

SB 573

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# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1998



# ENROLLED

SENATE BILL NO. 573

(By Senator WHITE, ET AL)



PASSED MARCH 13, 1998

In Effect 90 Days From Passage

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SENATE OF WEST VIRGINIA

**ENROLLED**

**Senate Bill No. 573**

(BY SENATORS WHITE, MINEAR, HUNTER, WALKER, SHARPE,  
DITTMAR, BALL, SCHOONOVER, FANNING, SNYDER, HELMICK,  
ANDERSON, DEEM, BOWMAN, MCKENZIE, KESSLER, ROSS,  
DUGAN, SCOTT, BOLEY, CRAIGO, LOVE, KIMBLE AND PLYMALE)

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[Passed March 13, 1998; in effect ninety days from passage.]

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AN ACT to amend and reenact article two-b, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to grandparent visitation generally; setting forth legislative findings and intent; defining certain terms; providing for the grandparent of a child residing in this state to apply for an order granting reasonable visitation rights with a grandchild; authorizing a grandparent, in proceedings for divorce, custody, legal separation, annulment or establishment of paternity, to make a motion for reasonable visitation rights; authorizing a grandparent to petition for reasonable visitation rights when no domestic relations action is pending; requiring circuit courts to grant grandparent visitation upon a finding

that visitation rights would be in the best interests of the child and would not substantially interfere with the parent-child relationship; describing the factors which the circuit court must consider in making a determination on a motion or petition for grandparent visitation; providing for an in camera interview with a child by the circuit judge; establishing the degree of proof required to support an award of grandparent visitation; prescribing the contents of orders granting or refusing a motion or petition for grandparent visitation; describing the effect of remarriage or adoption on an order granting grandparent visitation; providing for the modification or termination of orders; authorizing the award of attorney's fees; and defining the misdemeanor offense of allowing contact between a child and a person precluded from visitation, and establishing the penalty therefor.

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

That article two-b, 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 2B. GRANDPARENT VISITATION.**

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

1 The Legislature finds that circumstances arise where it  
2 is appropriate for circuit courts of this state to order that  
3 grandparents of minor children may exercise visitation  
4 with their grandchildren. The Legislature further finds  
5 that in such situations, as in all situations involving  
6 children, the best interests of the child or children are the  
7 paramount consideration. It is the express intent of the  
8 Legislature that the provisions for grandparent visitation  
9 that are set forth in this article are exclusive.

**§48-2B-2. Definitions.**

1 For purposes of this article:  
2 (1) "Child" means a person under the age of eighteen

3 years who has not been married or otherwise emancipated.

4 (2) "Grandparent" means a biological grandparent, a  
5 person married or previously married to a biological  
6 grandparent, or a person who has previously been granted  
7 custody of the parent of a minor child with whom visita-  
8 tion is sought.

**§48-2B-3. Visitation for grandparents.**

1 A grandparent of a child residing in this state may, by  
2 motion or petition, make application to the circuit court  
3 of the county in which that child resides for an order  
4 granting visitation with his or her grandchild.

**§48-2B-4. Proceedings for visitation for grandparents.**

1 (a) The provisions of this subsection apply to all pro-  
2 ceedings for divorce, custody, legal separation, annulment  
3 or establishment of paternity. After the commencement of  
4 the proceeding, a grandparent seeking visitation with his  
5 or her grandchild may, by motion, apply to the circuit  
6 court for an order granting visitation. A grandparent  
7 moving for an order of visitation will not be afforded  
8 party status, but may be called as a witness by the court,  
9 and will be subject to cross-examination by the parties.

10 (b) The provisions of this subsection apply when no  
11 proceeding for divorce, custody, legal separation, annul-  
12 ment or establishment of paternity is pending. A grand-  
13 parent may petition the circuit court for an order granting  
14 visitation with his or her grandchild, regardless of  
15 whether the parents of the child are married. If the  
16 grandparent filed a motion for visitation in a previous  
17 proceeding for divorce, custody, legal separation, annul-  
18 ment or establishment of paternity, and a decree or final  
19 order has issued in that earlier action, the grandparent  
20 may petition for visitation if the circumstances have  
21 materially changed since the entry of the earlier order or  
22 decree.

