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WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1992

— ● —

ENROLLED

Com. Sub. For

HOUSE BILL No. *4373*

(By Delegate *Brown*)

— ● —

Passed *March 7,* 1992

In Effect *Ninety Days From* Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 4373
(By DELEGATE BROWN)

[Passed March 7, 1992; in effect ninety days from passage.]

AN ACT to amend and reenact sections two, five-a and eight, article one, chapter fifty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section seven, article five, chapter fifty-seven of said code, all relating to providing that a citizen may not be excluded from jury services because of a disability; providing accommodation to jurors with disabilities other than physical; requiring interpreters to assist a juror who is deaf or a deaf mute because of any hearing impairment and readers for those who are visually impaired; and providing for payment therefor.

Be it enacted by the Legislature of West Virginia:

That sections two, five-a and eight, article one, chapter fifty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section seven, article five, chapter fifty-seven of said code be amended and reenacted, all to read as follows:

CHAPTER 52. JURIES.

ARTICLE 1. PETIT JURIES.

§52-1-2. Prohibition of discrimination.

1 A citizen may not be excluded from jury service on
2 account of race, color, religion, sex, national origin,
3 economic status, or being a qualified individual with a
4 disability.

**§52-1-5a. Jury qualification form; contents; procedure
for use; penalties.**

1 (a) Not less than twenty days before the date for which
2 persons are to report for jury duty, the clerk may, if
3 directed by the court, serve by first class mail, upon
4 each person listed on the master list, a juror qualifica-
5 tion form accompanied by instructions necessary for its
6 completion: *Provided*, That the clerk may, if directed by
7 the court, mail the juror qualification form to only those
8 prospective jurors drawn for jury service under the
9 provisions of section seven of this article. Each prospec-
10 tive juror shall be directed to complete the form and
11 return it by mail to the clerk within ten days after its
12 receipt. The juror qualification form is subject to
13 approval by the circuit court as to matters of form and
14 shall elicit the following information concerning the
15 prospective juror:

16 (1) The juror's name, sex, race, age and marital status;

17 (2) The juror's level of educational attainment,
18 occupation and place of employment;

19 (3) If married, the name of the juror's spouse, and the
20 occupation and place of employment of the spouse;

21 (4) The juror's residence address and the juror's
22 mailing address if different from the residence address;

23 (5) The number of children which the juror has and
24 their ages;

25 (6) Whether the juror is a citizen of the United States
26 and a resident of the county;

27 (7) Whether the juror is able to read, speak and
28 understand the English language;

29 (8) Whether the juror has any physical or mental
30 disability substantially impairing the capacity to render
31 satisfactory jury service: *Provided*, That a juror with a

32 physical disability, who can with reasonable accommo-
33 dation render competent service, is eligible for service;

34 (9) Whether the juror has, within the preceding two
35 years, been summoned to serve as a petit juror, grand
36 juror or magistrate court juror, and has actually
37 attended sessions of the magistrate or circuit court and
38 been compensated as a juror;

39 (10) Whether the juror has lost the right to vote
40 because of a criminal conviction; and

41 (11) Whether the juror has been convicted of perjury,
42 false swearing or other infamous offense.

43 The juror qualification form may also request infor-
44 mation concerning the prospective juror's religious
45 preferences and organizational affiliations, except that
46 the form and the accompanying instructions shall
47 clearly inform the juror that this information need not
48 be provided if the juror declines to answer such
49 inquiries.

50 (b) The juror qualification form shall contain the
51 prospective juror's declaration that the responses are
52 true to the best of the prospective juror's knowledge and
53 an acknowledgment that a willful misrepresentation of
54 a material fact may be punished by a fine of not more
55 than five hundred dollars or imprisonment for not more
56 than thirty days, or both fine and imprisonment.
57 Notarization of the juror qualification form shall not be
58 required. If the prospective juror is unable to fill out the
59 form, another person may assist the prospective juror in
60 the preparation of the form and indicate that such
61 person has done so and the reason therefor. If an
62 omission, ambiguity or error appear in a returned form,
63 the clerk shall again send the form with instructions to
64 the prospective juror to make the necessary addition,
65 clarification or correction and to return the form to the
66 clerk within ten days after its second receipt.

67 (c) Any prospective juror who fails to return a
68 completed juror qualification form as instructed shall be
69 directed by the jury commission to appear forthwith
70 before the clerk to fill out the juror qualification form.

