

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1964



ENROLLED

HOUSE BILL No. 48

(By Mr. Barley)



PASSED February 4 1964

In Effect From Passage



FILED IN THE OFFICE OF
JOE E. KENNETT
SECRETARY OF STATE

THIS DATE 2-7-64

48

ENROLLED

House Bill No. 48

(By MR. BAILEY)

[Passed February 4, 1964; in effect from passage.]

AN ACT to amend and reenact chapter one hundred nine, acts of the Legislature of West Virginia, regular session, one thousand nine hundred fifteen, as amended by chapter eighty-eight, acts of the Legislature, regular session, one thousand nine hundred seventeen, chapter one hundred seventy-one, acts of the Legislature, regular session, one thousand nine hundred twenty-one, chapter one hundred twenty-four, acts of the Legislature, regular session, one thousand nine hundred twenty-five, chapter one hundred sixty-seven, acts of the Legislature, regular session, one thousand nine hundred forty-five, chapter one hundred eighty-seven, acts of the Legislature, regular session, one thousand nine hundred fifty-five, and chapter one hundred

eighty-one, acts of the Legislature, regular session, one thousand nine hundred fifty-seven, all relating to the court of common pleas of Kanawha county, and providing a second judge therefor.

Be it enacted by the Legislature of West Virginia:

That chapter one hundred nine, acts of the Legislature of West Virginia, regular session, one thousand nine hundred fifteen, as amended by chapter eighty-eight, acts of the Legislature, regular session, one thousand nine hundred seventeen, chapter one hundred seventy-one, acts of the Legislature, regular session, one thousand nine hundred twenty-one, chapter one hundred twenty-four, acts of the Legislature, regular session, one thousand nine hundred twenty-five, chapter one hundred sixty-seven, acts of the Legislature, regular session, one thousand nine hundred forty-five, chapter one hundred eighty-seven, acts of the Legislature, regular session, one thousand nine hundred fifty-five, and chapter one hundred eighty-one, acts of the Legislature, regular session, one thousand nine hundred fifty-seven, be amended and reenacted to read as follows:

Section 1. The "Court of Common Pleas of Kanawha

2 County" heretofore established as a court of limited juris-
3 diction within and for the county of Kanawha is hereby
4 continued. On and after January first, one thousand nine
5 hundred sixty-five, sometimes hereinafter referred to as
6 "said date," such court shall have two judges to be se-
7 lected as hereinafter provided.

8 The judge presently serving as judge of said court may
9 continue to hold any regular, special or adjourned term
10 of said court. On and after said date, either or both judges
11 of said court may hold any regular, special or adjourned
12 term of the court. On and after said date, the judges may
13 sit together for transacting any business of the court for
14 which it is proper in their opinion that they should sit
15 together and may hold court separately or together, but
16 no one may demand that any cause be heard by the
17 judges sitting together. At any time that the judges shall
18 sit separately the courts shall be designated "Division I"
19 and "Division II" of the court of common pleas of Kan-
20 awha county, and each shall have and exercise the same
21 power, authority and jurisdiction as are or may be vested
22 in the court of common pleas of Kanawha county. Either

23 of said divisions may be held by a judge of a circuit court
24 or by another person in any case where the circuit court
25 of the county might be held by a judge of another circuit
26 court or another person.

Sec. 2. On and after said date, the business of the court
2 may be apportioned between the two judges by the judge
3 thereof longest in continuous service as a judge of a
4 court of record of this state or, if both shall have served
5 for the same period, by the senior in years, who shall
6 serve as chief judge of the court; if such judge declines
7 to serve as chief judge, the other judge shall be desig-
8 nated as such. If the chief judge is temporarily disquali-
9 fied or unable to serve, the other judge shall serve tem-
10 porarily in his stead. On and after said date, the work
11 of said court shall be apportioned in accordance with
12 standards, procedures, rules and regulations established
13 by the two judges of said court and the judge of the cir-
14 cuit court of Kanawha county.

Sec. 3. The said court shall continue to have original
2 jurisdiction within the county of Kanawha concurrent
3 with the circuit court of said county in all suits and pro-

ceedings in equity, in all actions of ejectment, and in all civil actions or proceedings at law, except where it shall appear from the pleadings that the matter or thing in controversy in any such civil action or proceeding at law exceeds in value the sum of five hundred thousand dollars; and also of appeals from the judgments of justices of the peace in said county in civil cases when such appeals shall be to said court in the same manner and under the same regulations as provided in the general law for appeals from justices and shall also continue to have jurisdiction concurrent with the circuit court of said county as to the supervision and control of all proceedings before justices of the peace or municipal courts of said county in civil cases, by mandamus, prohibition, habeas corpus or certiorari, subject to the right of appeal to the circuit court of Kanawha county, as hereinafter provided.

