

# SENATE BILL 28

D4  
SB 849/22 – JPR

(PRE-FILED)

3lr0671

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By: **Senator West**

Requested: November 1, 2022

Introduced and read first time: January 11, 2023

Assigned to: Judicial Proceedings

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## A BILL ENTITLED

1 AN ACT concerning

2 **Child Custody – Legal Decision Making and Parenting Time**

3 FOR the purpose of repealing references to the terms “child custody” and “visitation” in  
4 certain instances and substituting the terms “legal decision making” and “parenting  
5 time”; authorizing the court, in determining certain legal–decision–making  
6 authority and parenting time in certain child custody proceedings, to consider  
7 certain factors; authorizing the court to award joint legal decision making to both  
8 parents or make other modifications to a custody or visitation order under certain  
9 circumstances; prohibiting a parent from unilaterally making certain decisions  
10 concerning a child without agreement of the other parent or order of the court under  
11 certain circumstances; and generally relating to child custody, visitation, legal  
12 decision making, and parenting time.

13 BY repealing

14 Article – Family Law

15 Section 5–203(d) and 9–107

16 Annotated Code of Maryland

17 (2019 Replacement Volume and 2022 Supplement)

18 BY adding to

19 Article – Family Law

20 Section 9–101 and 9–103 to be under the amended subtitle “Subtitle 1. Definitions;

21 General Provisions” and the amended title “Title 9. Custodial Arrangements

22 for Children”; and 9–201 through 9–204 to be under the new subtitle “Subtitle

23 2. Legal Decision Making and Parental Responsibility – Judicial

24 Determinations”

25 Annotated Code of Maryland

26 (2019 Replacement Volume and 2022 Supplement)

27 BY repealing and reenacting, with amendments,

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Article – Family Law  
2 Section 9–101, 9–101.1, 9–101.2, 9–103, 9–104, 9–105, 9–106, and 9–108  
3 Annotated Code of Maryland  
4 (2019 Replacement Volume and 2022 Supplement)

5 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,  
6 That the Laws of Maryland read as follows:

7 **Article – Family Law**

8 5–203.

9 [(d) (1) If the parents live apart, a court may award custody of a minor child to  
10 either parent or joint custody to both parents.

11 (2) Neither parent is presumed to have any right to custody that is superior  
12 to the right of the other parent.]

13 Title 9. [Child Custody and Visitation] **CUSTODIAL ARRANGEMENTS FOR CHILDREN.**

14 Subtitle 1. [In General] **DEFINITIONS; GENERAL PROVISIONS.**

15 **9–101.**

16 (A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS  
17 INDICATED.

18 (B) “CHILD” MEANS AN INDIVIDUAL UNDER THE AGE OF 18 YEARS.

19 (C) (1) “LEGAL DECISION MAKING” MEANS THE RIGHT AND OBLIGATION  
20 TO MAKE MAJOR LONG–TERM DECISIONS INVOLVING MEDICAL CARE, MENTAL  
21 HEALTH, EDUCATION, RELIGIOUS TRAINING, EXTRACURRICULAR ACTIVITIES, AND  
22 OTHER MATTERS OF MAJOR SIGNIFICANCE CONCERNING A CHILD’S LIFE AND  
23 WELFARE.

24 (2) “LEGAL DECISION MAKING” IS ALSO KNOWN AS LEGAL CUSTODY.

25 (D) “PARENT” MEANS A BIOLOGICAL PARENT, AN ADOPTIVE PARENT, OR AN  
26 INDIVIDUAL THAT A COURT HAS DEEMED TO BE A DE FACTO PARENT.

27 (E) (1) “PARENTING TIME” MEANS:

28 (I) THE TIME A CHILD IS IN A PARENT’S CARE ACCORDING TO  
29 AN AGREEMENT OR A COURT–ORDERED SCHEDULE; AND

1                   **(II) THE RIGHT AND OBLIGATION OF A PARENT TO PROVIDE A**  
2 **HOME FOR THE CHILD, ADDRESS THE CHILD’S NEEDS, AND MAKE THE DAY-TO-DAY**  
3 **DECISIONS REQUIRED DURING THE TIME THE CHILD IS WITH THAT PARENT.**

