

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

Senate Bill 516

By Senators Woelfel, Trump, and Caputo

[Introduced January 23, 2024; referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §48-9-105 of the Code of West Virginia, 1931, as amended, relating
2 to determining venue for custodial allocation actions independent of divorce.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 9. ALLOCATION OF CUSTODIAL RESPONSIBILITY AND DECISION-
MAKING RESPONSIBILITY OF CHILDREN.**

§48-9-105. Venue for custodial allocation actions independent of divorce.

1 (a) Venue for the initial determination of custodial allocation or child custody determination
2 within a divorce action shall be governed by §48-5-106 or §48-20-101 *et seq.* of this code, or both.

3 (b) Venue for the initial determination of custodial allocation or child custody determination
4 as between parties who reside in separate states shall be governed by §48-20-101 *et seq.* of this
5 code.

6 (c) Venue for modification of custodial allocation or modification of child custody
7 determination which was previously determined in a tribunal of a state other than West Virginia
8 shall be governed by §48-20-101 *et seq.* of this code.

9 (d) When all persons with potential custodial responsibility reside within the state of West
10 Virginia and the home state of the child is West Virginia as defined in §48-20-102(g) of this code:

11 (1) Venue for an initial determination of custodial allocation shall be properly had in the
12 county where the parties and the child last resided together or in the child’s home county, which is
13 where the child has resided for at least six consecutive months or since birth. If a child, over the
14 age of six months, has not resided in any county for six consecutive months, then venue lies in the
15 county where the respondent resides at the time of the filing of the action.

16 (2) Venue for a modification of custodial allocation remains in the county in which the initial
17 custodial allocation was determined until such time as:

18 (A) Neither the child nor any person with custodial responsibility has resided in the county
19 where the initial custodial allocation was determined for a period of not less than six months

20 preceding the filing of the modification action; neither the child nor any person with custodial
21 responsibility resides within 40 miles of the county seat of the county where the initial custodial
22 allocation was determined; a modification action has been filed in the county where the initial
23 custodial allocation was determined; and a motion to change venue to the residence of the
24 responding party has been filed.

25 (B) If the conditions of paragraph (A) of this subdivision are satisfied, the matter shall be
26 transferred to the family court in the responding party's county of residence; or

27 (C) If the conditions of paragraph (A) of this subdivision are met and all parties consent, the
28 matter may be transferred to the family court in the petitioning party's county of residence.

NOTE: The purpose of this bill is to determine venue for custodial allocation actions independent of divorce.

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