71 At the time of the prospective juror's appearance for
72 jury service, or at the time of any interview before the
73 court or clerk, any prospective juror may be required
74 to fill out another juror qualification form in the
75 presence of the court or clerk. At that time the
76 prospective juror may be questioned, with regard to the
77 responses to questions contained on the form and the
78 grounds for the prospective juror's excuse or disquali-
79 fication. Any information thus acquired by the court or
80 clerk shall be noted on the juror qualification form.

81 (d) Any person who willfully misrepresents a material
82 fact on a juror qualification form or during any
83 interview described in subsection (c) of this section, for
84 the purpose of avoiding or securing service as a juror,
85 is guilty of a misdemeanor, and, upon conviction, shall
86 be fined not more than five hundred dollars or impris-
87 oned not more than thirty days, or both fined and
88 imprisoned.

§52-1-8. Disqualification from jury service.

1 (a) The court, upon request of the jury commission or
2 a prospective juror or on its own initiative, shall
3 determine on the basis of information provided on the
4 juror qualification form or interview with the prospec-
5 tive juror or other competent evidence whether the
6 prospective juror is disqualified for jury service. The
7 clerk shall enter this determination in the space
8 provided on the juror qualification form and on the
9 alphabetical lists of names drawn from the jury wheel
10 or jury box.

11 (b) A prospective juror is disqualified to serve on a
12 jury if the prospective juror:

13 (1) Is not a citizen of the United States, at least
14 eighteen years old and a resident of the county;

15 (2) Is unable to read, speak and understand the
16 English language. For the purposes of this section, the
17 requirement of speaking and understanding the English
18 language is met by the ability to communicate an
19 American sign language or signed English;

20 (3) Is incapable, by reason of substantial physical or

21 mental disability, of rendering satisfactory jury service;
22 but a person claiming this disqualification may be
23 required to submit a physician's certificate as to the
24 disability and the certifying physician is subject to
25 inquiry by the court at its discretion;

26 (4) Has, within the preceding two years, been sum-
27 moned to serve as a petit juror, grand juror or magis-
28 trate court juror, and has actually attended sessions of
29 the magistrate or circuit court and been compensated
30 as a juror pursuant to the provisions of section twenty-
31 one of this article, section thirteen, article two of this
32 chapter, or pursuant to an applicable rule or regulation
33 of the supreme court of appeals promulgated pursuant
34 to the provisions of section eight, article five, chapter
35 fifty of this code;

36 (5) Has lost the right to vote because of a criminal
37 conviction; or

38 (6) Has been convicted of perjury, false swearing or
39 other infamous offense.

40 (c) A prospective juror sixty-five years of age or older
41 is not disqualified from serving, but shall be excused
42 from service by the court upon the juror's request.

43 (d) A prospective grand juror is disqualified to serve
44 on a grand jury if the prospective grand juror is an
45 officeholder under the laws of the United States or of
46 this state except that the term "officeholder" does not
47 include notaries public.

48 (e) A person who is physically disabled and can render
49 competent service with reasonable accommodation shall
50 not be ineligible to act as juror or be dismissed from a
51 jury panel on the basis of disability alone: *Provided,*
52 That the circuit judge shall, upon motion by either party
53 or upon his or her own motion, disqualify a disabled
54 juror if the circuit judge finds that the nature of
55 potential evidence in the case including, but not limited
56 to, the type or volume of exhibits or the disabled juror's
57 ability to evaluate a witness or witnesses, unduly
58 inhibits the disabled juror's ability to evaluate the
59 potential evidence. For purposes of this section:

60 (1) Reasonable accommodation includes, but is not
61 limited to, certified interpreters for the hearing
62 impaired, spokespersons for the speech impaired, and
63 readers for the visually impaired.

64 (2) The court shall administer an oath or affirmation
65 to any person present to facilitate communication for a
66 disabled juror. The substance of such oath or affirma-
67 tion shall be that any person present as an accommo-
68 dation to a disabled juror will not deliberate on his or
69 her own behalf, although present throughout the
70 proceedings, but act only to accurately communicate for
71 and to the disabled juror.

72 (f) Nothing in this article shall be construed so as to
73 limit in any way a party's right to preemptory strikes
74 in civil or criminal actions.

CHAPTER 57. EVIDENCES AND WITNESSES.

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§57-5-7. Interpreters required.

1 (a) In any court proceeding wherein a party or witness
2 or juror cannot readily understand or verbally commu-
3 nicate the English language because the witness or juror
4 is deaf or a deaf mute or because of any other hearing
5 impairment, such person shall have the right to have a
6 qualified interpreter to assist the witness or juror at
7 every stage of the proceeding. Such right shall also
8 pertain in any proceeding before administrative boards,
9 commissions or agencies of this state or any political
10 subdivision or municipality thereof, and in coroners'
11 inquests and grand jury proceedings.

