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WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1998



ENROLLED

House Bill No. 4060

(By Delegates Staton, Trump, Underwood,
Amores, Buchanan, Hunt and Rowe)



Passed March 14, 1998

In Effect Ninety Days from Passage

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COMMITTEE SUBSTITUTE

FOR

H. B. 4060

(BY DELEGATES STATON, TRUMP, UNDERWOOD,
AMORES, BUCHANAN, HUNT AND ROWE)

[Passed March 14, 1998; in effect ninety days from passage.]

AN ACT to repeal articles one and two, chapter fifty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal sections eight, nine, ten, eleven, twelve, thirteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine and thirty-one, article five of said chapter; to amend and reenact section twenty-seven, article seven, chapter twenty-one-a of said code; to amend and reenact section four, article five, chapter twenty-nine-a of said code; and to amend and reenact sections one, two, three, four, five, six, seven, fourteen and thirty, article five, chapter fifty-eight of said code, all relating generally to appellate procedure; repealing provisions of law relating to appellate relief in the supreme court of appeals which are outdated, archaic, or not in conformity with rules of appellate procedure promulgated by the supreme court of appeals; providing for appeal from circuit court in an unemployment compensation case to be made in accordance with the provisions of the state administrative procedures act; prescribing when an appeal will lie to the supreme court of appeals; providing for the certification of questions of law to the supreme court of

appeals; providing for a petition for appeal to be filed in accordance with rules of appellate procedure promulgated by the supreme court of appeals; prescribing the time for filing a petition for appeal to the supreme court of appeals; providing for the suspension of the execution of a judgment at the instance of a person desiring to present a petition for appeal; providing that a petition for appeal shall be filed and processed filed in accordance with rules of appellate procedure promulgated by the supreme court of appeals; providing that the contents of the transcript of record shall be governed by rules of appellate procedure promulgated by the supreme court of appeals; providing for an appeal to be given before an appeal takes effect; and providing for an appeal by the state of a judgment quashing an indictment.

Be it enacted by the Legislature of West Virginia:

That articles one and two, chapter fifty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections eight, nine, ten, eleven, twelve, thirteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine and thirty-one, article five of said chapter be repealed; that section twenty-seven, article seven, chapter twenty-one-a of said code be amended and reenacted; that section four, article five, chapter twenty-nine-a of said code be amended and reenacted; and that sections one, two, three, four, five, six, seven, fourteen and thirty, article five, chapter fifty-eight of said code be amended and reenacted, all to read as follows:

CHAPTER 21A. UNEMPLOYMENT COMPENSATION.

ARTICLE 7. CLAIM PROCEDURE.

§21A-7-27. Appeal to supreme court of appeals.

- 1 The judgment of the circuit court shall be final unless
- 2 reversed, vacated or modified on appeal to the supreme
- 3 court of appeals in accordance with the provisions of
- 4 section one, article six, chapter twenty-nine-a of this code.

CHAPTER 29A. STATE ADMINISTRATIVE PROCEDURES ACT.

ARTICLE 5. CONTESTED CASES.

§29A-5-4. Judicial review of contested cases.

1 (a) Any party adversely affected by a final order or
2 decision in a contested case is entitled to judicial review
3 thereof under this chapter, but nothing in this chapter shall
4 be deemed to prevent other means of review, redress or
5 relief provided by law.

6 (b) Proceedings for review shall be instituted by filing
7 a petition, at the election of the petitioner, in either the
8 circuit court of Kanawha county, West Virginia or in the
9 circuit court of the county in which the petitioner or any
10 one of the petitioners resides or does business, or with the
11 judge thereof in vacation, within thirty days after the date
12 upon which such party received notice of the final order
13 or decision of the agency. A copy of the petition shall be
14 served upon the agency and all other parties of record by
15 registered or certified mail. The petition shall state
16 whether the appeal is taken on questions of law or
17 questions of fact, or both. No appeal bond shall be
18 required to effect any such appeal.

19 (c) The filing of the petition shall not stay
20 enforcement of the agency order or decision or act as a
21 supersedeas thereto, but the agency may stay such
22 enforcement, and the appellant, at any time after the filing
23 of his petition, may apply to such circuit court for a stay
24 of or supersedeas to such final order or decision. Pending
25 the appeal, the court may grant a stay or supersedeas upon
26 such terms as it deems proper.