Sec. 4. Any and all judges of said court shall be resident members of the bar of Kanawha county, and have the same qualifications as a circuit judge.

The judge presently serving as judge of the court of common pleas of Kanawha county shall continue in office

6 until the end of his term, expiring December thirty-one,
7 one thousand nine hundred sixty-four, and shall continue
8 until and including said date to perform and exercise all
9 the duties of said court. At the general election of this
10 state to be held on the Tuesday next after the first Mon-
11 day in November, one thousand nine hundred sixty-four,
12 two judges of the court of common pleas of Kanawha
13 county shall be elected, one of whom shall be elected for
14 a term of four years and one of whom shall be elected for
15 a term of eight years, each said term to begin on January
16 first, one thousand nine hundred sixty-five, and quad-
17 rennially thereafter one judge shall be elected for a term
18 of eight years. Persons who filed their certificates of
19 candidacy in accordance with the provisions of section
20 seven, article five, chapter three of the code of West Vir-
21 ginia, one thousand nine hundred thirty-one, as amended,
22 as candidates for nomination for election as a judge of
23 said court at said general election to be held in the year
24 one thousand nine hundred sixty-four shall be deemed
25 to have filed for the eight-year term. Notwithstanding the
26 provisions of section seven, article five, chapter three of

27 the code of West Virginia, one thousand nine hundred
28 thirty-one, as amended, persons filing as candidates for
29 nomination for election as a judge of said court for the
30 four-year term at said general election to be held in the
31 year one thousand nine hundred sixty-four may file their
32 Certificates of candidacy not later than the fifteenth day
33 of February, one thousand nine hundred sixty-four,
34 which certificates must be received by the clerk of the
35 circuit court before midnight, eastern standard time, of
36 that day or, if mailed, shall be postmarked before that
37 hour.

Sec. 5. The powers, jurisdiction and obligations con-
2 ferred by law upon the circuit courts in the trial of civil
3 cases and proceedings, and the modes and procedures au-
4 thorized therein within the county of Kanawha, including
5 the appointment of commissioners, heretofore conferred
6 upon and exercised by the said court of common pleas of
7 Kanawha county, in respect to all cases, matters and pro-
8 ceedings, of which the last named court has heretofore
9 been given and is given jurisdiction by this act shall con-
10 tinue to be vested in, conferred upon and exercised by
11 said court; and the judge of said court, and on and after

12 said date, each judge of said court, shall have the same
13 powers in vacation as are now or may hereafter be con-
14 ferred upon the judge of the circuit court of Kanawha
15 county in respect to all cases, matters and proceedings
16 within the jurisdiction of said court of common pleas.

Sec. 6. It shall not be necessary in any case or proceed-
2 ing in said court of common pleas that the facts author-
3 izing it to take jurisdiction or proceeding shall be set
4 forth upon the record, but the jurisdiction shall be pre-
5 sumed unless the contrary plainly appears from the
6 record.

Sec. 7. The said court of common pleas shall have the
2 same powers to punish for contempt as are conferred upon
3 the circuit court by law.

Sec. 8. The county court, or tribunal acting in lieu
2 thereof in Kanawha county, shall provide necessary of-
3 fices, rooms, equipment and office supplies, including
4 record books and a seal for said court and for the judge
5 thereof, and, on and after said date for each of the judges
6 thereof; and shall likewise provide the necessary secre-
7 tarial help for the judge of said court, and, on and after
8 said date for each of the judges thereof. Full faith and

9 credit shall be given to the records of said court and to
10 the certificates of any judge or clerk thereof, whether the
11 seal of the court be affixed thereto or not, in like manner
12 and with like effect as if the same were records of the
13 circuit court or certificates of the judge or clerk of the
14 circuit court similarly authenticated.

Sec. 9. The clerk of the circuit court of Kanawha county
2 shall be ex-officio clerk of said court of common pleas and
3 perform the duties thereof and shall receive the same
4 fees as are allowed by law, for similar services to the clerk
5 of the circuit court; and in the discharge of his duties as
6 clerk of the court of common pleas he shall be subject to
7 all statutes relating to the clerk of the circuit court. All
8 process, rules and orders of said court in the exercise of
9 its jurisdiction shall be signed by the clerk thereof, and
10 be directed to the sheriffs of the proper counties wherein
11 the same are to be executed, and they shall be executed
12 in like manner and with the same effect as process issuing
13 from the circuit court of said county.

