

FILED

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
Regular Session, 2005

ENROLLED

SENATE BILL NO. 583

(By Senator Kessler, et al)

PASSED April 9, 2005

In Effect 90 days from Passage

FILED

2005 MAY -2 P 3:07

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Senate Bill No. 583

(BY SENATORS KESSLER, DEMPSEY, FOSTER, HUNTER,
JENKINS, MINARD, OLIVERIO, WHITE, BARNES, CARUTH,
DEEM, HARRISON, LANHAM, MCKENZIE AND WEEKS)

[Passed April 9, 2005; in effect ninety days from passage.]

AN ACT to amend and reenact §51-2A-11, §51-2A-14 and §51-2A-16 of the Code of West Virginia, 1931, as amended, all relating to appealing orders from the family court to the circuit court.

Be it enacted by the Legislature of West Virginia:

That §51-2A-14 and §51-2A-16 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2A. FAMILY COURTS.

§51-2A-14. Review by circuit court; record; standard of review; temporary order upon demand.

- 1 (a) The circuit court may refuse to consider the petition
- 2 for appeal, may affirm or reverse the order, may affirm or
- 3 reverse the order in part or may remand the case with

4 instructions for further hearing before the family court
5 judge.

6 (b) In considering a petition for appeal, the circuit court
7 may only consider the record as provided in subsection (d),
8 section eight of this article.

9 (c) The circuit court shall review the findings of fact
10 made by the family court judge under the clearly errone-
11 ous standard and shall review the application of law to the
12 facts under an abuse of discretion standard.

13 (d) If the circuit court agrees to consider a petition for
14 appeal, the court shall provide the parties an opportunity
15 to appear for oral argument, upon the request of either
16 party or in the discretion of the court. The provisions of
17 this subsection are effective until the adoption of rules by
18 the Supreme Court of Appeals governing the appellate
19 procedures of family courts.

20 (e) If the proceeding is remanded to the family court, the
21 circuit court must enter appropriate temporary orders for
22 a parenting plan or other allocation of custodial responsi-
23 bility or decision-making responsibility for a child, child
24 support, spousal support or such other temporary relief as
25 the circumstances of the parties may require. If the circuit
26 court remands the case to the family court, it must state
27 the legal or factual issues to be considered by the family
28 court on remand. If the family court determines that the
29 consideration of those issues also requires consideration of
30 collateral or interdependent issues, the family court may
31 also consider those other collateral or interdependent
32 issues.

33 (f) The circuit court must enter an order ruling on a
34 petition for appeal within sixty days from the last day a
35 reply to the petition for appeal could have been filed. If
36 the circuit court does not enter the order within the sixty-
37 day period or does not, within the sixty-day period, enter
38 an order stating just cause why the order has not been

39 timely entered, the circuit clerk shall send a written notice
40 to the parties that unless the parties both file an objection
41 within fourteen days of the date of the notice, the appeal
42 will be transferred to the Supreme Court of Appeals as
43 provided in section fifteen of this article due to the failure
44 of the circuit court to timely enter an order. The appeal
45 shall be transferred without the necessity of the filing of
46 any petition or further document by the petitioner.

**§51-2A-16. Expiration of appellate procedures; exceptions;
report requirements.**

1 (a) The provisions of sections eleven, twelve, thirteen,
2 fourteen and fifteen of this article shall expire and be of no
3 force and effect after the thirtieth day of June, two
4 thousand ten, except as otherwise provided by subsection
5 (b) of this section.

6 (b) Appeals that are pending before a circuit court or the
7 Supreme Court of Appeals on the thirtieth day of June,
8 two thousand ten, but not decided before the first day of
9 July, two thousand ten, shall proceed to resolution in
10 accordance with the provisions of sections eleven, twelve,
11 thirteen, fourteen and fifteen of this article, notwithstand-
12 ing the provisions of subsection (a) of this section that
13 provide for the expiration of those sections. The Supreme
14 Court of Appeals shall, by rule, provide procedures for
15 those appeals that are remanded but not concluded prior
16 to the first day of July, two thousand ten, in the event that
17 the appeals process set forth in sections eleven, twelve,
18 thirteen, fourteen and fifteen of this article is substantially
19 altered as of the first day of July, two thousand ten.

20 (c) Prior to the two thousand eight regular session of the
21 Legislature and annually thereafter, the Supreme Court of
22 Appeals shall report to the Joint Committee on Govern-
23 ment and Finance the number of appeals from final orders
24 of the family court filed in the various circuit courts and
25 in the Supreme Court of Appeals, the number of pro se
26 appeals filed, the subject matter of the appeals, the time

27 periods in which appeals are concluded, the number of
28 cases remanded upon appeal and such other detailed
29 information so as to enable the Legislature to study the
30 appellate procedures for family court matters and to
31 consider the possible necessity and feasibility of creating
32 an intermediate appellate court or other system of appel-
33 late procedure.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Charles S. White
.....
Chairman Senate Committee

W. Rube Ben
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Russell Holmes
.....
Clerk of the Senate

Erny D. Bur
.....
Clerk of the House of Delegates

Cecil Ray Tomblin
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *is appended* this the *2nd*
Day of *May*, 2005.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

APR 29 2005

Time

9:40 am