

APPROVED AND SIGNED BY THE GOVERNOR

Date 4-29-81

Time _____

No. 707-S

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1981



ENROLLED

SENATE BILL NO. 707-S

(By Mr. Baetjer)



PASSED April 11, 1981

In Effect minutes days from Passage

OFFICE
SECY. OF STATE

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Senate Bill No. 707-S
(By MR. BOETTNER)

[Passed April 11, 1961; in effect ninety days from passage.]

AN ACT to amend article five, chapter fifty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto ten new sections, designated section four-a, four-b, four-c, four-d, four-e, four-f, four-g, four-h, four-i and four-j, relating to evidence and witnesses; production of writings; and use of hospital records in trials and administrative hearings.

Be it enacted by the Legislature of West Virginia:

That article five, chapter fifty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto ten new sections, designated sections four-a, four-b, four-c, four-d, four-e, four-f, four-g, four-h, four-i and four-j, to read as follows:

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§57-5-4a. Production of writings---Hospital records; definitions.

- 1 As used in sections four-a to four-j in this article the
- 2 following terms shall have the respective meanings as-
- 3 cribed thereto:
- 4 (a) "Records" means and includes without restriction,
- 5 those medical histories, records, reports, summaries,
- 6 diagnoses, and prognoses, records of treatment and medi-
- 7 cation ordered and given, notes, entries, X-rays, and
- 8 other written or graphic data prepared, kept, made or
- 9 maintained in hospitals that pertain to hospital confine-
- 10 ments or hospital services rendered to patients admitted
- 11 to hospitals or receiving emergency room or outpatient

12 care. Such records shall not, however, include ordinary
13 business records pertaining to patients' accounts or the
14 administration of the institution.

15 (b) "Custodian" means and includes the medical record
16 librarian and the administrator or other chief officer of a
17 duly licensed hospital in this state and its proprietor, as
18 well as their deputies and assistants and any other per-
19 sons who are official custodians or depositories of rec-
20 ords.

§57-5-4b. Furnishing copies of records in compliance with subpoenas.

1 Except as hereinafter provided, when a subpoena duces
2 tecum is served upon a custodian of records of any hos-
3 pital duly licensed under the laws of this state in an
4 action or proceeding in which the hospital is neither a
5 party nor the place where any cause or action is alleged
6 to have arisen and such subpoena requires the production
7 of all or any part of the records of the hospital relating
8 to the care or treatment of a patient in such hospital, it
9 shall be sufficient compliance therewith if the custodian or
10 other officer of the hospital shall, on or before the time
11 specified in the subpoena duces tecum, file with court
12 clerk or the officer, body or tribunal conducting the hear-
13 ing, a true and correct copy (which may be a copy re-
14 produced on film or other reproducing material by
15 microfilming, photographing, photostating or other ap-
16 proximate process, or facsimile, exemplification or copy
17 of such reproduction or copy) of all records described in
18 such subpoena.

§57-5-4c. Sealing, identification and direction of copies.

1 The copy of the records shall be separately enclosed in
2 an inner-envelope or wrapper, sealed, with the style and
3 number of the action, name of witness and date of sub-
4 poena clearly inscribed thereon. The sealed envelope or
5 wrapper shall then be enclosed in an outer-envelope or
6 wrapper, sealed, and directed as follows:

7 If the subpoena directs attendance in court, to the
8 clerk of such court or to the judge thereof; if the subpoena
9 directs attendance at a deposition, to the officer be-

10 fore whom the deposition is to be taken, at the place
11 designated in the subpoena for the taking of the deposi-
12 tion or at his place of business; in other cases, to the
13 officer, body or tribunal conducting the hearing, at a like
14 address.

§57-5-4d. Opening of sealed envelopes.

1 Unless the sealed envelope or wrapper is returned to a
2 witness who is to appear personally, the copy of the rec-
3 ords shall remain sealed and shall be opened only at the
4 time of trial, deposition, or other hearing, upon the direc-
5 tion of the judge, court, officer, body, or tribunal conduct-
6 ing the proceeding, in the presence of all parties who
7 have appeared in person or by counsel at such trial,
8 deposition or hearing. Before directing that such inner-
9 envelope or wrapper be opened, the judge, court, officer,
10 body, or tribunal shall first ascertain that either (1) the
11 records have been subpoenaed at the instance of the
12 patient involved or his counsel of record, or (2) the pa-
13 tient involved or someone authorized in his behalf to do
14 so for him has consented thereto and waived any privilege
15 of confidence involved. Records which are not introduced
16 in evidence or required as part of the record shall be
17 returned to the person or entity from whom received.

