SB 88

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1996

ENROLLED

SENATE BILL NO. 88

(By Senator WOOTON, ET AL)

PASSED MARCH 7, 1996

In Effect NINETY DAYS FROM Passage

ENROLLED

Senate Bill No. 88

(By Senators Wooton, Anderson, Bowman, Buckalew, Deem, Dittmar, Grubb, Miller, Oliverio, Ross, Schoonover, Scott, Wagner and Yoder)

[Passed March 7, 1996; in effect ninety days from passage.]

AN ACT to amend and reenact article one-a, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the uniform certification of questions of law act; defining certain terms; authorizing the supreme court of appeals to certify questions of law to other jurisdictions; authorizing the supreme court of appeals to answer and to reformulate questions of law certified to it from other jurisdictions; providing for certification orders and for the delivery of records to the receiving court; setting forth contents of certification order; providing for notification to the certifying court and establishing preference for consideration of certified question; establishing governing procedures; providing for a written opinion; allocating fees and costs; providing for severability and construction of act; and setting forth a short title.

Be it enacted by the Legislature of West Virginia:

That article one-a, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 1A. UNIFORM CERTIFICATION OF QUESTIONS OF LAW ACT.

§51-1A-1. Definitions.

1 As used in this article:

2 (1) "State" means a state of the United States, the
3 District of Columbia, the Commonwealth of Puerto Rico
4 or any territory or insular possession subject to the
5 jurisdiction of the United States.

6 (2) "Tribe" means a native American tribe, band or
7 village recognized by federal law or formally acknowl-
8 edged by a state.

§51-1A-2. Power to certify.

1 The supreme court of appeals of West Virginia, on the
2 motion of a party to a pending cause or its own motion,
3 may certify a question of law to the highest court of
4 another state or of a tribe or of Canada, a Canadian
5 province or territory, Mexico or a Mexican state if:

6 (1) The pending cause involves a question to be decided
7 under the law of the other state or of the tribe or of
8 Canada, the Canadian province or territory, Mexico or
9 the Mexican state;

10 (2) The answer to the question may be determinative of
11 an issue in the pending cause; and

12 (3) The question is one for which no answer is provided
13 by a controlling appellate decision, constitutional
14 provision or statute of the other state or of the tribe or of
15 Canada, the Canadian province or territory, Mexico or
16 the Mexican state.

§51-1A-3. Power to answer.

1 The supreme court of appeals of West Virginia may
2 answer a question of law certified to it by any court of
3 the United States or by the highest appellate court or the

intermediate appellate court of another state or of a tribe or of Canada, a Canadian province or territory, Mexico or a Mexican state, if the answer may be determinative of an issue in a pending cause in the certifying court and if there is no controlling appellate decision, constitutional provision or statute of this state.

§51-1A-4. Power to amend question.

The supreme court of appeals of West Virginia may reformulate a question certified to it.

§51-1A-5. Certification order; record.

The court certifying a question shall issue a certification order and shall forward it to the designated receiving court. Before responding to a certified question, the receiving court may require the certifying court to deliver its record, or any portion of the record, to the receiving court.

§51-1A-6. Contents of certification order.

(a) A certification order must contain:

(1) The question of law to be answered;

(2) The facts relevant to the question, showing fully the nature of the controversy out of which the question arose;

(3) A statement acknowledging that the receiving court may reformulate the question; and

(4) The names and addresses of counsel of record and unrepresented parties.

(b) If the parties cannot agree upon a statement of facts, then the certifying court shall determine the relevant facts and shall state them as a part of its certification order.

§51-1A-7. Notice; preference.

The supreme court of appeals of West Virginia, acting as the receiving court, shall notify the certifying court of

its acceptance or rejection of the question; and in accordance with notions of comity and fairness, it shall respond to an accepted certified question as soon as practicable.

§51-1A-8. Procedures.

After the supreme court of appeals of West Virginia has accepted a certified question, proceedings are governed by the rules and statutes of this state governing briefs, arguments and other appellate procedures. Procedures for certification from this state to a receiving court shall be those provided in the rules and statutes of the receiving forum.

§51-1A-9. Opinion.

The supreme court of appeals of West Virginia shall state in a written opinion the law answering the certified question and send a copy of the opinion to the certifying court, to counsel of record and to unrepresented parties.

§51-1A-10. Cost of certification.

Fees and costs are the same as in civil appeals docketed before the supreme court of appeals of West Virginia and shall be equally divided between the parties unless otherwise ordered by the certifying court.

§51-1A-11. Severability.

If any provision of this article or its application to any person, court or circumstance is held invalid, the invalidity does not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

§51-1A-12. Construction.

This article shall be construed as to effectuate its general purpose to make uniform the law of those jurisdictions which enact it.

§51-1A-13. Short title.

This article may be cited as the "Uniform Certification of Questions of Law Act".

That 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 House of Delegates

The within is approved this the 21st day of March, 1996.

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Governor

PRESENTED TO THE

GOVERNOR

Date 3/15/96

Time 3:20 pm