4                   **(2) “PARENTING TIME” IS ALSO KNOWN AS PHYSICAL CUSTODY,**  
5 **VISITATION, OR ACCESS.**

6 **9-103.**

7                   **(A) A COURT MAY AWARD LEGAL DECISION MAKING OR PARENTING TIME TO**  
8 **ONE PARENT OR JOINTLY TO THE PARENTS.**

9                   **(B) NO PARENT IS PRESUMED TO HAVE ANY RIGHT TO LEGAL**  
10 **DECISION MAKING OR PARENTING TIME THAT IS SUPERIOR TO THE RIGHT OF**  
11 **ANOTHER PARENT.**

12 **[9-101.] 9-104.**

13                   (a) In any [custody or visitation] **LEGAL-DECISION-MAKING OR**  
14 **PARENTING-TIME** proceeding, if the court has reasonable grounds to believe that a child  
15 has been abused or neglected by a party to the proceeding, the court shall determine  
16 whether abuse or neglect is likely to occur if [custody or visitation]  
17 **LEGAL-DECISION-MAKING OR PARENTING-TIME** rights are granted to the party.

18                   (b) Unless the court specifically finds that there is no likelihood of further child  
19 abuse or neglect by the party, the court shall deny [custody or visitation]  
20 **LEGAL-DECISION-MAKING OR PARENTING-TIME** rights to that party, except that the  
21 court may approve a supervised [visitation] **PARENTING-TIME** arrangement that assures  
22 the safety and the physiological, psychological, and emotional well-being of the child.

23 **[9-101.1.] 9-105.**

24                   (a) In this section, “abuse” has the meaning stated in § 4-501 of this article.

25                   (b) In a [custody or visitation] **LEGAL-DECISION-MAKING OR**  
26 **PARENTING-TIME** proceeding, the court shall consider[, when deciding custody or  
27 visitation issues,] evidence of abuse by a party against:

28                   (1) the other parent of the party’s child;

29                   (2) the party’s spouse; or

30                   (3) any child residing within the party’s household, including a child other  
31 than the child who is the subject of the [custody or visitation] proceeding.

1 (c) If the court finds that a party has committed abuse against the other parent  
2 of the party's child, the party's spouse, or any child residing within the party's household,  
3 the court shall make arrangements for [custody or visitation] **LEGAL DECISION MAKING**  
4 **OR PARENTING TIME** that best protect:

5 (1) the child who is the subject of the proceeding; and

6 (2) the victim of the abuse.

7 **[9-101.2.] 9-106.**

8 (a) Except as provided in subsection (b) of this section, unless good cause for the  
9 award of [custody or visitation] **LEGAL DECISION MAKING OR PARENTING TIME** is  
10 shown by clear and convincing evidence, a court may not award [custody of a child or  
11 visitation with a child] **LEGAL DECISION MAKING OR PARENTING TIME**:

12 (1) to a parent who has been found by a court of this State to be guilty of  
13 first degree or second degree murder of the other parent of the child, another child of the  
14 parent, or any family member residing in the household of either parent of the child; or

15 (2) to a parent who has been found by a court of any state or of the United  
16 States to be guilty of a crime that, if committed in this State, would be first degree murder  
17 or second degree murder of the other parent of the child, another child of the parent, or any  
18 family member residing in the household of either parent of the child.

19 (b) If it is in the best interest of the child, the court may approve a supervised  
20 [visitation] **PARENTING-TIME** arrangement that assures the safety and the physiological,  
21 psychological, and emotional well-being of the child.

22 **[9-103.] 9-107.**

23 (a) A child who is 16 years old or older and who is subject to a custody order or  
24 decree **OR A LEGAL-DECISION-MAKING OR PARENTING-TIME ORDER OR DECREE**  
25 may file a petition to change custody **OR LEGAL DECISION MAKING OR PARENTING**  
26 **TIME**.

27 (b) A petitioner under this section may file the proceeding in the petitioner's own  
28 name and need not proceed by guardian or next friend.

29 (c) Notwithstanding any other provision of this article, if a petitioner under this  
30 section petitions a court to amend a custody order or decree **OR A**  
31 **LEGAL-DECISION-MAKING OR PARENTING-TIME ORDER OR DECREE**, the court:

32 (1) shall hold a hearing; and

33 (2) may amend the order or decree and [place the child in the custody of]

1 **GRANT LEGAL DECISION MAKING OR PARENTING TIME TO** the parent designated by  
2 the child.

