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SECRETARIAT OF STATE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1995



ENROLLED

SENATE BILL NO. 260

(By Senator WOOTEN, ET AL)



PASSED MARCH 10, 1995

In Effect 90 days FROM Passage

ENROLLED

Senate Bill No. 260

(BY SENATORS WOOTON, ANDERSON, BOWMAN, BUCKALEW,
DEEM, DITTMAR, MILLER, OLIVERIO, ROSS, SCHOONOVER, SCOTT,
WAGNER, WHITE, WIEDEBUSCH AND YODER)

[Passed March 10, 1995; in effect ninety days from passage.]

AN ACT to amend and reenact sections six, twelve, thirteen, fourteen and twenty-eight, article five, chapter fifty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section thirteen, article one, chapter fifty-nine of said code; and to amend and reenact section fourteen, article two of said chapter, all relating to the activities of the clerk of the supreme court of appeals; the time required for the clerk of the supreme court to return the record to the circuit clerk; the service of an order granting an appeal rather than a summons in actions when an appeal is granted by the supreme court; the endorsement by the clerk of the supreme court on an order or supersedeas pending the posting of a bond; the requirement of an appeal bond in cases before the supreme court; the certification of a mandate by the clerk of the supreme court; fees charged by the supreme court; and the taxation of statutory fees.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 58. APPEAL AND ERROR.

ARTICLE 5. APPELLATE RELIEF IN SUPREME COURT OF APPEALS.

§58-5-6. Filing of petition; transmission of petition and record; deposit or bond; return of record; transcript; charges.

1 Such petition, together with a copy thereof, shall be
2 first filed in the office of the clerk of the circuit court
3 wherein the judgment, decree or order complained of
4 was entered, and such clerk, retaining in his office the
5 copy of such petition, shall, as soon as may be, transmit
6 to the clerk of the supreme court of appeals, or such
7 judge of said court as the petitioner shall designate, if
8 said court be not in session, by United States registered
9 mail or valued express, the original, together with the
10 record of so much of the case wherein the judgment,
11 decree or order is, as will enable the court or judge to
12 whom the petition is to be presented properly to decide
13 on such petition, and enable the court, if the petition be
14 granted, properly to decide the questions that may arise
15 before it. The clerk of the circuit court, before transmit-
16 ting the record as aforesaid, shall arrange the papers, as
17 nearly as may be, in the order of the filing and entry
18 thereof, numbering the pages, make and certify copies of
19 all orders entered in the case, copies of which are not in
20 the files, and prepare and annex to the record a table of
21 contents or index. Before such petition and record are
22 transmitted as aforesaid, the petitioner shall deposit
23 with the clerk of the circuit court a sufficient sum of
24 money to defray the expenses of the preparation and

25 indexing of the record, fees for filing the petition and
26 making and certifying necessary copies of orders, costs
27 of transmission and return of the record, and the making
28 of a transcript of the record, or file with the clerk a bond
29 conditioned to pay the same, in a penalty and with
30 sureties to be fixed and approved by such clerk, who
31 shall indorse on the petition that such deposit has been
32 made or such bond filed. If the appeal or writ of error
33 prayed for be granted, the clerk of the supreme court of
34 appeals shall return the record to the clerk of the circuit
35 court, by mail or express, as aforesaid; and such circuit
36 court clerk shall forthwith make a transcript of so much
37 of the record as is required for the purposes of the appeal
38 or writ of error and transmit the same to the clerk of the
39 supreme court of appeals. Insofar as provision therefor
40 is not made by existing law, the compensation of the
41 clerk of the circuit court for services rendered hereunder
42 shall be fixed by the judge of such court. If the prayer of
43 the petition be not granted, the petition and record shall
44 be returned as aforesaid, and the clerk of the circuit
45 court shall repay to the petitioner, or his attorney, the
46 money deposited with him, if any, less his fees and
47 expenses.

§58-5-12. Order granting appeal or supersedeas; service.

1 The clerk of the appellate court shall thereupon send
2 a copy of the order granting the appeal to the parties
3 interested, other than the petitioners, that they may be
4 heard, and also send a copy of any supersedeas which
5 may be awarded, which order or supersedeas may be
6 served upon the party in person or his attorneys in the
7 court from which the appeal or writ of error is taken.

§58-5-13. Indorsements on writs as to bond.

1 The clerk of the supreme court of appeals shall indorse
2 on the order or supersedeas that it is not to be effectual
3 until the bond required by section fourteen of this
4 article, with good personal security, be given before the
5 clerk of the court below, who shall take such bond and
6 indorse on the order that it has been given, and the

7 names of the sureties therein, and forward to the clerk of
8 the supreme court of appeals a certified copy of such
9 bond.

§58-5-14. Appeal bond generally.

