

1 **Senate Bill No. 430**

2 (By Senator Trump)

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4 [Introduced February 6, 2015; referred to the Committee on the Judiciary.]  
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9 A BILL to amend and reenact §48-27-507 of the Code of West Virginia, 1931, as amended; and to  
10 amend said code by adding thereto a new section, designated §51-2A-2a, all relating to  
11 exempting mutual orders enjoining certain contact between parties to a domestic relations  
12 action from the prohibition against mutual protective orders; and authorizing the family  
13 courts of the state to enter mutual orders enjoining certain contact between parties to a  
14 domestic relations action upon consent of the parties or upon certain findings of the court.

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

16 That §48-27-507 of the Code of West Virginia, 1931, as amended, be amended and  
17 reenacted; and that said code be amended by adding thereto a new section, designated §51-2A-2a,  
18 all to read as follows:

19 **CHAPTER 48. DOMESTIC RELATIONS.**

20 **ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.**

21 **§48-27-507. Mutual protective orders prohibited.**

1 Mutual protective orders are prohibited unless both parties have filed a petition under part  
2 3 of this article and have proven the allegations of domestic violence by a preponderance of the  
3 evidence. This ~~shall~~ does not prevent other persons, including the respondent, from filing a separate  
4 petition. The court may consolidate two or more petitions if he or she determines that consolidation  
5 will further the interest of justice and judicial economy. The court shall enter a separate order for  
6 each petition filed: Provided, That nothing in this section precludes the court from entering a mutual  
7 order enjoining contact pursuant to section two-a , article two-a, chapter fifty-one of this code.

## 8 **CHAPTER 51. COURTS IN GENERAL.**

### 9 **ARTICLE 2A. FAMILY COURTS.**

#### 10 **§51-2A-2a. Family court jurisdiction to mutually enjoin contact between parties.**

11 (a) A family court in its discretion may, at any time during the pendency of any action  
12 prosecuted under chapter forty-eight of this code, enjoin contact between the parties thereto without  
13 a finding of domestic violence under article twenty-seven of that chapter. This order, which is not  
14 considered a protective order for purposes of section five hundred seven, article twenty-seven,  
15 chapter forty-eight of this code, may enjoin both parties from physical, electronic, telephonic, or  
16 written contact not expressly necessary for the prosecution of the underlying action, or any obligation  
17 resulting therefrom. This order may be entered by the court: (1) When both parties to the action  
18 consent to such order at the time of entry; (2) upon motion of a party to the action; or (3) upon its  
19 own motion, upon findings by the court articulated in writing or on the record that such an order  
20 should be entered against one or both parties. Any order under this section may enjoin one or both  
21 parties from:

1 (1) Entering the school, business or place of employment of the other for the purpose of  
2 molesting or harassing the other;

3 (2) Contacting the other, in person, in writing, electronically, or by telephone, for the purpose  
4 of harassment or threats;

5 (3) Harassing or verbally abusing the other in a public place; or

6 (4) Any other activity or behavior the court, in its discretion, deems to be detrimental to the  
7 peace and well being of the parties, or their immediate family members.

8 (b) Nothing in this section precludes the court from entering an emergency protective order,  
9 or final protective order, as provided in article twenty-seven, chapter forty-eight of this code.

10 (c) Notwithstanding the provisions of section five hundred five, article twenty-seven, chapter  
11 forty-eight of this code, an order entered pursuant to the provisions of this section remains in effect  
12 for the period of time for which it was granted, unless otherwise ordered by the judge.

13 (d) The court may enforce its order through an order of contempt, pursuant to section nine  
14 of this article, against one or both of the parties whose conduct is enjoined under this section.

NOTE: The purpose of this bill is to expressly empower Family Courts and Circuit Courts to enter mutual "no contact"; orders to parties litigating any action under Chapter 48 of this code without a finding of domestic violence. In its Memorandum Decision dated November 24, 2014 in the matter of *Riffle v. Miller*, No. 14-0042, the Supreme Court of Appeals upheld the Circuit Court of Harrison County's finding that the Family Court lacked the statutory authority to impose orders of this type, characterizing them as "protective orders" and therefore governed by the provisions of §48-27-507. The intent of this legislation is to give family law practitioners, and family law judges, a method of enforcing no-contact orders in situations not rising to the level of domestic violence, with the objective of de-escalating tense family situations.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

§51-2A-2a is new; therefore, strike-throughs and underscoring have been omitted.