27 (d) Within fifteen days after receipt of a copy of the
28 petition by the agency, or within such further time as the
29 court may allow, the agency shall transmit to such circuit
30 court the original or a certified copy of the entire record
31 of the proceeding under review, including a transcript of
32 all testimony and all papers, motions, documents, evidence
33 and records as were before the agency, all agency staff
34 memoranda submitted in connection with the case, and a
35 statement of matters officially noted; but, by stipulation of
36 all parties to the review proceeding, the record may be
37 shortened. The expense of preparing such record shall be

38 taxed as a part of the costs of the appeal. The appellant
39 shall provide security for costs satisfactory to the court.
40 Any party unreasonably refusing to stipulate to limit the
41 record may be taxed by the court for the additional costs
42 involved. Upon demand by any party to the appeal, the
43 agency shall furnish, at the cost of the party requesting
44 same, a copy of such record. In the event the complete
45 record is not filed with the court within the time provided
46 for in this section, the appellant may apply to the court to
47 have the case docketed, and the court shall order such
48 record filed.

49 (e) Appeals taken on questions of law, fact or both,
50 shall be heard upon assignments of error filed in the cause
51 or set out in the briefs of the appellant. Errors not argued
52 by brief may be disregarded, but the court may consider
53 and decide errors which are not assigned or argued. The
54 court or judge shall fix a date and time for the hearing on
55 the petition, but such hearing, unless by agreement of the
56 parties, shall not be held sooner than ten days after the
57 filing of the petition, and notice of such date and time
58 shall be forthwith given to the agency.

59 (f) The review shall be conducted by the court without
60 a jury and shall be upon the record made before the
61 agency, except that in cases of alleged irregularities in
62 procedure before the agency, not shown in the record,
63 testimony thereon may be taken before the court. The
64 court may hear oral arguments and require written briefs.

65 (g) The court may affirm the order or decision of the
66 agency or remand the case for further proceedings. It
67 shall reverse, vacate or modify the order or decision of the
68 agency if the substantial rights of the petitioner or
69 petitioners have been prejudiced because of the
70 administrative findings, inferences, conclusions, decision
71 or order are:

72 (1) In violation of constitutional or statutory
73 provisions; or

74 (2) In excess of the statutory authority or jurisdiction
75 of the agency; or

- 76 (3) Made upon unlawful procedures; or
77 (4) Affected by other error of law; or
78 (5) Clearly wrong in view of the reliable, probative and
79 substantial evidence on the whole record; or
80 (6) Arbitrary or capricious or characterized by abuse
81 of discretion or clearly unwarranted exercise of discretion.
82 (h) The judgment of the circuit court shall be final
83 unless reversed, vacated or modified on appeal to the
84 supreme court of appeals of this state in accordance with
85 the provisions of section one, article six of this chapter.

CHAPTER 58. APPEAL AND ERROR.

ARTICLE 5. APPELLATE RELIEF IN SUPREME COURT OF APPEALS.

§58-5-1. When appeal lies.

1 A party to a civil action may appeal to the supreme
2 court of appeals from a final judgment of any circuit
3 court or from an order of any circuit court constituting a
4 final judgment as to one or more but fewer than all claims
5 or parties upon an express determination by the circuit
6 court that there is no just reason for delay and upon an
7 express direction for the entry of judgment as to such
8 claims or parties. The defendant in a criminal action may
9 appeal to the supreme court of appeals from a final
10 judgment of any circuit court in which there has been a
11 conviction or which affirms a conviction obtained in an
12 inferior court.

§58-5-2. Certification to supreme court of appeals.

1 Any question of law, including, but not limited to,
2 questions arising upon the sufficiency of a summons or
3 return of service, upon a challenge of the sufficiency of a
4 pleading or the venue of the circuit court, upon the
5 sufficiency of a motion for summary judgment where
6 such motion is denied, or a motion for judgment on the
7 pleadings, upon the jurisdiction of the circuit court of a
8 person or subject matter, or upon failure to join an
9 indispensable party, may, in the discretion of the circuit

10 court in which it arises, be certified by it to the supreme
11 court of appeals for its decision, and further proceedings
12 in the case stayed until such question shall have been
13 decided and the decision thereof certified back. The
14 procedure for processing questions certified pursuant to
15 this section shall be governed by rules of appellate
16 procedure promulgated by the supreme court of appeals.

§58-5-3. Presentation of petition.

1 A party desiring to appeal, seeking the original
2 jurisdiction of the supreme court of appeals, or seeking an
3 opinion of the court on certified questions may file a
4 petition in accordance with rules of appellate procedure
5 promulgated by the supreme court of appeals.

§58-5-4. Time for appeal.

1 No petition shall be presented for an appeal from any
2 judgment rendered more than four months before such
3 petition is filed with the clerk of the court where the
4 judgment being appealed was entered: *Provided*, That the
5 judge of the circuit court may, prior to the expiration of
6 such period of four months, by order entered of record
7 extend and reextend such period for such additional
8 period or periods, not to exceed a total extension of two
9 months, for good cause shown, if the request for
10 preparation of the transcript was made by the party
11 seeking such appellate review within thirty days of the
12 entry of such judgment, decree or order.

