendant fails to answer the complaint,  
22 notice of the action shall be made upon the grandpar-  
23 ents of any minor child of the party whose where-  
24 abouts are unknown or who fails to answer the  
25 complaint to afford said grandparent or grandparents  
26 the opportunity to petition the court for visitation.  
27 Such notice shall be given at the time of the entry of  
28 a final order of divorce and shall be consistent with  
29 the provisions of rule four of the West Virginia rules  
30 of civil procedure. Any petition for grandparent

31 visitation filed pursuant to this section shall be so filed  
32 within thirty days of the notice having been received.

33 (c) In determining the appropriateness of granting  
34 visitation rights to the grandparent, the court shall  
35 consider the amount of personal contact between the  
36 grandparent and minor child prior to the filing of the  
37 petition, whether or not the granting of visitation  
38 would interfere with the parent-child relationship and  
39 the overall effect on the minor child's best interests  
40 that the granting or denial of visitation would have.

**§48-2B-3. Grandparent visitation upon abandonment or  
abrogation of visitation rights by parent or  
judicial preclusion of visitation.**

1 (a) A grandparent may petition a circuit court,  
2 which has entered a final order of divorce or annul-  
3 ment or has granted a decree of separate maintenance,  
4 for an order granting visitation rights with a minor  
5 grandchild where:

6 (1) The parent through whom the grandparent is  
7 related to the minor grandchild is deemed the noncus-  
8 todial parent of the minor child by virtue of the  
9 court's order regarding custody of the minor child;

10 (2) The parent through whom the grandparent is  
11 related to the minor child having been granted visita-  
12 tion rights with the minor child refuses, fails or is  
13 unable to avail himself or herself of the right of  
14 visitation for a period of six months or more or has  
15 been precluded visitation rights by court order or is an  
16 active duty member of the armed forces of the United  
17 States whose permanent duty station is located more  
18 than one hundred miles ~~to~~ from the border of this state;  
19 and

20 (3) The petitioning grandparent has been refused  
21 visitation with a minor grandchild by the custodial  
22 parent for a period of six months or more.

23 (b) In determining the appropriateness of granting  
24 visitation rights to a grandparent pursuant to this  
25 section, the court shall consider the amount of per-  
26 sonal contact between the grandparent and minor  
27 child prior to the filing of the petition, whether or not  
28 the granting of visitation would interfere with the  
29 parent-child relationship and the overall effect of such  
30 visitation on the minor child's best interest.

**§48-2B-4. Grandparent visitation when parent deceased.**

1 (a) Notwithstanding any provisions of this code to  
2 the contrary, a grandparent may petition the circuit  
3 court of the county of residence of any minor grand-  
4 child for an order granting said grandparent reason-  
5 able visitation rights with the minor grandchild where  
6 the parent through whom the grandparent is related is  
7 deceased.

8 (b) In determining the appropriateness of granting  
9 visitation rights to a grandparent pursuant to this  
10 section, the court shall consider the amount of per-  
11 sonal contact between the grandparent and minor  
12 child prior to the filing of the petition, whether or not  
13 the granting of visitation would interfere with the  
14 parent-child relationship and the overall effect of such  
15 visitation on the minor child's best interest.

**§48-2B-5. Grandparent visitation when minor child has  
resided with grandparent.**

1 (a) Notwithstanding any provision of this code to the  
2 contrary, a grandparent may petition the circuit court  
3 of the county in which he or she resides for an order  
4 granting said grandparent reasonable visitation rights  
5 where:

6 (1) Said minor grandchild has resided without  
7 significant interruption with the grandparent with the  
8 parents residing elsewhere for a period of six consec-  
9 utive months or more within the past two years;

10 (2) The minor grandchild is subsequently removed  
11 from the home by a parent or parents; and

12 (3) The removing parent or parents have refused to  
13 allow the petitioning grandparent visitation with the  
14 minor child who formerly resided in the grandparent's  
15 home.

16 (b) If the circuit court determines that the require- *D&H*  
17 ments set forth in subsection (a) of this section have *SUCH*  
18 been shown, it shall grant reasonable visitation rights  
19 to the petitioning grandparent as may be consistent  
20 with the minor child's best interests.

**§48-2B-6. Grandparent visitation where parents unwed.**

1 (a) Notwithstanding any provision of this code to the  
2 contrary, a grandparent may petition the circuit court  
3 of the county of residence of the minor child with  
4 whom visitation is sought for an order granting said  
5 grandparent reasonable visitation rights where:

6 (1) The child of said grandparent has been legally  
7 determined to be the parent of the minor child or the  
8 child of the grandparent has acknowledged paternity  
9 of the minor child through a sworn, notarized  
10 statement;

11 (2) The parent of the minor child through whom the  
12 grandparent is related is precluded by court order  
13 from visitation with the minor child or has failed to  
14 exercise the right of visitation for a period of six  
15 months or more or is an active duty member of the  
16 armed forces of the United States whose permanent  
17 duty station is located more than one hundred miles  
18 from the border of this state; and

19 (3) The parent of the minor child who has custody  
20 of said child refuses to allow the petitioning grandpar-  
21 ent reasonable visitation with the minor child.

22 (b) In determining the appropriateness of granting  
23 visitation rights to a grandparent pursuant to this  
24 section, the court shall consider, where applicable, the  
25 amount of personal contact between the grandparent  
26 and minor child prior to the filing of the petition,  
27 whether or not the granting of visitation would  
28 interfere with the parent-child relationship and the  
29 overall effect of such visitation on the minor child's  
30 best interest.

**§48-2B-7. Termination of grandparent visitation.**

1 (a) Any circuit court which grants visitation rights to  
2 a grandparent shall retain jurisdiction throughout the  
3 minority of the minor child with whom visitation is  
4 granted to modify or terminate such rights as dictated  
5 by the best interests of the minor child.

6 (b) A circuit court shall, based upon a petition  
7 brought by an interested person, terminate any grant  
8 of the right of grandparent visitation upon presenta-  
9 tion of clear and convincing evidence that a grandpar-  
10 ent granted visitation has materially violated the  
11 terms and conditions of said order of visitation.

**§48-2B-8. Attorney's fees; reasonable costs.**

1 In an action brought under the provisions of this  
2 article, a circuit court may order payment of reason-  
3 able attorney's fees and costs based upon the equities  
4 of the positions asserted by the parties to pay such fees  
5 and costs.

**§48-2B-9. Penalties for violation of order of visitation.**

1 Any grandparent who knowingly allows contact  
2 between the minor grandchild and a parent or other  
3 person who has been precluded visitation rights with  
4 the child by court order, shall, in addition to any other  
5 remedy under section seven of this article, be guilty of  
6 a misdemeanor, and, upon conviction thereof, shall be

7 confined in the county jail not more than thirty days  
8 or fined not less than one hundred dollars nor more  
9 than one thousand dollars.



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

*Thomer Heck*  
.....  
Chairman Senate Committee

*Ernest C. Moore*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*Parrell E. Albee*  
.....  
Clerk of the Senate

*Donald G. Kopp*  
.....  
Clerk of the House of Delegates

*Bill Burton*  
.....  
President of the Senate

*Bob Cagle*  
.....  
Speaker House of Delegates

The within is approved this the *2nd* .....  
day of *March* ....., 1992.

*York Capel*  
.....  
Governor

PRESENTED TO THE

GOVERNOR

Date 2/26/92

Time 3:40 pm