3 **[9-104.] 9-108.**

4 Unless otherwise ordered by a court, access to medical, dental, and educational  
5 records concerning the child may not be denied to a parent **[because the parent does not**  
6 **have physical custody of the child]**.

7 **[9-105.] 9-109.**

8 **[In any custody or visitation proceeding, if] IF** the court determines that a party to  
9 a custody or visitation order **OR LEGAL-DECISION-MAKING OR PARENTING-TIME**  
10 **ORDER** has unjustifiably denied or interfered with **[visitation] THE RIGHTS** granted by **[a**  
11 **custody or visitation] THE** order, the court may, in addition to any other remedy available  
12 to the court and in a manner consistent with the best interests of the child, take any or all  
13 of the following actions:

14 (1) order that the **[visitation] PARENTING TIME** be rescheduled;

15 (2) modify the custody or visitation **OR LEGAL-DECISION-MAKING OR**  
16 **PARENTING-TIME** order to require additional terms or conditions designed to ensure  
17 future compliance with the order; or

18 (3) assess costs or counsel fees against the party who has unjustifiably  
19 denied or interfered with **[visitation] PARENTING-TIME** rights.

20 **[9-106.] 9-110.**

21 (a) (1) Except as provided in subsection (b) of this section, in any **[custody or**  
22 **visitation] LEGAL-DECISION-MAKING OR PARENTING-TIME** proceeding the court  
23 **[may] SHALL** include as a condition of a **[custody or visitation]**  
24 **LEGAL-DECISION-MAKING OR PARENTING-TIME** order a requirement that either party  
25 provide advance written notice of at least 90 days to the court, the other party, or both, of  
26 the intent to relocate the permanent residence of the party or the child either within or  
27 outside the State.

28 (2) The court may prescribe the form and content of the notice requirement.

29 (3) If the court orders that notice be given to the other party, a mailing of  
30 the notice by certified mail, return receipt requested, to the last known address of the other  
31 party shall be deemed sufficient to comply with the notice requirement.

32 (4) If either party files a petition regarding a proposed relocation within 20  
33 days of the written notice of the relocation required by paragraph (1) of this subsection, the

1 court shall set a hearing on the petition on an expedited basis.

2 (b) On a showing that notice would expose the child or [either] A party to abuse  
3 as defined in § 4–501 of this article or for any other good cause the court shall waive the  
4 notice required by this section.

5 (c) If [either] A party is required to relocate in less than the 90–day period  
6 specified in the notice requirement, the court may consider as a defense to any action  
7 brought for a violation of the notice requirement that:

8 (1) relocation was necessary due to financial or other extenuating  
9 circumstances; and

10 (2) the required notice was given within a reasonable time after learning  
11 of the necessity to relocate.

12 (d) The court may consider any violation of the notice requirement as a factor in  
13 determining the merits of any subsequent proceeding involving [custody or visitation]  
14 **LEGAL DECISION MAKING OR PARENTING TIME.**

15 [9–107.

16 (a) (1) In this section the following words have the meanings indicated.

17 (2) (i) “Disability” means:

18 1. a physical or mental impairment that substantially limits  
19 one or more of an individual’s major life activities;

20 2. a record of having a physical or mental impairment that  
21 substantially limits one or more of an individual’s major life activities; or

22 3. being regarded as having a physical or mental impairment  
23 that substantially limits one or more of an individual’s major life activities.

24 (ii) “Disability” shall be construed in accordance with the ADA  
25 Amendments Act of 2008, P.L. 110–325.

26 (3) “Supportive parenting services” means services that may assist an  
27 individual with a disability in the effective use of techniques and methods to enable the  
28 individual to discharge the individual’s responsibilities to a child as successfully as an  
29 individual who does not have a disability, including nonvisual techniques for individuals  
30 who are blind.

31 (b) (1) In any custody or visitation proceeding, the disability of a party is  
32 relevant only to the extent that the court finds, based on evidence in the record, that the  
33 disability affects the best interest of the child.