18 The provisions of this section shall not apply in a work-
19 men's compensation proceeding if the pertinent record is
20 the record of the claimant therein or a claimant's dece-
21 dent: *Provided*, That nothing in this section, or the pre-
22 ceding section, shall limit in any manner the availability
23 of and access to documents as provided in the rules of
24 civil procedure or elsewhere in this code by the parties
25 to any civil action and their counsel.

§57-5-4e. Affidavit of custodian as to copies; charges.

1 The records shall be accompanied by an affidavit of a
2 custodian stating in substance: (a) That the affiant is a
3 duly authorized custodian of the records and has author-
4 ity to certify said records, (b) that the copy is a true copy
5 of all the records described in the subpoena, (c) that the
6 records were prepared by the personnel of the hospital,
7 staff physicians, or persons acting under the control of

8 either, in the ordinary course of hospital business at or
9 near the time of the act, condition or event reported
10 therein, and (d) certifying the amount of the reasonable
11 charges of the hospital for furnishing such copies of the
12 record. If the hospital has none of the records described,
13 or only part thereof, the custodian shall so state in the
14 affidavit and file the affidavit and such records as are
15 available in the manner described in sections four-b and
16 four-c. The filing of such affidavit with respect to reason-
17 able charges shall be sufficient proof of such expense,
18 which shall be taxed as costs of court.

§57-5-4f. Admissibility of copies and affidavits.

1 The copy of the record shall be admissible in evidence
2 to the same extent as though the original thereof were
3 offered and the custodian has been present and testified to
4 the matters stated in the affidavit.

5 The affidavit shall be admissible in evidence and the
6 matters stated therein shall be presumed true in the ab-
7 sence of preponderance of evidence to the contrary. When
8 more than one person has knowledge of the facts, more
9 than one affidavit may be made.

§57-5-4g. Obtaining personal attendance of custodian.

1 The personal attendance of the custodian shall be re-
2 quired if the subpoena duces tecum contains a clause
3 which reads:

4 "The procedure authorized pursuant to section four-b
5 of this article will not be deemed sufficient compliance
6 with this subpoena."

**§57-5-4h. Obtaining personal attendance of custodian and
production of original record.**

1 The personal attendance of the custodian and the pro-
2 duction of the original record shall be required if the
3 subpoena duces tecum contains a clause which reads:

4 "Original records are required, and the procedure
5 authorized pursuant to section four-b, article five, chapter
6 fifty-seven of this code, will not be deemed sufficient
7 compliance with this subpoena."

§57-5-4i. Substitution of copies after introduction of records into evidence.

1 In view of the property right of the hospital in its
2 records, original records may be withdrawn after intro-
3 duction into evidence and copies substituted, unless
4 otherwise directed for good cause by the court, judge,
5 officer, body, or tribunal conducting the hearing. The
6 custodian may prepare copies of original records in ad-
7 vance of testifying for the purpose of making substitu-
8 tion of the original record, and the reasonable charges for
9 making such copies shall be taxed as costs of court. If
10 copies are not prepared in advance, they can be made and
11 substituted at any time after introduction of the original
12 record, and the reasonable charges for making such
13 copies shall be taxed as costs of court.

§57-5-4j. Evidence of reasonableness of medical expenses.

1 Proof that medical, hospital, and doctor bills were paid
2 or incurred because of any illness, disease, or injury shall
3 be prima facie evidence that such bills so paid or incurred
4 were necessary and reasonable.

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

R. P. Bayler
Chairman Senate Committee

Tommy E. Whitlow
Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

Todd C. Mills
Clerk of the Senate

V. Blankenship
Clerk of the House of Delegates

Maryland
President of the Senate

Walter P. Lee, Jr.
Speaker House of Delegates

The within is approved this the 19
day of April, 1981.

John P. Rayner
Governor



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