§58-5-5. Stay of proceedings pending appeal; supersedeas bond; post-conviction bail.

1 A petition for stay of proceedings pending appeal,
2 supersedeas bond or post-conviction bail relief shall be
3 filed and processed in accordance with rules of appellate
4 procedure promulgated by the supreme court of appeals.

§58-5-6. Filing of petition.

1 Petitions for appeal shall be filed and processed in
2 accordance with rules of appellate procedure promulgated
3 by the supreme court of appeals.

§58-5-7. Contents of transcript of record.

1 The contents of the transcript of record shall be
2 governed in accordance with rules of appellate procedure
3 promulgated by the supreme court of appeals.

§58-5-14. Appeal bond generally.

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

36 (1) File with the clerk of the court in which the
37 judgment was entered, a sworn statement of one of its
38 officers, describing the nature of the policy and the
39 amount of coverage thereof;

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

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

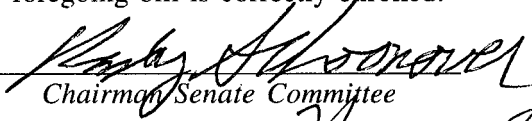
51 (4) Deliver or mail to the insured at the latest address
52 of the insured appealing upon the records of such
53 insurance corporation, or other insurer, written notice that
54 execution on such judgment to the extent that it is not
55 covered by such insurance is not stayed in respect to the
56 insured: *Provided*, That the filing of a bond by the
57 insured or someone for him, conditioned upon the
58 payment of the balance of the judgment and interest not
59 stayed by the insured as aforesaid if the judgment is
60 affirmed or the appeal is dismissed, shall stay execution on
61 the balance of said judgment not covered by such
62 insurance: *Provided, however*, That the filing of such
63 statement and bond hereunder by an insurance
64 corporation or other insurer shall not thereby make such
65 insurance corporation or other insurer a party to such
66 action, either in the trial court or in the appellate court.

§58-5-30. Appeal by state of judgment quashing indictment.

1 Whenever in any criminal case an indictment is held
2 bad or insufficient by the judgment of a circuit court, the
3 state, on the application of the attorney general or the
4 prosecuting attorney, may appeal such judgment to the
5 supreme court of appeals. No such appeal shall be allowed
6 unless the state presents its petition therefor to the supreme
7 court of appeals within thirty days after the entry of such

8 judgment. No such judgment shall finally discharge, or
9 have the effect of finally discharging, the accused from
10 further proceedings on the indictment unless the state fails,
11 within such period of thirty days, to file a petition for
12 appeal with the clerk of the court in which judgment was
13 entered; but after the entry of such judgment or order the
14 accused shall not be kept in custody or required to give
15 bail pending the hearing and determination of the case by
16 the supreme court of appeals. Except as herein otherwise
17 provided, all the provisions of the other sections of this
18 article shall, so far as appropriate, be applicable to a
19 petition for an appeal under this section, and to all
20 subsequent proceedings thereon in the supreme court of
21 appeals in case such appeal is granted.

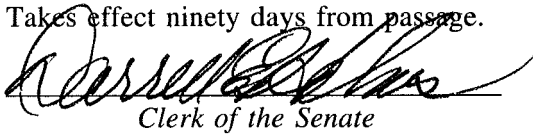
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

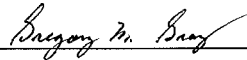

Chairman Senate Committee

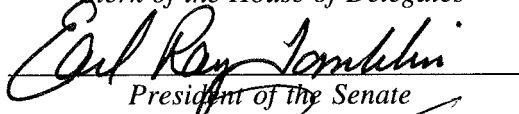

Chairman House Committee

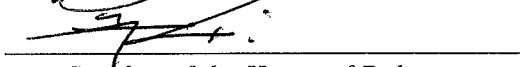
Originating in the House.

Takes effect ninety days from passage.

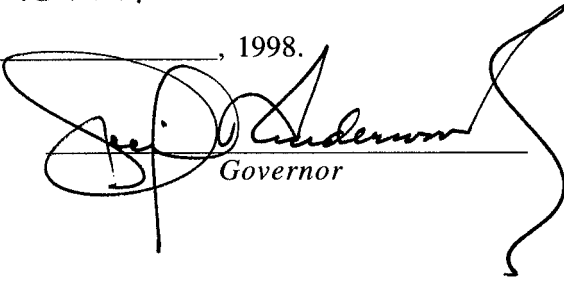

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within approved this the 1st
day of April, 1998.


Governor

PRESENTED TO THE

GOVERNOR

Date 3/24/98

Time 10:17am