12 (b) The director of the administrative office of the
13 supreme court of appeals shall establish a program to
14 facilitate the use of interpreters in courts of this state
15 and in extra-judicial criminal proceedings as provided
16 for in this section.

17 (1) The director shall prescribe, determine and certify
18 the qualifications of persons who may serve as certified
19 interpreters in courts of this state in proceedings
20 involving the hearing impaired. Persons certified by the

21 director shall be interpreters certified by the national
22 registry of interpreters for the deaf, or the West
23 Virginia registry of interpreters for the deaf or
24 approved by the chief of services for the deaf and
25 hearing impaired of West Virginia of the West Virginia
26 division of vocational rehabilitation, or shall be such
27 other persons deemed by the director to be qualified by
28 education, training and experience. The director shall
29 maintain a current master list of all interpreters
30 certified by the director and shall report annually on the
31 frequency of requests for, and the use and effectiveness
32 of, interpreters.

33 (2) Each circuit court shall maintain on file in the
34 office of the clerk of the court a list of all persons who
35 have been certified as oral or manual interpreters for
36 the hearing impaired by the director of the administra-
37 tive office of the supreme court of appeals in accordance
38 with the certification program established pursuant to
39 this section.

40 (3) In any criminal or juvenile proceeding, or other
41 proceeding described in section five, article eleven,
42 chapter fifty-one of this code, the judge of the circuit
43 court in which such proceeding is pending, or, if such
44 proceeding is in a magistrate court, then the judge of
45 the circuit court to which such proceeding may be
46 appealed or presented for judicial review, shall, with the
47 assistance of the director of the administrative office of
48 the supreme court of appeals, utilize the services of the
49 most available certified interpreter, or when no certified
50 interpreter is reasonably available, as determined by the
51 judge, the services of an otherwise competent interpre-
52 ter, if the judge determines on his own motion or on the
53 motion of a party that such party or a witness who may
54 present testimony in the proceeding suffers from a
55 hearing impairment so as to inhibit such party's
56 comprehension of the proceedings or communication
57 with counsel or the presiding judicial officer, or so as
58 to inhibit such witness' comprehension of questions and
59 the presentation of such testimony. The utilization of an
60 interpreter shall be appropriate at any stage of the
61 proceeding, judicial or extrajudicial, at which a person

62 would be entitled to representation by an attorney and
63 a waiver of the right to counsel shall not constitute a
64 waiver of the right to an interpreter as provided for by
65 this section.

66 (c) Whenever a qualified interpreter is appointed
67 pursuant to the provisions of subsection (b) of this
68 section, or to accommodate a juror, the court shall, at
69 the conclusion of the proceedings or interrogation, by
70 order, fix the compensation of such interpreter. The
71 compensation shall include reimbursement for all
72 reasonable and necessary expenses actually incurred in
73 the performance of such duties, but expenses shall not
74 be incurred in excess of the prevailing rate for state
75 employees. In all such appointments arising from
76 subsection (b) subdivision (3), of this section, the
77 compensation shall be paid by the state auditor from the
78 fund administered by the Supreme Court of Appeals for
79 other court costs. In other proceedings before any circuit
80 or magistrate court, supreme court of appeals or before
81 any administrative boards, commissions and agencies,
82 the compensation shall be fixed by such court, board,
83 commission or agency and paid, within the limit of
84 available funds, by such court, board, commission or
85 agency.

86 (d) In any proceeding described in subdivision (3),
87 subsection (b) of this section, if the circuit judge does
88 not appoint an interpreter, an individual requiring the
89 services of an interpreter may seek the assistance of the
90 clerk of the circuit court or the director of the adminis-
91 trative office of the supreme court of appeals in
92 obtaining the assistance of a certified interpreter.

93 (e) Whenever an interpreter is necessary in any court
94 proceeding because a witness or party speaks only a
95 foreign language or for any other reason, an interpreter
96 shall be sworn truly to interpret.

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

Homer Leck

Chairman Senate Committee

Ernest C. Moore

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Harrell E. Adams

Clerk of the Senate

Donald G. Kopp

Clerk of the House of Delegates

Scott Sandette

President of the Senate

Robert C. Bell

Speaker of the House of Delegates

The within *is approved* this the *27th* day of *March*, 1992.

Mark W. Warner
Governor

PRESENTED TO THE

GOVERNOR

Date 3/25/90

Time 12:04 pm