

Senate Bill No. 349

(By Senator D. Facemire)

[Introduced January 19, 2012; referred to the Committee on the
Judiciary.]

10 A BILL to amend and reenact §48-6-301 of the Code of West Virginia,
11 1931, as amended, relating to prohibiting the use or
12 consideration of an income-producing asset for spousal support
13 if the asset was the subject of equitable distribution.

14 *Be it enacted by the Legislature of West Virginia:*

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

17 **ARTICLE 6. PROPERTY SETTLEMENT OR SEPARATION AGREEMENTS**

18 **§48-6-301. Factors considered in awarding spousal support, child**
19 **support or separate maintenance.**

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

1 not to be fair and reasonable or clear and unambiguous, the court
2 shall proceed to resolve the issues outstanding between the
3 parties.

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

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

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

12 (3) The present employment income and other recurring earnings
13 of each party from any source except that income or earnings
14 derived from an asset that was the subject of equitable
15 distribution may not be considered;

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

20 (5) The distribution of marital property to be made under the
21 terms of a separation agreement or by the court under the
22 provisions of article seven of this chapter insofar as the
23 distribution affects or will affect the earnings of the parties and
24 their ability to pay or their need to receive spousal support,

1 child support or separate maintenance. ~~Provided, That~~ For the
2 purposes of determining a spouse's ability to pay spousal support,
3 the court may not consider the income generated by property
4 allocated to the payor spouse in connection with the division of
5 marital property; ~~unless the court makes specific findings that a~~
6 ~~failure to consider income from the allocated property would result~~
7 ~~in substantial inequity;~~

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;

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

3 (15) The tax consequences to each party;

4 (16) The extent to which it would be inappropriate for a
5 party, because said party will be the custodian of a minor child or
6 children, to seek employment outside the home;

7 (17) The financial need of each party;

8 (18) The legal obligations of each party to support himself or
9 herself and to support any other person;

10 (19) Costs and care associated with a minor or adult child's
11 physical or mental disabilities; and

12 (20) Such other factors as the court deems necessary or
13 appropriate to consider in order to arrive at a fair and equitable
14 grant of spousal support, child support or separate maintenance.

15 (c) A court may not consider the use or consideration of an
16 income-producing asset for purposes of spousal support if the asset
17 was the subject of equitable distribution pursuant to article seven
18 of this chapter.

NOTE: The purpose of this bill is to prohibit courts from using or considering an income-producing asset for purposes of spousal support if the asset was the subject of equitable distribution.

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

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