

Senate Bill No. 562

(By Senators Minard and D. Facemire)

[Introduced February 21, 2011; referred to the Committee on the
Judiciary.]

A BILL to amend and reenact §48-6-301 of the Code of West Virginia, 1931, as amended, relating to providing that a court may not consider income-producing assets, which were the subject of equitable marital distribution under article seven of said chapter, when determining spousal support duration, amounts or purposes.

Be it enacted by the Legislature of West Virginia:

That §48-6-301 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6. PROPERTY SETTLEMENT OR SEPARATION AGREEMENTS.

PART 3. RELIEF IN ABSENCE OF AGREEMENT.

§48-6-301. Factors considered in awarding spousal support, child support or separate maintenance.

(a) In cases where the parties to an action commenced under the provisions of this article have not executed a separation agreement, or have executed an agreement which is incomplete or insufficient to resolve the outstanding issues between the parties,

1 or where the court finds the separation agreement of the parties
2 not to be fair and reasonable or clear and unambiguous, the court
3 shall proceed to resolve the issues outstanding between the
4 parties.

5 (b) The court shall consider the following factors in
6 determining the amount of spousal support, child support or
7 separate maintenance, if any, to be ordered under the provisions of
8 parts five and six, article five of this chapter, as a supplement
9 to or in lieu of the separation agreement:

10 (1) The length of time the parties were married;

11 (2) The period of time during the marriage when the parties
12 actually lived together as husband and wife;

13 (3) The present employment income and other recurring earnings
14 of each party from any source;

15 (4) The income-earning abilities of each of the parties, based
16 upon such factors as educational background, training, employment
17 skills, work experience, length of absence from the job market and
18 custodial responsibilities for children;

19 (5) The distribution of marital property to be made under the
20 terms of a separation agreement or by the court under the
21 provisions of article seven of this chapter, insofar as the
22 distribution affects or will affect the earnings of the parties and
23 their ability to pay or their need to receive spousal support,
24 child support or separate maintenance: *Provided*, That for the
25 purposes of determining a spouse's ability to pay spousal support,
26 the court may not consider the income generated by property

1 allocated to the payor spouse in connection with the division of
2 marital property unless the court makes specific findings that a
3 failure to consider income from the allocated property would result
4 in substantial inequity: Provided, however, That the court may not
5 consider any income producing asset, which was the subject of
6 equitable distribution under article seven of this chapter, for
7 spousal support duration, amounts or purposes.

8 (6) The ages and the physical, mental and emotional condition
9 of each party;

10 (7) The educational qualifications of each party;

11 (8) Whether either party has foregone or postponed economic,
12 education or employment opportunities during the course of the
13 marriage;

14 (9) The standard of living established during the marriage;

15 (10) The likelihood that the party seeking spousal support,
16 child support or separate maintenance can substantially increase
17 his or her income-earning abilities within a reasonable time by
18 acquiring additional education or training;

19 (11) Any financial or other contribution made by either party
20 to the education, training, vocational skills, career or earning
21 capacity of the other party;

22 (12) The anticipated expense of obtaining the education and
23 training described in subdivision (10) above;

24 (13) The costs of educating minor children;

25 (14) The costs of providing health care for each of the
26 parties and their minor children;

- 1 (15) The tax consequences to each party;
- 2 (16) The extent to which it would be inappropriate for a
3 party, because said party will be the custodian of a minor child or
4 children, to seek employment outside the home;
- 5 (17) The financial need of each party;
- 6 (18) The legal obligations of each party to support himself or
7 herself and to support any other person;
- 8 (19) Costs and care associated with a minor or adult child's
9 physical or mental disabilities; and
- 10 (20) Such other factors as the court deems necessary or
11 appropriate to consider in order to arrive at a fair and equitable
12 grant of spousal support, child support or separate maintenance.

NOTE: The purpose of this bill is to prevent "double-dipping" in certain situations by providing that a court may not consider income producing assets, which were the subject of equitable marital distribution under article seven, chapter forty-eight of this code, when determining spousal support duration, amounts or purposes.

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