23 (c) When a petition under subsection (b) of this section  
24 is filed, the matter shall be styled "In re grandparent  
25 visitation of [petitioner's(s) name(s)]."

26 (d) The court, on its own motion or upon the motion of  
27 a party or grandparent, may appoint a guardian ad litem  
28 for the child to assist the court in determining the best  
29 interests of the child regarding grandparent visitation.

**§48-2B-5. Factors affecting a decision to grant visitation for  
grandparents.**

1 (a) The circuit court shall grant reasonable visitation to  
2 a grandparent upon a finding that visitation would be in  
3 the best interests of the child and would not substantially  
4 interfere with the parent-child relationship.

5 (b) In making a determination on a motion or petition  
6 made pursuant to section four of this article, the court  
7 shall consider the following factors:

8 (1) The age of the child;

9 (2) The relationship between the child and the grandpar-  
10 ent;

11 (3) The relationship between each of the child's parents  
12 or the person with whom the child is residing and the  
13 grandparent;

14 (4) The time which has elapsed since the child last had  
15 contact with the grandparent;

16 (5) The effect that such visitation will have on the  
17 relationship between the child and the child's parents or  
18 the person with whom the child is residing;

19 (6) If the parents are divorced or separated, the custody  
20 and visitation arrangement which exists between the  
21 parents with regard to the child;

22 (7) The time available to the child and his or her parents,  
23 giving consideration to such matters as each parent's

24 employment schedule, the child's schedule for home,  
25 school and community activities, and the child's and  
26 parents' holiday and vacation schedule;

27 (8) The good faith of the grandparent in filing the  
28 motion or petition;

29 (9) Any history of physical, emotional or sexual abuse or  
30 neglect being performed, procured, assisted or condoned  
31 by the grandparent;

32 (10) Whether the child has, in the past, resided with the  
33 grandparent for a significant period or periods of time,  
34 with or without the child's parent or parents; or

35 (11) Whether the grandparent has, in the past, been a  
36 significant caretaker for the child, regardless of whether  
37 the child resided inside or outside of the grandparent's  
38 residence.

39 (12) The preference of the parents with regard to the  
40 requested visitation; and

41 (13) Any other factor relevant to the best interests of the  
42 child.

**§48-2B-6. Interview of child by judge.**

1 (a) In considering the factors listed in section five of this  
2 article for purposes of determining whether to grant  
3 visitation, establishing a specific visitation schedule, and  
4 resolving any issues related to the making of any determi-  
5 nation with respect to visitation or the establishment of  
6 any specific visitation schedule, the court, in its discretion,  
7 may interview in chambers any or all involved children  
8 regarding their wishes and concerns. No person shall be  
9 present other than the court, the child, the child's attorney  
10 or guardian ad litem, if any, and any necessary court  
11 personnel.

12 (b) No person shall obtain or attempt to obtain from a  
13 child a written or recorded statement or affidavit setting

14 forth the wishes and concerns of the child regarding those  
15 visitation matters, and the court, in considering the  
16 factors listed in section five of this article for purposes of  
17 determining whether to grant any visitation, establishing  
18 a visitation schedule, or resolving any issues related to the  
19 making of any determination with respect to visitation or  
20 the establishment of any specific visitation schedule, shall  
21 not accept or consider such a written or recorded state-  
22 ment or affidavit.

23 (c) A child shall not be called as a witness in any pro-  
24 ceeding to determine whether grandparent visitation  
25 should be awarded.

**§48-2B-7. Proof required.**

1 (a) If a motion for grandparent visitation is filed in a  
2 pending action for divorce, custody, legal separation,  
3 annulment or establishment of paternity pursuant to  
4 subsection (a), section four of this article, the grandparent  
5 shall be granted visitation if a preponderance of the  
6 evidence shows that visitation is in the best interest of the  
7 child and that:

8 (1) The party to the divorce through which the grand-  
9 parent is related to the minor child has failed to answer or  
10 otherwise appear and defend the cause of action; or

11 (2) The whereabouts of the party through which the  
12 grandparent is related to the minor child are unknown to  
13 the party bringing the action and to the grandparent who  
14 filed the motion for visitation.