1           (2)     The party alleging that the disability of the other party affects the best  
2 interest of the child bears the burden of proving that the disability of the other party affects  
3 the best interest of the child.

4           (3)     If the burden of proof is met, the party who has a disability shall have  
5 the opportunity to prove that supportive parenting services would prevent a finding that  
6 the disability affects the best interest of the child.

7           (4)     If the court finds that the disability of a party affects the best interest  
8 of the child and denies or limits custody or visitation, the court shall specifically state in  
9 writing:

10                   (i)     the basis for the finding; and

11                   (ii)    the reason that the provision of supportive parenting services is  
12 not a reasonable accommodation to prevent the finding.]

13 **[9–108.] 9–111.**

14           (a)     In this section:

15                   (1)     “deployment” means compliance with military orders received by a  
16 member of the United States Army, Navy, Air Force, Marine Corps, Coast Guard, National  
17 Guard, or any other Reserve component to report for combat operations or other active  
18 service for which the member is required to report unaccompanied by any family member  
19 or that is classified by the member’s branch as remote; and

20                   (2)     “deployment” does not include National Guard or Reserve annual  
21 training, inactive duty days, or drill weekends.

22           (b)     Any order or modification of an existing child custody or visitation order **OR**  
23 **LEGAL–DECISION–MAKING OR PARENTING–TIME ORDER** issued by a court during a  
24 term of a deployment of a parent shall specifically reference the deployment of the parent.

25           (c)     (1)     A parent who petitions the court for an order or modification of an  
26 existing child custody or visitation order **OR LEGAL–DECISION–MAKING OR**  
27 **PARENTING–TIME ORDER** after returning from a deployment shall specifically reference  
28 the date of the end of the deployment in the petition.

29                   (2)     (i)     If the petition under paragraph (1) of this subsection is filed  
30 within 30 days after the end of the deployment of the parent, the court shall set a hearing  
31 on the petition on an expedited basis.

32                   (ii)    If the court finds that extenuating circumstances prohibited the  
33 filing of the petition within 30 days after the end of the deployment of the parent, the court

1 may set a hearing on the petition on an expedited basis whenever the petition is filed.

2 (d) Any [custody or visitation] **LEGAL-DECISION-MAKING OR**  
3 **PARENTING-TIME** order issued based on the deployment of a parent shall require that:

4 (1) the other parent reasonably accommodate the leave schedule of the  
5 parent who is subject to the deployment;

6 (2) the other parent facilitate opportunities for telephone and electronic  
7 mail contact between the parent who is subject to the deployment and the child during the  
8 period of deployment; and

9 (3) the parent who is subject to the deployment provide timely information  
10 regarding the parent's leave schedule to the other parent.

11 **SUBTITLE 2. LEGAL DECISION MAKING AND PARENTAL RESPONSIBILITY**  
12 **- JUDICIAL DETERMINATIONS.**

13 **9-201.**

14 **THE PURPOSES OF THIS SUBTITLE ARE:**

15 **(1) TO PROMOTE STABILITY AND LONG-TERM HEALTH AND WELFARE**  
16 **FOR CHILDREN BY:**

17 **(I) ENSURING THAT CHILDREN HAVE FREQUENT, REGULAR,**  
18 **CONTINUING, AND EXTENDED CONTACT WITH PARENTS WHO HAVE THE ABILITY TO**  
19 **ACT IN THE BEST INTEREST OF THEIR CHILDREN;**

20 **(II) CREATING FAMILY AND CASE-SPECIFIC PARENTING-TIME**  
21 **SCHEDULES FOR DAY-TO-DAY ACCESS, SHARED HOLIDAYS, VACATIONS, CULTURAL**  
22 **OR RELIGIOUS EVENTS, AND PARTICIPATION IN SPECIAL OCCASIONS WITH THE**  
23 **EXTENDED FAMILY OF THE PARENTS;**

24 **(III) ENCOURAGING PARENTS TO SHARE IN THE RIGHTS AND**  
25 **RESPONSIBILITIES OF RAISING THEIR CHILDREN WHEN THE PARENTS DO NOT**  
26 **RESIDE TOGETHER; AND**

27 **(IV) FOSTERING CHILDREN'S RELATIONSHIPS WITH SIBLINGS**  
28 **AND WITH SIGNIFICANT ADULTS IN THE CHILDREN'S LIVES;**