Sec. 10. After the first day of January, one thousand
2 nine hundred sixty-five, each of said judges shall for their
3 services receive fifteen thousand dollars per annum, to

4 be paid in monthly installments out of the county treasury
5 of Kanawha county, out of funds of said treasury, in the
6 manner provided by statute. The salary of the present
7 judge of said court shall continue as provided in chapter
8 one hundred eighty-seven, acts of the Legislature, regular
9 session, one thousand nine hundred fifty-five, until the
10 first day of January, one thousand nine hundred sixty-
11 five.

Sec. 11. The clerk of said court shall be paid a salary as
2 provided by general law, and the sheriff shall be allowed
3 the same compensation for attendance upon said court,
4 and, on and after said date, upon each division of said
5 court as is now or may hereafter be allowed by law for
6 attendance upon the circuit court.

Sec. 12. There shall be three terms of said court held
2 in each year, commencing on the third Monday in Febru-
3 ary, third Monday in June, and the third Monday in
4 October. Adjourned and special terms of said court may
5 be called and held as provided for special and adjourned
6 terms of the circuit court.

Sec. 13. The said terms of said court shall be held in

2 Charleston in said county of Kanawha at the courthouse
3 thereof except that, on and after said date, either of the
4 divisions of said court may be held at a place other than
5 the courthouse, but in the same city, as may be appointed
6 by joint order of the judges thereof.

Sec. 14. The sheriff of Kanawha county and the sheriffs
2 of the several counties of the state shall by themselves
3 or their deputies execute all process of said court, or
4 issued by the clerk thereof, directed to them respectively,
5 and all process emanating from said court, or issued by
6 the clerk thereof, shall be directed to and executed by
7 them in the same manner as is provided by law as to
8 process issuing from the circuit court or its clerk; and
9 the sheriff of Kanawha county shall perform the same
10 duties and services for the court of common pleas of
11 Kanawha county as he now by law is required to perform
12 for the circuit court of said county; and in the execution
13 of the process, rules and orders of said court the said
14 officers shall have the same power and rights, be subject
15 to the liabilities, govern themselves by the same rules
16 and principles of law and the statutes of the state, and

17 be entitled to the same fees as though the process issued
18 from the circuit court of said county.

Sec. 15. The petit juries for said court shall be chosen
2 and empaneled in the same manner as they are chosen
3 and empaneled in the circuit court and shall receive the
4 same compensation except that on and after said date
5 the two divisions of said court shall be treated as one
6 for such purposes. Jury commissioners for said court shall
7 be appointed to serve in accordance with section three,
8 article one, chapter fifty-two of the code of West Virginia,
9 one thousand nine hundred thirty-one, as amended. Until
10 January first, one thousand nine hundred sixty-five, the
11 judge of said court presently in office shall appoint the
12 jury commissioners in accordance with said section three,
13 article one, chapter fifty-two. On and after said date, the
14 jury commissioners shall be appointed by the judges of
15 said court in accordance with said section three, article
16 one, chapter fifty-two. In the event on and after said date
17 the two judges of said court are not able to agree on the
18 appointment of jury commissioners, the chief judge shall
19 appoint the jury commissioners.

Sec. 16. If the judge of said court in his judgment cannot
2 properly preside at the hearing of any cause pending
3 therein, said cause, in his discretion, by and with the
4 consent of the circuit court of Kanawha county, may be
5 transferred by order entered of record to said circuit
6 court, and the original papers, together with a copy of
7 the order transferring said cause shall be filed therein,
8 and the cause shall be docketed therein and proceeded
9 with as though the cause had originally been brought and
10 proceedings therein had in said circuit court. When for
11 any cause the judge of said court of common pleas is in-
12 capable of acting, or is absent, a special judge may be
13 elected in the same manner as a special judge of the
14 circuit court, and be governed in all respects so far as
15 applicable by the laws governing special judges of the
16 circuit court, and such special judge shall be allowed
17 twenty-five dollars a day to be paid out of the county
18 treasury. If, on and after said date, either of the judges
19 of said court in his judgment cannot properly preside at
20 the hearing of any cause pending therein, said cause, in
21 his discretion, may be transferred by order entered of

22 record to the other division of said court, or, by and with
23 the consent of the circuit court, to the circuit court of
24 said county, and the original papers, together with a copy
25 of the order transferring said cause shall be filed therein,
26 and the cause shall be docketed therein and proceeded
27 with as though the cause had originally been brought
28 and proceedings therein had in said other division or in
29 the circuit court. When for any cause either of the judges
30 of said court of common pleas is incapable of acting, or
31 is absent, the judge of the other division may act, or, in
32 the event neither of such judges shall be available, a
33 special judge may be elected in the same manner as a
34 special judge of the circuit court, and be governed in all
35 respects so far as applicable by the laws governing special
36 judges of the circuit court, and such special judge shall
37 be allowed twenty-five dollars a day to be paid out of the
38 county treasury.

