WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1993

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ENROLLED

HOUSE BILL No. 2610...

(By Delegates West, White and Beane)

- - -

Passed April 10, 1993

In Effect Ninety Days From Passage
ENROLLED

H. B. 2610

(By Delegates Vest, L. White and Beane)

[Passed April 10. 1993; in effect ninety days from passage.]

AN ACT to amend chapter fifty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article four, relating to providing for awards of attorney fees and certain expenses against the state in civil actions brought by the state and in proceedings for judicial review of administrative orders; exempting certain state agencies; defining terms; providing exceptions to the awarding of fees and other expenses; and defining persons eligible for the awards.

Be it enacted by the Legislature of West Virginia:

That chapter fifty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article four, to read as follows:

ARTICLE 4. ATTORNEY FEES AND EXPENSES AWARDED AGAINST THE STATE.

§59-4-1. Definitions.

1 As used in this article, unless the context clearly requires otherwise:

3 (a) “Fees and other expenses” include reasonable attorney fees, reasonable expenses for investigation, case development and expert witnesses and court costs, but do not include any portion of an attorney's fees or salary which is paid by any public funds of an agency or
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in instrumentality of a local, state or federal government
for the attorney's services in a case.

(b) "State" includes the state of West Virginia, each
agency, board, commission, department or division
thereof, and each official thereof while acting in his or
her official capacity: Provided, That for the purposes of
this article, the state does not include the division of
highways or the bureau of employment programs.

§59-4-2. Award of attorney fees.

(a) Unless otherwise provided by law, the court having
jurisdiction over a civil action brought by the state or
an action for review of an administrative proceeding
may award fees and other expenses to the prevailing
party unless the prevailing party is the state: Provided,
That the court may not make an award pursuant to this
section if it finds one of the following:

(1) The position of the state was substantially justified;
or

(2) Special circumstances exist which would make
such an award unjust.

(b) A party seeking an award of attorney fees and
other expenses pursuant to this section shall, not later
than thirty days after a final judgment or dismissal
order is entered in the action, submit to the court a
verified petition which sets forth evidence of eligibility
for an award pursuant to this section and which
specifies the amount sought. If the amount sought
includes attorney fees or fees for investigation, case
development or expert witnesses, the petition shall
include an itemized statement of such fees indicating the
actual time expended in the prosecution of the case and
the rates at which fees and expenses have been
computed.

(c) When awarding fees and other expenses to the
prevailing party pursuant to this section in an action for
judicial review of an administrative proceeding, the
court shall include in the award the fees and other
expenses for services performed during the administra-
tive proceeding, if the court finds that the position or
claim of the state was substantially without merit.

(d) Fees and other expenses awarded pursuant to this section may be ordered in addition to any damages awarded in a judgment.

(e) The provisions of this section apply only to legal and administrative proceedings initiated after the effective date of this article.

(f) The provisions of this article apply only to parties to legal and administrative proceedings who are individuals in their capacities as doing business as a sole proprietorship and who have obtained a business franchise license to do business in the state and to firms, partnerships or corporations.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is disapproved this the 7th day of May, 1993.

Governor