29 **(2) TO PROVIDE CHILDREN WITH PHYSICAL AND EMOTIONAL**  
30 **SECURITY AND PROTECTION FROM EXPOSURE TO CONFLICT AND VIOLENCE; AND**

31 **(3) TO PROVIDE FOR AN EXPEDITIOUS, THOUGHTFUL, AND**



1 CONSISTENT PROCESS FOR DECISION MAKING BY COURTS TO PROTECT THE BEST  
2 INTEREST OF CHILDREN.

3 **9–202.**

4 (A) SUBJECT TO THE PROVISIONS OF §§ 9–104, 9–105, AND 9–106 OF THIS  
5 TITLE, IN DETERMINING WHAT LEGAL–DECISION–MAKING AUTHORITY AND  
6 PARENTING TIME IS IN THE BEST INTEREST OF A CHILD, THE COURT MAY CONSIDER  
7 THE FOLLOWING FACTORS:

8 (1) STABILITY AND THE FORESEEABLE HEALTH AND WELFARE OF THE  
9 CHILD;

10 (2) FREQUENT, REGULAR, AND CONTINUING CONTACT WITH PARENTS  
11 WHO CAN ACT IN THE CHILD’S BEST INTEREST;

12 (3) WHETHER AND HOW PARENTS WHO DO NOT LIVE TOGETHER WILL  
13 SHARE THE RIGHTS AND RESPONSIBILITIES OF RAISING THE CHILD;

14 (4) THE CHILD’S RELATIONSHIP WITH EACH PARENT, ANY SIBLINGS,  
15 OTHER RELATIVES, AND INDIVIDUALS WHO ARE OR MAY BECOME IMPORTANT IN THE  
16 CHILD’S LIFE;

17 (5) THE CHILD’S PHYSICAL AND EMOTIONAL SECURITY AND  
18 PROTECTION FROM EXPOSURE TO CONFLICT AND VIOLENCE;

19 (6) THE CHILD’S DEVELOPMENTAL NEEDS, INCLUDING PHYSICAL  
20 SAFETY, EMOTIONAL SECURITY, POSITIVE SELF–IMAGE, INTERPERSONAL SKILLS,  
21 AND INTELLECTUAL AND COGNITIVE GROWTH;

22 (7) THE DAY–TO–DAY NEEDS OF THE CHILD, INCLUDING EDUCATION,  
23 SOCIALIZATION, CULTURE AND RELIGION, FOOD, SHELTER, CLOTHING, AND  
24 MENTAL AND PHYSICAL HEALTH;

25 (8) HOW TO:

26 (I) PLACE THE CHILD’S NEEDS ABOVE THE PARENTS’ NEEDS;

27 (II) PROTECT THE CHILD FROM THE NEGATIVE EFFECTS OF ANY  
28 CONFLICT BETWEEN THE PARENTS; AND

29 (III) MAINTAIN THE CHILD’S RELATIONSHIP WITH THE PARENTS,  
30 SIBLINGS, OTHER RELATIVES, OR OTHER INDIVIDUALS WHO HAVE OR LIKELY MAY  
31 HAVE A SIGNIFICANT RELATIONSHIP WITH THE CHILD;

1           **(9) THE AGE OF THE CHILD;**

2           **(10) ANY MILITARY DEPLOYMENT OF A PARENT AND ITS EFFECT, IF**  
3 **ANY, ON THE PARENT–CHILD RELATIONSHIP;**

4           **(11) ANY PRIOR COURT ORDERS OR AGREEMENTS;**

5           **(12) EACH PARENT’S ROLE AND TASKS RELATED TO THE CHILD AND**  
6 **HOW, IF AT ALL, THOSE ROLES AND TASKS HAVE CHANGED;**

7           **(13) THE LOCATION OF EACH PARENT’S HOME AS IT RELATES TO THE**  
8 **PARENT’S ABILITY TO COORDINATE PARENTING TIME, SCHOOL, AND ACTIVITIES;**

