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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1997

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# ENROLLED

SENATE BILL NO. 380

(By Senator CHAFIN, ET AL)

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PASSED APRIL 12, 1997

In Effect NINETY DAYS FROM Passage

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OFFICE OF THE CLERK  
SENATE OF WEST VIRGINIA

**ENROLLED**

**Senate Bill No. 380**

(BY SENATORS CHAFIN, BUCKALEW, SNYDER, BAILEY, KIMBLE,  
DEEM, SPROUSE, SCOTT, DUGAN, BOLEY, WHITE,  
DITTMAR AND MINEAR)

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[Passed April 12, 1997; in effect ninety days from passage.]

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AN ACT to amend and reenact sections one and twenty, article four, chapter forty-eight-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to appointing family law masters to serve for geographical regions; providing that conclusions of law of family law masters are subject to de novo review; providing that findings of facts are not subject to de novo review; and providing that the circuit court is not held to a "clearly erroneous" standard in reviewing findings of fact.

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

That sections one and twenty, article four, chapter forty-eight-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, to read as

follows:

**ARTICLE 4. PROCEEDINGS BEFORE A MASTER.**

**§48A-4-1. Appointment of family law masters; term of office; vacancy; removal.**

1 (a) The family law masters holding office on the effec-  
2 tive date of this section by virtue of appointments made  
3 under the prior enactments of this article shall continue  
4 their service for a term of office ending on the thirtieth  
5 day of June, one thousand nine hundred ninety-eight.  
6 Before the first day of July, one thousand nine hundred  
7 ninety-eight, the governor shall appoint family law  
8 masters in such numbers and to serve for geographical  
9 regions of the state as provided for under the provisions of  
10 section four of this article, with terms commencing on the  
11 first day of July, one thousand nine hundred ninety-eight,  
12 and on a like date in every fourth year thereafter, and  
13 ending on the thirtieth day of June, two thousand two, and  
14 on a like date in every fourth year thereafter. Upon the  
15 expiration of his or her term, a family law master may  
16 continue to perform the duties of the office until the  
17 governor makes the appointment, or for sixty days after  
18 the date of the expiration of the master's term, whichever  
19 is earlier. If a vacancy occurs in the office of family law  
20 master, the governor shall, within thirty days after such  
21 vacancy occurs, fill the vacancy by appointment for the  
22 unexpired term: *Provided*, That if the remaining portion  
23 of the unexpired term to be filled is less than one year, the  
24 governor may, in his or her discretion, simultaneously  
25 appoint an individual to the unexpired term and to the  
26 next succeeding full four-year term.

27 (b) An individual may be reappointed to succeeding  
28 terms as a family law master to serve in the same or a  
29 different region of the state.

30 (c) Removal of a master during the term for which he or  
31 she is appointed shall be as follows:

32 (1) Upon a recommendation by the judicial hearing  
33 board created pursuant to the rules of procedure for the  
34 handling of complaints against justices, judges, magis-  
35 trates and family law masters, if the supreme court of

36 appeals shall find that a family law master has violated  
37 the judicial code of ethics or that the master, because of  
38 advancing years and attendant physical or mental inca-  
39 pacity, should not continue to serve, the supreme court of  
40 appeals may, in lieu of or in addition to any disposition  
41 authorized by such rules, remove the family law master  
42 from office; and

43 (2) The supreme court of appeals may remove a master  
44 when conduct of the family law master evidences incom-  
45 petence, unsatisfactory performance, misconduct, neglect  
46 of duty or physical or mental disability.

**§48A-4-20. Circuit court review of master's recommended order.**

1 (a) The circuit court shall proceed to a review of the  
2 recommended order of the master when:

3 (1) No petition has been filed within the time allowed, or  
4 the parties have expressly waived the right to file a  
5 petition;

6 (2) A petition and an answer in opposition have been  
7 filed, or the time for filing an answer in opposition has  
8 expired, or the parties have expressly waived the right to  
9 file an answer in opposition, as the case may be.

10 (b) To the extent necessary for decision and when  
11 presented, the circuit court shall decide all relevant  
12 questions of law, interpret constitutional and statutory  
13 provisions and determine the appropriateness of the terms  
14 of the recommended order of the master.

15 (c) The circuit court shall examine the recommended  
16 order of the master, along with the findings and conclu-  
17 sions of the master, and may enter the recommended  
18 order, may recommit the case, with instructions, for  
19 further hearing before the master or may, in its discretion,  
20 enter an order upon different terms, as the ends of justice  
21 may require. Conclusions of law of the family law master  
22 shall be subject to de novo review by the circuit court.  
23 Nothing in this subsection shall be construed to authorize  
24 a de novo review of the facts; however, the circuit court  
25 shall not be held to the clearly erroneous standard in

26 reviewing findings of fact. The circuit court shall not  
27 follow the recommendation, findings and conclusions of a  
28 master found to be:

29 (1) Arbitrary, capricious, an abuse of discretion or  
30 otherwise not in conformance with the law;

31 (2) Contrary to constitutional right, power, privilege or  
32 immunity;

33 (3) In excess of statutory jurisdiction, authority or  
34 limitations or short of statutory right;

35 (4) Without observance of procedure required by law;

36 (5) Unsupported by substantial evidence; or

37 (6) Unwarranted by the facts.

38 (d) In making its determinations under this section, the  
39 circuit court shall review the whole record or those parts  
40 of it cited by a party. If the circuit court finds that a  
41 master's recommended order is deficient as to matters  
42 which might be affected by evidence not considered or  
43 inadequately developed in the master's recommended  
44 order, the court may recommit the recommended order to  
45 the master, with instructions indicating the court's  
46 opinion, or the circuit court may proceed to take such  
47 evidence without recommitting the matter.

48 (e) The order of the circuit court entered pursuant to the  
49 provisions of subsection (d) of this section shall be entered  
50 not later than ten days after the time for filing pleadings  
51 or briefs has expired or after the filing of a notice or  
52 notices waiving the right to file such pleading or brief.

53 (f) If a case is recommitted by the circuit court, the  
54 master shall retry the matter within twenty days.

55 (g) At the time a case is recommitted, the circuit court  
56 shall enter appropriate temporary orders awarding  
57 custody, visitation, child support, spousal support or such  
58 other temporary relief as the circumstances of the parties  
59 may require.

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 is approved this the *2nd* day of *May*, 1997.

*[Signature]*  
.....  
Governor

PRESENTED TO THE

GOVERNOR

Date 4/22/97

Time 3:10 pm