1 When required by the court, an appeal, writ of error or
2 writ of supersedeas shall not take effect until bond is
3 given by the appellants or petitioners, or one of them, or
4 some other person, in a penalty to be fixed by the court
5 or judge by or in which the appeal, writ of error or
6 supersedeas is allowed or entered with condition: If a
7 supersedeas be awarded, to abide by and perform the
8 judgment, decree or order of affirmance, and to pay to
9 the opposite party, and to any person injured all such
10 costs and damages as they, or either of them, may incur
11 or sustain by reason of said appeal, in case such judg-
12 ment, decree or order, or such part, be affirmed, or the
13 appeal, writ of error or supersedeas be dismissed, and
14 also, to pay all damages, costs and fees, which may be
15 awarded against or incurred by the appellant or petition-
16 ers; and if it be an appeal from an order or decree
17 dissolving an injunction, or dismissing a bill of injunc-
18 tion, with a further condition, to indemnify and save
19 harmless the surety in the injunction bond against loss or
20 damage in consequence of his suretyship; and with
21 condition when no supersedeas is awarded to pay such
22 specific damages, and such costs and fees as may be
23 awarded or incurred: *Provided*, That whenever a writ of
24 error, appeal or supersedeas shall be awarded in any
25 action or suit wherein a judgment or decree for the
26 payment of money has been entered against an insured
27 in an action which is defended by an insurance corpora-
28 tion, or other insurer, on behalf of the insured under a
29 policy of insurance, the limit of liability of which is less
30 than the amount of said judgment, execution on the
31 judgment to the extent of the policy coverage shall be
32 stayed until final determination of such appeal, writ of
33 error or supersedeas, and no execution shall be issued, or
34 action brought, maintained or continued against such
35 insured, insurance corporation, or other insurer, for the

36 amount of such judgment or decree so stayed, by either
37 the injured party, the insured, or the legal representa-
38 tive, heir or assigns of any of them, during the pendency
39 of such proceeding, provided such insurance corporation,
40 or other insurer, shall:

41 (1) File with the clerk of the court in which the judg-
42 ment was entered, a sworn statement of one of its
43 officers, describing the nature of the policy and the
44 amount of coverage thereof;

45 (2) Give or cause to be given by the judgment debtor or
46 some other person for him a bond in a penalty to be fixed
47 by the court or judge by or in which the appeal, writ of
48 error or supersedeas is allowed or entered, not to exceed
49 the amount of such insurance coverage set out in the
50 sworn statement above required, with condition to pay
51 the amount of such coverage upon said judgment if the
52 judgment or decree or such part be affirmed or the
53 appeal, writ of error or supersedeas be dismissed, plus
54 interest on said sum and cost;

55 (3) Serve a copy of such sworn statement and bond
56 upon the judgment creditor or his attorney;

57 (4) Deliver or mail to the insured at the latest address
58 of the insured appealing upon the records of such
59 insurance corporation, or other insurer, written notice
60 that execution on such judgment to the extent that it is
61 not covered by such insurance is not stayed in respect to
62 the insured: *Provided*, That the filing of a bond by the
63 insured or someone for him, conditioned upon the
64 payment of the balance of the judgment or decree and
65 interest not stayed by the insured as aforesaid if the
66 judgment or decree be affirmed or the appeal, writ of
67 error or supersedeas be dismissed, shall stay execution
68 on the balance of said judgment not covered by such
69 insurance: *Provided, however*, That the filing of such
70 statement and bond hereunder by an insurance corpora-
71 tion or other insurer shall not thereby make such insur-
72 ance corporation or other insurer a party to such action,
73 either in the trial court or in the appellate court.

§58-5-28. Certification of mandate to lower court; stay of mandate pending rehearing.

1 The clerk of the supreme court of appeals shall certify
 2 and mail or otherwise transmit its mandate to the clerk
 3 of the court below thirty days after entry of judgment.
 4 Unless otherwise ordered by the supreme court of
 5 appeals, judgment is not effective until issuance of the
 6 mandate. A certified copy of the judgment and a copy of
 7 the opinion of the supreme court of appeals, if any, and
 8 any direction as to costs, constitute the mandate. The
 9 timely filing of a petition for rehearing shall stay the
 10 mandate until disposition of the petition unless other-
 11 wise ordered by the supreme court of appeals. When the
 12 petition for rehearing is denied, the mandate shall issue
 13 seven days after entry of the order denying the petition:
 14 *Provided*, That the time for performance of any act
 15 under this section may be shortened or enlarged by order
 16 of the supreme court of appeals.

**CHAPTER 59. FEES, ALLOWANCES AND COSTS;
 NEWSPAPERS; LEGAL ADVERTISEMENTS.**

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-13. Fees to be charged by clerk of supreme court of appeals.

1 The clerk of the supreme court of appeals shall charge
 2 the following fees to be paid by the parties for whom the
 3 services are rendered:

4 For all copies of petitions, records, orders, opinions or
 5 other papers, per page.25

6 For each certificate under seal of the court5.00

7 For license to practice law, suitable for framing . . . 25.00

8 For any other work or services not herein enumerated,
 9 the clerk shall charge the fees prescribed for similar
 10 services by clerks of circuit courts.

ARTICLE 2. COSTS GENERALLY.

§59-2-14. Taxation of statute fees.

- 1 He shall include in the costs to the prevailing party:
- 2 (a) In any civil action, ten dollars;
- 3 (b) In civil actions in any court of limited jurisdiction,
- 4 the same fees as are allowed in a circuit court for like
- 5 actions.

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

Randy Schorover
.....
Chairman Senate Committee

Ernest C. Moore
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage

Darrell R. White
.....
Clerk of the Senate

Daniel J. Hoff
.....
Clerk of the House of Delegates

Carl Ray Tomblin
.....
President of the Senate

Paul Blanton
.....
Speaker House of Delegates

The within is approved..... this the *21st*.....

day of *March*....., 1995.

Gaston Caperton
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/17/95

Time 3:23 pm