Sec. 17. And to the end that justice may be adminis-
2 tered without delay and to expedite the dispatch of the
3 business of the circuit court and the court of common
4 pleas of Kanawha county, the circuit court may transfer

5 by order entered of record to the court of common pleas,
6 any suit or proceeding at law or in equity now, or which
7 may hereafter be, upon the docket of said circuit court,
8 and within the jurisdiction of said court of common pleas,
9 and such cause shall thereupon be docketed, proceeded
10 with, heard and determined in all respects as though
11 originally brought, matured and docketed in said court
12 of common pleas; and the court of common pleas, and,
13 on and after said date, either division of the court of com-
14 mon pleas, likewise, by and with the consent of the circuit
15 court, may transfer by order entered of record to the
16 circuit court, any case upon its docket, the same to be
17 proceeded with in the circuit court in like manner.

Sec. 18. Appeals may be allowed and writs of error or
2 supersedeas awarded to the judgments, decrees and orders
3 of said court, by the circuit court of said county, or the
4 judge thereof in vacation, in the following cases:

5 (1) In all civil cases where the matter in controversy
6 exclusive of costs, is of greater value or amount than one
7 hundred dollars, wherein there is a final judgment or
8 order.

9 (2) In controversies concerning the title or boundaries
10 of land, the probate of a will, or the appointment of a
11 personal representative, guardian, committee or curator.

12 (3) Concerning a mill, road, way, ferry or landing.

13 (4) Concerning the right of a corporation, county or
14 district to levy tolls or taxes.

15 (5) In any case of quo warranto, habeas corpus, man-
16 damus or prohibition.

17 (6) In any case involving freedom or the constitution-
18 ality of a law.

19 (7) In any case wherein there is a decree or order dis-
20 solving or refusing to dissolve an injunction, or requiring
21 money to be paid, or real estate to be sold, or the posses-
22 sion or title of the property to be changed, or adjudicating
23 the principles of the cause.

24 (8) In any case where there is a judgment or order
25 quashing or abating, or refusing to quash or abate an
26 attachment.

27 (9) In any case where there is an order granting a new
28 trial or rehearing; and in such cases an appeal may be
29 taken from the order without waiting for the new trial
30 or rehearing to be had.

Sec. 19. Any person who is a party to any such contro-
2 versy wishing to obtain an appeal, writ of error or super-
3 sedeas, in the cases named in the eighteenth section of
4 this act, may present to the circuit court of Kanawha
5 county, or to the judge thereof in vacation, a petition
6 therefor in accordance with the provisions of article four,
7 chapter fifty-eight of the code of West Virginia, one thou-
8 sand nine hundred thirty-one, as amended, and every
9 appeal, writ of error or supersedeas from said court shall
10 be docketed in the circuit court of Kanawha county, and
11 shall be proceeded with as provided in said article four,
12 chapter fifty-eight.

Sec. 20. In a case wherein the appeal, writ of error or
2 supersedeas is to the circuit court and the court or judge
3 thereof deems the judgment or order plainly right, and
4 rejects it on this ground, if the order of rejection so state,
5 no further petition shall afterward be presented for the
6 same purpose, but the petition and order of rejection with
7 transcript of the record may be presented to the supreme
8 court of appeals, or judge thereof, in vacation, for an
9 appeal from said order of rejection, if the matter is one

10 of which said supreme court of appeals has jurisdiction
11 and, if allowed, the same proceeding may be had thereon
12 as if the same was a petition originally from the circuit
13 court of said county to the supreme court of appeals. At
14 the instance of any person who desires to present such
15 petition to the supreme court of appeals, the circuit court
16 or the judge thereof in vacation may, during the term in
17 which such order of rejection was entered, or within
18 twenty days after such term is ended, upon notice in
19 writing to the opposite party or parties (in either case
20 the court or the judge exercising a discretion), make
21 an order suspending the execution of the judgment, order
22 or decree of the court of common pleas of Kanawha
23 county, for a reasonable time to be specified in such order,
24 when such person shall give bond before the clerk of the
25 circuit court, in such penalty as the court or judge may
26 require, with a condition reciting such judgment, decree
27 or order, and such order of rejection, and the intention
28 of such person to present such petition, and providing
29 for the payment of all such damages as any person may
30 sustain by reason of such suspension in case supersedeas

31 to such judgment, decree or order should not be allowed
32 and be effective within the time so specified.