9           **(14) THE PARENTS’ RELATIONSHIP WITH EACH OTHER, INCLUDING:**

10                   **(I) HOW THEY COMMUNICATE WITH EACH OTHER;**

11                   **(II) WHETHER THEY CAN CO–PARENT WITHOUT DISRUPTING**  
12 **THE CHILD’S SOCIAL AND SCHOOL LIFE; AND**

13                   **(III) HOW THE PARENTS WILL RESOLVE ANY DISPUTES IN THE**  
14 **FUTURE WITHOUT THE NEED FOR COURT INTERVENTION;**

15           **(15) THE CHILD’S PREFERENCE, IF AGE–APPROPRIATE; AND**

16           **(16) ANY OTHER FACTOR THAT THE COURT CONSIDERS APPROPRIATE**  
17 **IN DETERMINING HOW BEST TO SERVE THE PHYSICAL, DEVELOPMENTAL, AND**  
18 **EMOTIONAL NEEDS OF THE CHILD.**

19           **(B) THE COURT SHALL ARTICULATE ITS FINDINGS OF FACT ON THE RECORD**  
20 **OR IN A WRITTEN OPINION, INCLUDING THE CONSIDERATION OF EACH FACTOR**  
21 **LISTED IN SUBSECTION (A) OF THIS SECTION AND ANY OTHER FACTOR THAT THE**  
22 **COURT CONSIDERED.**

23 **9–203.**

24           **(A) IF THE COURT DETERMINES THAT THE PARENTS ARE ABLE TO**  
25 **COMMUNICATE AND REACH JOINT DECISIONS CONCERNING SOME OR ALL OF THE**  
26 **CHILD’S NEEDS DESCRIBED IN § 9–202(A) OF THIS SUBTITLE, THE COURT MAY**  
27 **AWARD:**

28                   **(1) JOINT LEGAL DECISION MAKING TO THE PARENTS;**

29                   **(2) JOINT LEGAL DECISION MAKING TO THE PARENTS, DESIGNATING**

1 ONE PARENT TO MAKE FINAL DECISIONS IF THE PARENTS ARE UNABLE TO AGREE  
2 AFTER A THOROUGH DISCUSSION OF THE ISSUES; OR

3 (3) JOINT LEGAL DECISION MAKING TO THE PARENTS, ALLOCATING  
4 RESPONSIBILITY FOR SPECIFIC ISSUES TO EACH PARENT, IF THE PARENTS ARE  
5 UNABLE TO AGREE AFTER A THOROUGH DISCUSSION OF THE ISSUES.

6 (B) IF THE COURT AWARDS JOINT LEGAL-DECISION-MAKING AUTHORITY  
7 UNDER SUBSECTION (A)(1) OF THIS SECTION, NO PARENT, WITHOUT AGREEMENT OF  
8 THE OTHER PARENT OR PARENTS OR ORDER OF THE COURT, MAY UNILATERALLY  
9 MAKE MAJOR DECISIONS INVOLVING THE CHILD'S HEALTH, EDUCATION, RELIGION,  
10 CULTURE, OR MEDICAL CARE OR ANY OTHER MATTER OF MAJOR SIGNIFICANCE  
11 CONCERNING THE CHILD'S LIFE OR WELFARE.

12 9-204.

13 (A) THE COURT MAY MODIFY, IN ACCORDANCE WITH THE PROVISIONS OF  
14 THIS SUBTITLE, A CHILD CUSTODY OR VISITATION ORDER OR A  
15 LEGAL-DECISION-MAKING OR PARENTING-TIME ORDER IF THE COURT  
16 DETERMINES THAT THERE HAS BEEN A MATERIAL CHANGE IN CIRCUMSTANCES  
17 SINCE THE ISSUANCE OF THE ORDER THAT RELATES TO THE NEEDS OF THE CHILD  
18 OR THE ABILITY OF THE PARENTS TO MEET THOSE NEEDS AND SUCH MODIFICATION  
19 IS IN THE BEST INTEREST OF THE CHILD.

20 (B) A PARENT'S PROPOSAL TO RELOCATE THE RESIDENCE OF THE PARENT  
21 OR THE CHILD IN A WAY THAT WOULD CAUSE PARENTING TIME TO BE  
22 IMPRACTICABLE CONSTITUTES A MATERIAL CHANGE IN CIRCUMSTANCES.

23 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
24 October 1, 2023.