**South Carolina General Assembly**

119th Session, 2011-2012

**S. 58**

**STATUS INFORMATION**

General Bill

Sponsors: Senators L. Martin, Rose and Campsen

Document Path: l:\s-res\lam\001prob.mrh.lam.docx

Introduced in the Senate on January 11, 2011

Currently residing in the Senate Committee on **Judiciary**

Summary: Probate court appeals

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

12/1/2010 Senate Prefiled

12/1/2010 Senate Referred to Committee on **Judiciary**

1/11/2011 Senate Introduced and read first time ([Senate Journal‑page 31](file:///h:\sj%20archive\2011\01-11-11.docx))

1/11/2011 Senate Referred to Committee on **Judiciary** ([Senate Journal‑page 31](file:///h:\sj%20archive\2011\01-11-11.docx))

1/9/2012 Senate Referred to Subcommittee: Malloy (ch), Ford, Massey, S.Martin

**VERSIONS OF THIS BILL**

[12/1/2010](file:///p:\pprever\2011-12\58_20101201.docx)

**A** **BILL**

TO AMEND SECTION 62‑1‑308 OF THE 1976 CODE, RELATING TO APPEALS FROM THE PROBATE COURT, TO PROVIDE THAT THE COURT OF APPEALS WILL DIRECTLY HEAR APPEALS FROM THE PROBATE COURT.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 62‑1‑308 of the 1976 Code is amended to read:

“~~Except as provided in subsection (g), appeals~~ Appeals from the probate court must be to the ~~circuit~~ court of appeals and are governed by the following rules:

(a) A person interested in a final order, sentence, or decree of a probate court and considering himself injured by it may appeal to the ~~circuit~~ court of appeals ~~in the same county~~. The notice of intention to appeal to the ~~circuit~~ court of appeals must be filed in the office of the ~~circuit~~ probate court ~~and in the office of the probate court~~ and a copy served on all parties within ten days after receipt of written notice of the appealed from order, sentence, or decree of the probate court. The grounds of appeal must be filed in the office of the probate court and a copy served on all parties within forty‑five days after receipt of written notice of the order, sentence, or decree of the probate court.

(b) Within thirty days after the grounds of appeal ~~has~~ have been filed in the office of the probate court, as provided in subsection (a), the probate court shall make a return to the ~~appellate~~ court of appeals of the testimony, proceedings, and judgment and file it in the ~~appellate~~ court of appeals. Upon final disposition of the appeal, all papers included in the return must be forwarded to the probate court.

(c) When an appeal according to law is taken from ~~any~~ a sentence or decree of the probate court, all proceedings in pursuance of the order, sentence, or decree appealed from ~~shall~~ must cease until the judgment of the ~~circuit court,~~ court of appeals~~,~~ or Supreme Court is had. If the appellant, in writing, waives his appeal before the entry of the judgment, proceedings may be had in the probate court as if no appeal had been taken.

(d) When the return has been filed in the ~~circuit~~ court of appeals as provided in subsection (b), the court shall hear and determine the appeal according to the rules of law. The hearing must be strictly on appeal and ~~no~~ new evidence may not be presented.

(e) The final decision and judgment in cases appealed~~, as provided in this code, shall~~ must be certified to the probate court by the ~~circuit court,~~ court of appeals~~,~~ or Supreme Court, as the case may be, and the same proceedings ~~shall~~ must be had in the probate court as though the decision had been made in the probate court.

~~(f)~~ ~~A judge of a probate court must not be admitted to have any voice in judging or determining an appeal from his decision or be permitted to act as attorney or counsel.~~

~~(g)~~ ~~If the parties not in default consent either in writing or on the record at a hearing in the probate court, a party to a final order, sentence, or decree of a probate court who considers himself injured by it may appeal directly to the Supreme Court, and the procedure for the appeal must be governed by the South Carolina Appellate Court Rules.~~”

SECTION 2. This act takes effect upon approval by the Governor.

‑‑‑‑XX‑‑‑‑