15 (b) If a petition is filed pursuant to subsection (b),  
16 section four of this article when the parent through whom  
17 the grandparent is related to the grandchild does not: (1)  
18 Have custody of the child; (2) share custody of the child; or  
19 (3) exercise visitation privileges with the child that would  
20 allow participation in the visitation by the grandparent if  
21 the parent so chose, the grandparent shall be granted  
22 visitation if a preponderance of the evidence shows that

23 visitation is in the best interest of the child.

24 (c) If a petition is filed pursuant to subsection (b),  
25 section four of this article, there is a presumption that  
26 visitation privileges need not be extended to the grandpar-  
27 ent if the parent through whom the grandparent is related  
28 to the grandchild has custody of the child, shares custody  
29 of the child, or exercises visitation privileges with the  
30 child that would allow participation in the visitation by  
31 the grandparent if the parent so chose. This presumption  
32 may be rebutted by clear and convincing evidence that an  
33 award of grandparent visitation is in the best interest of  
34 the child.

**§48-2B-8. Orders.**

1 (a) An order granting or refusing the grandparent's  
2 motion or petition for visitation shall state in writing the  
3 court's findings of fact and conclusions of law.

4 (b) In the court's discretion, an order granting visitation  
5 privileges to a grandparent may require supervised  
6 visitation or may place such conditions upon visitation  
7 that it finds are in the best interests of the child, includ-  
8 ing, but not limited to, the following:

9 (1) That the grandparent not attempt to influence any  
10 religious beliefs or practices of the children in a manner  
11 contrary to the preferences of the child's parents;

12 (2) That the grandparent not engage in, permit or  
13 encourage activities, or expose the grandchild to condi-  
14 tions or circumstances, that are contrary to the prefer-  
15 ences of the child's parents; or

16 (3) That the grandparent not otherwise act in a manner  
17 to contradict or interfere with child-rearing decisions  
18 made by the child's parents.

**§48-2B-9. Effect of remarriage or adoption on visitation for  
grandparents.**



1 (a) The remarriage of the custodial parent of a child does  
2 not affect the authority of a circuit court to grant reason-  
3 able visitation to any grandparent.

4 (b) If a child who is subject to a visitation order under  
5 this article is later adopted, the order for grandparent  
6 visitation is automatically vacated when the order for  
7 adoption is entered, unless the adopting parent is a  
8 stepparent, grandparent or other relative of the child.

**§48-2B-10. Modification or termination of grandparent visita-  
tion.**

1 (a) Any circuit court which grants visitation rights to a  
2 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 by  
5 the best interests of the minor child.

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

**§48-2B-11. Attorney's fees; reasonable costs.**

1 In an action brought under the provisions of this article,  
2 a circuit court may order payment of reasonable attor-  
3 ney's fees and costs based upon the equities of the posi-  
4 tions asserted by the parties to pay such fees and costs.

**§48-2B-12. Penalties for violation of order of visitation.**

1 Any grandparent who knowingly allows contact be-  
2 tween the minor grandchild and a parent or other person  
3 who has been precluded visitation rights with the child by  
4 court order shall, in addition to any other remedy under  
5 section seven of this article, be guilty of a misdemeanor  
6 and, upon conviction thereof, shall be confined in the  
7 county jail not more than thirty days or fined not less than

8 one hundred dollars nor more than one thousand dollars.

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

*[Signature]*  
.....  
Chairman Senate Committee

*[Signature]*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*[Signature]*  
.....  
Clerk of the Senate

*[Signature]*  
.....  
Clerk of the House of Delegates

*[Signature]*  
.....  
President of the Senate

*[Signature]*  
.....  
Speaker House of Delegates

The within *approved* this the *7th*  
day of *April*, 1998.

*[Signature]*  
.....  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/31/98

Time 10:50 am