

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 51

(SENATORS BOLEY AND NOHE, *original sponsors*)

[Passed March 10, 2012; in effect ninety days from passage.]

AN ACT to amend and reenact §48-8-103 of the Code of West Virginia, 1931, as amended, relating to modifying or terminating spousal support based upon the results of genetic testing; defining “altered circumstances”; requiring a preliminary determination by the court as to whether genetic testing evidence should be admitted; providing facts which may be considered by the court in making the preliminary determination; and providing guidelines for genetic testing.

Be it enacted by the Legislature of West Virginia:

That §48-8-103 the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 8. SPOUSAL SUPPORT.

§48-8-103. Payment of spousal support.

- 1 (a) Upon ordering a divorce or granting a decree of
- 2 separate maintenance, the court may require either party to
- 3 pay spousal support in the form of periodic installments, or
- 4 a lump sum, or both, for the maintenance of the other party.

5 Payments of spousal support are to be ordinarily made from
6 a party's income, but when the income is not sufficient to
7 adequately provide for those payments, the court may, upon
8 specific findings set forth in the order, order the party
9 required to make those payments to make them from the
10 corpus of his or her separate estate. An award of spousal
11 support shall not be disproportionate to a party's ability to
12 pay as disclosed by the evidence before the court.

13 (b) At any time after the entry of an order pursuant to the
14 provisions of this article, the court may, upon motion of
15 either party, revise or alter the order concerning the mainte-
16 nance of the parties, or either of them, and make a new order
17 concerning the same, issuing it forthwith, as the altered
18 circumstances or needs of the parties may render necessary
19 to meet the ends of justice.

20 (c)(1) For the purposes of subsection (b) of this section,
21 "altered circumstances" includes evidence in the form of
22 genetic testing that establishes that a child conceived during
23 the marriage of the parties is not the child of the former
24 husband, or that a child was born to a woman other than the
25 former wife because of the adultery of the former husband.

26 (2) Prior to admitting evidence of genetic testing, the
27 court shall preliminarily determine whether genetic testing
28 evidence should be admitted for the purpose of disproving or
29 establishing paternity. The facts that may be considered by
30 the court at this hearing include the following:

31 (A) The length of time that has elapsed since the party
32 was first placed on notice that a child conceived during the
33 marriage of the parties is not the child of the former hus-
34 band, or that a child was born to a woman other than the
35 former wife because of the adultery of the former husband;

36 (B) The length of time during which the individual
37 desiring to challenge paternity assumed the role of parent to
38 the child;

39 (C) The facts surrounding the party's discovery of
40 nonpaternity;

41 (D) The nature of the parent/child relationship;

42 (E) The age of the child;

43 (F) The harm which may result to the child if paternity
44 were successfully disproved;

45 (G) The extent to which the passage of time reduced the
46 chances of establishing paternity in favor of the child; and

47 (H) All other factors which may affect the equities
48 involved in the potential disruption of the parent/child
49 relationship or the chances of undeniable harm to the child.

50 (d) For the purposes of subsection (c), genetic testing
51 must be performed pursuant to the following guidelines:

52 (1) The tests show that the inherited characteristics
53 including, but not limited to, blood types, have been deter-
54 mined by appropriate testing procedures at a hospital,
55 independent medical institution or independent medical
56 laboratory duly licensed under the laws of this state, or any
57 other state, and an expert qualified as an examiner of genetic
58 markers has analyzed, interpreted and reported on the
59 results; and

60 (2) The genetic test results exclude the former husband
61 as the father of the 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 of the House of Delegates

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Day of, 2012.

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Governor