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STATE OF WEST VIRGINIA
DEPARTMENT OF STATE

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1973



ENROLLED

HOUSE BILL No. 1790

(By Mr. Orig. in the House Comm on the Judiciary)



PASSED April 13, 1973

In Effect Ninety days from Passage



FILED IN THE OFFICE
EDGAR F. HEISKELL III
SECRETARY OF STATE
THIS DATE 5/2/73

1290

ENROLLED

House Bill No. 1290

(Originating in the House Committee on the Judiciary)

[Passed April 13, 1973; in effect ninety days from passage.]

AN ACT to amend and reenact sections four, seven and fourteen, article four; and sections four and sixteen, article five, all of chapter fifty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to appeals from, or writs of error or supersedes to, any judgment, decree or order rendered or made by a court of record of limited jurisdiction and the time therefor; requiring a notice of intent in criminal cases to be filed within sixty days after judgment is entered by a court of record of limited jurisdiction; relating to contents of notice of intent; relating to appeals from, or writs of error or supersedes to, any judgment, decree or order rendered or made by a circuit court, including an order of rejection, and the time therefor; requiring a notice of intent in criminal cases to be filed within sixty days after judgment is entered by a circuit court; relating to the contents of such notice of intent; relating to process upon any appeal, writ of error or supersedes; and relating to the time for presentation of the record giving a bond in any such case.

Be it enacted by the Legislature of West Virginia:

That sections four, seven and fourteen, article four; and sections four and sixteen, article five, all of chapter fifty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 4. APPEALS FROM COURTS OF RECORD OF LIMITED JURISDICTION.

§58-4-4. Time for appeal or writ of error; notice of intent to file petition in criminal cases to be filed with clerk stating grounds.

1 No petition shall be presented to the circuit court or judge
2 for an appeal from, or writ of error or supersedeas to, any
3 judgment, decree or order rendered or made by such court of
4 limited jurisdiction, whether the state be a party thereto or not,
5 which shall have been rendered or made more than four months
6 before such petition is presented: *Provided*, That the judge of
7 such court of limited jurisdiction may, prior to the expiration
8 of such period of four months, by order entered of record
9 extend and reextend such period for such additional period
10 or periods, not to exceed a total extension of four months, as
11 in his opinion may be necessary for preparation of the
12 transcript, if the request for such transcript was made by
13 the party seeking such judicial review within sixty days
14 after such judgment, decree or order was rendered or made.
15 Such judge may also extend and reextend such period for
16 such additional period or periods of time not to exceed a total
17 extension of four months, upon petition made prior to the
18 expiration of the initial four month period for good cause
19 shown and if the request for such transcript was made by
20 the party seeking such judicial review within sixty days after
21 such judgment, decree or order was rendered or made.

22 In criminal cases no petition for appeal or writ of error shall
23 be presented unless a notice of intent to file such petition shall
24 have been filed with the clerk of the court in which the judg-
25 ment was entered within sixty days after such judgment was
26 entered. The notice shall fairly state the grounds for the peti-
27 tion without restricting the right to assign additional grounds
28 in the petition.

§58-4-7. Order showing action of circuit court on petition; second petition; application to supreme court of appeals or judge thereof.

1 The circuit court or the judge thereof, upon consideration
2 of the petition, shall enter an order granting or refusing it.
3 If the circuit court or judge deems the judgement, decree or

4 order of such court of limited jurisdiction to be plainly right,
5 and rejects it on that ground, and the order of rejection so
6 states, no further petition shall afterwards be presented to the
7 circuit court or judge for the same purpose; but in any
8 case where the circuit court or judge rejects the petition, the
9 petition and order of rejection, together with the record of the
10 cause, may, within four months from the date of the order of
11 rejection, be presented to the supreme court of appeals, or
12 any judge thereof in vacation, for an appeal from, or writ of
13 error or supersedeas to, such order of rejection, and, if allowed,
14 the same proceedings may be had thereon as if the same were
15 a petition originally from the circuit court of such county to
16 the supreme court of appeals: *Provided*, That the judge of the
17 circuit court which rejected the petition may, prior to the
18 expiration of such period of four months by order entered of
19 record extend and reextend such period for such additional
20 period or periods, not to exceed a total extension of one month,
21 as in his opinion may be necessary for preparation of the
22 transcript of the proceeding in the circuit court, if the request
23 for such transcript was made by the party seeking judicial
24 review in the supreme court of appeals within thirty days after
25 the entry of such order of rejection. Such judge may also
26 extend and reextend such period for such additional period
27 or periods of time not to exceed a total extension of four
28 months, upon petition made prior to the expiration of the
29 initial four month period for good cause shown and if the
30 request for such transcript was made by the party seeking
31 judicial review in the supreme court of appeals within thirty
32 days after the entry of such order of rejection. After the
33 petition has been rejected by the circuit court or judge, the
34 clerk of the circuit court shall, as soon as may be, upon
35 request of the petitioner, transmit to the clerk of the supreme
36 court of appeals, or such judge of said court as the petitioner
37 shall designate, if said court be not then in session, by United
38 States registered mail or valued express, the petition, the
39 record of the cause as presented to the circuit court or judge,
40 and the order of rejection. Before such petition, record and
41 order are transmitted as aforesaid, the petitioner shall deposit
42 with the clerk of the circuit court a sufficient sum of money
43 to defray the costs of transmission and return of the record,
44 and the making of a transcript of the record, or file with the

