

573

FILED

2001 MAY -2 P 4: 28

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

Regular Session, 2001



ENROLLED

SENATE BILL NO. 573

(By Senator Low)



PASSED April 14, 2001

In Effect 90 days from **Passage**

FILED

2001 MAY -2 P 4: 29

OFFICE WEST VIRGINIA
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Senate Bill No. 573

(BY SENATOR ROWE)

[Passed April 14, 2001; in effect ninety days from passage.]

AN ACT to amend article ten, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section sixteen, relating to settlement of derivative parental claims for damages they personally have arising out of injury to their child or children; providing authority to settle derivative claims including the costs of medical care and other necessary expenses; providing that settlement of the derivative claim does not limit the right to seek damages on behalf of a minor child; requiring that a release of derivative claims be in writing; providing that a parent or guardian may revive a derivative claim previously settled with the repayment of consideration plus legal interest; and continuing current limitation period for bringing an action on behalf of a minor child.

Be it enacted by the Legislature of West Virginia:

That article ten, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section sixteen, to read as follows:

ARTICLE 10. GUARDIANS AND WARDS GENERALLY.

§44-10-16. Settlement of derivative claims.

1 (a) Nothing contained in this article may limit the
2 derivative rights of a parent or guardian to compromise
3 and settle any claim they may personally have for damages
4 arising out of injury to their minor child or ward for whom
5 they are responsible. This authority to compromise and
6 settle derivative claims includes, without limitation, the
7 authority to compromise and settle claims for the costs of
8 medical or other care for the child or ward attributable to
9 the bodily injury.

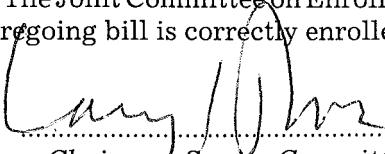
10 (b) The separate settlement of a derivative claim by a
11 parent or guardian does not limit any person, including the
12 parent or guardian, from seeking damages for the minor
13 child or ward.


14 (c) Any release or waiver of a right to bring a legal
15 action to assert a derivative claim, made and executed
16 prior to the commencement of a civil action, shall be in
17 writing and shall be binding against the person who
18 accepts valuable consideration in exchange for the release
19 or waiver of right to bring the legal action: *Provided*, That
20 in the event a parent or guardian fully repays the consider-
21 ation received in exchange for a release or waiver of a
22 right to bring a derivative claim or action to the appropri-
23 ate entity within ninety days after the commencement of
24 a civil action brought on behalf of the child or ward who
25 was injured, the parent or guardian may fully assert the
26 derivative claim in conjunction with the child or ward's
27 claim: *Provided, however*, That if more than a year has
28 elapsed since the payment of the consideration, full
29 repayment shall include, in addition to the principal sum
30 paid, legal interest on the principal sum calculated in

31 accordance with section thirty-one, article six, chapter
32 fifty-six of this code.

33 (d) Nothing contained in this section may be construed
34 to reduce the limitation period for filing any civil action
35 for damages arising out of the bodily injury of a minor
36 child.

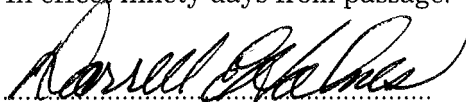
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

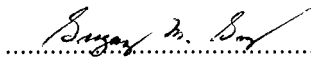

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Chairman Senate Committee



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Chairman House Committee

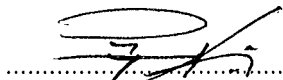
Originated in the Senate.

In effect ninety days from passage.

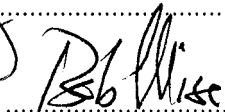

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Clerk of the Senate


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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 1st
Day of May, 2001.


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Governor

PRESENTED TO THE

GOVERNOR

Date

4/30/01

Time

3:00 pm