Sec. 21. The said circuit court, where an appeal, writ of
2 error or supersedeas has been allowed by the said court
3 or the judge thereof in vacation shall, upon the hearing
4 thereof affirm said judgment or order if there be no error
5 therein prejudicial to the appellant, or reverse the same
6 in whole or in part if erroneous, and if reversed, shall
7 remand the same back to the court of common pleas, and
8 on and after January first, one thousand nine hundred
9 sixty-five, to that division of said court of common pleas
10 from which it came, to be further proceeded in and finally
11 determined. And the clerk of said circuit court shall, as
12 soon as practicable, transmit the decision of said circuit
13 court to the clerk of said court of common pleas: *Provided,*
14 That from any action of the circuit court in affirming or
15 reversing any order or judgment of the court of common
16 pleas, an appeal or writ of error shall lie to the supreme
17 court of appeals.

Sec. 22. If the office of any judge of said court be con-
2 tested, the contest shall be heard and determined in the

3 same manner as the election of judges of the circuit court
4 are determined.

Sec. 23. If from any cause the office of any judge of said
2 court shall become vacant, the vacancy shall be filled in
3 the same manner as in the case of a vacancy in the office
4 of judge of the circuit court.

Sec. 24. Any judge of said court may be removed from
2 office for the same reasons and in the same manner as
3 judges of the circuit court.

Sec. 25. In the taxation of costs in said court the clerk
2 and court shall be governed by the same rules and provi-
3 sions of law as are provided in the circuit court.

Sec. 26. Article three, chapter fifty-one of the code of
2 West Virginia, one thousand nine hundred thirty-one, as
3 amended, shall apply to the court of common pleas of
4 Kanawha county, in the same manner and to the same
5 extent that it does to the circuit courts of the state.

Sec. 27. The court of common pleas of Kanawha county
2 and any judge thereof in vacation shall have the same
3 power to punish for contempts as is conferred by law
4 upon the circuit court of Kanawha county, or the judge
5 thereof in vacation.

Sec. 28. The court of common pleas of Kanawha county
2 and any judge thereof in vacation shall, concurrent with
3 the supreme court of appeals, the circuit court of said
4 county, or any judge of either of said courts in vacation,
5 grant the writ of habeas corpus ad subjiciendum, as pro-
6 vided in article four, chapter fifty-three of the code of
7 West Virginia, one thousand nine hundred thirty-one, as
8 amended, and all the provisions of said article shall be
9 applicable thereto, and the same shall be governed as
10 therein provided.

Sec. 29. The West Virginia reports and bound acts of
2 the Legislature are to be delivered to any and all judges
3 of the said court in the same manner as they are required
4 to be delivered to the circuit courts of the state.

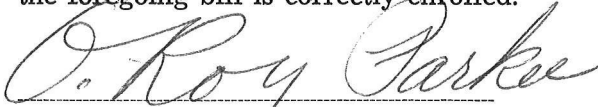
Sec. 30. Upon every judgment of said court the judg-
2 ment creditors shall be entitled to all liens, executions
3 and remedies to secure or recover the same to which they
4 would be entitled if the same were a judgment of the cir-
5 cuit court of the said Kanawha county; judgments ren-
6 dered in said court of common pleas may be docketed

7 in the judgment lien docket kept in the county clerk's
8 office of any county in like manner and with like effect
9 as other judgments, and executions on said judgments
10 may likewise be docketed the same as executions from
11 the circuit court.

Sec. 31. Attachments may be issued by the clerk of
2 said court of common pleas under the same regulations
3 and in the same cases as attachments are now issued by
4 the clerks of the circuit courts, whenever applicable, and
5 be served in the same manner and with like effect.

Sec. 32. In case it should be judicially determined that
2 any provision or provisions of this act, cannot be exer-
3 cised or enforced under the constitution and laws of this
4 state, it is nevertheless the intention that all portions of
5 this act not so determined shall nevertheless be and re-
6 main valid and effective.

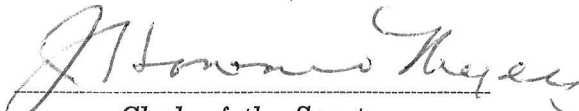
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.



Chairman Senate Committee



Chairman House Committee

Originated in the House.

Takes effect From passage.


Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker House of Delegates

The within approved this the 6th
day of February, 1964.


Governor