45 clerk a bond conditioned to pay the same, in a penalty and with
46 sureties to be fixed and approved by such clerk, who shall
47 endorse on the petition that such deposit has been made or
48 such bond filed. If the appeal or writ of error prayed for be
49 granted, the clerk of the supreme court of appeals shall, im-
50 mediately after the issuance of the appellate process, return
51 the record to the clerk of the circuit court, by mail or express,
52 as aforesaid; and such circuit clerk shall forthwith make a
53 transcript, as provided in section seven of article five of this
54 chapter, of so much of the record as is required for the pur-
55 poses of the appeal or writ of error and transmit the same to
56 the clerk of the supreme court of appeals. Insofar as provision
57 therefor is not made by existing law, the compensation of the
58 clerk of the circuit court for services rendered hereunder
59 shall be fixed by the judge of the circuit court. If the prayer
60 of the petition be not granted by the supreme court of appeals
61 or judge thereof, the petition and record shall be returned as
62 aforesaid, and the clerk of the circuit court shall repay to the
63 petitioner, or his attorney, the money deposited with him, if
64 any, less his fees and expenses, and the petition and record
65 shall be returned to the office of the clerk of the court of
66 limited jurisdiction. The rejection of such petition by a judge of
67 the supreme court of appeals in vacation shall not prevent the
68 presentation of such petition to such court when in session.

§58-4-14. Time for presenting and giving bond.

1 No process shall issue upon any appeal, writ of error or
2 supersedeas allowed by a circuit court, or in the case of an
3 order of rejection the supreme court of appeals, or judge of
4 either of such courts to or from a judgment, decree or order, if,
5 when the record is delivered to the clerk of the appropriate
6 court, four months (or the extended period or periods, if any,
7 allowed by order pursuant to either section four or section
8 seven of this article, as the case may be) shall have elapsed
9 since the date of such judgment, decree or order; but the ap-
10 peal, writ of error or supersedeas shall be dismissed whenever
11 it appears that four months or the extended period, if any, as
12 the case may be, has elapsed since such date before the record
13 is delivered to such clerk, or that two months have elapsed since
14 the date when the appeal, writ of error or supersedeas was

15 granted before such bond is given as is required to be given
16 before the appeal, writ of error or supersedeas takes effect.

**ARTICLE 5. APPELLATE RELIEF IN SUPREME COURT OF AP-
PEALS.**

**§58-5-4. Time for appeal or writ of error; notice of intent to file
petition in criminal cases to be filed with clerk stating
grounds.**

1 No petition shall be presented for an appeal from, or writ
2 of error or supersedeas to, any judgment, decree or order,
3 whether the state be a party thereto or not, which shall have
4 been rendered or made more than eight months before such
5 petition is presented: *Provided*, That the judge of the circuit
6 court may, prior to the expiration of such period of eight
7 months, by order entered of record extend and reextend such
8 period for such additional period or periods, not to exceed a
9 total extension of four months, as in his opinion may be
10 necessary for preparation of the transcript, if the request for
11 such transcript was made by the party seeking such judicial
12 review within sixty days of the entry of such judgment, decree
13 or order. Such judge may also extend and reextend such
14 period for such additional period or periods of time not to
15 exceed a total extension of four months, upon petition made
16 prior to the expiration of the initial eight month period for
17 good cause shown and if the request for such transcript was
18 made by the party seeking such judicial review within sixty
19 days of the entry of such judgment, decree or order.

20 In criminal cases no petition for appeal or writ of error
21 shall be presented unless a notice of intent to file such petition
22 shall have been filed with the clerk of the court in which the
23 judgment or order was entered within sixty days after such
24 judgment or order was entered. The notice shall fairly state
25 the grounds for the petition without restricting the right to
26 assign additional grounds in the petition.

§58-5-16. Time for presenting record and giving bond.

1 No process shall issue upon any appeal, writ of error or
2 supersedeas allowed from or to a final judgment, decree or
3 order, if, when the record is delivered to the clerk of the

4 appellate court, eight months (or the extended period or
5 periods, if any, allowed by order pursuant to section four
6 of this article) shall have elapsed since the date of such final
7 judgment, decree or order; but the appeal, writ of error or
8 supersedeas shall be dismissed whenever it appears that eight
9 months or the extended period or periods, if any, as the case
10 may be, have elapsed since such date before the record is
11 delivered to such clerk, or that two months have elapsed since
12 the date when the appeal, writ of error or supersedeas was
13 granted before such bond is given as is required to be given be-
14 fore the appeal, wit of error or supersedeas takes effect.

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

N. Darrel Darby
Chairman Senate Committee

Lawrence C. Brumback
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

Howard W. Carson
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

H. D. Bodhett
President of the Senate

Lewis J. McManus
Speaker House of Delegates

The within *approved* this the *24th*
day of *April*, 1973.

Arch A. Shaver, Jr.
Governor

PRESENTED TO THE
GOVERNOR

Date 4/24/73

Time 2:34 p.m.