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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
SEVENTY-EIGHTH LEGISLATURE
REGULAR SESSION, 2007

ENROLLED

COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 194

(SENATORS KESSLER AND PLYMALE, *original sponsors*)

[Passed March 10, 2007; in effect ninety days from passage.]

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AN ACT to amend and reenact §58-5-14 of the Code of West Virginia, 1931, as amended, relating to appeal bonds; limiting bond amounts; consolidating multiple judgments for bonding purposes; providing exceptions to bonding limitations; and providing for the adjustment of the appeal bonding limitations to reflect changes in the consumer price index.

Be it enacted by the Legislature of West Virginia:

That §58-5-14 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. APPELLATE RELIEF IN SUPREME COURT OF APPEALS.

§58-5-14. Appeal bond generally; limitation on amount.

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

30 shall be issued, or action brought, maintained or
31 continued against such insured, insurance corporation
32 or other insurer, for the amount of such judgment so
33 stayed, by either the injured party, the insured or the
34 legal representative, heir or assigns of any of them,
35 during the pendency of such proceeding, provided such
36 insurance corporation, or other insurer, shall:

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

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

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

52 (4) Deliver or mail to the insured at the latest address
53 of the insured appealing upon the records of such
54 insurance corporation, or other insurer, written notice
55 that execution on such judgment to the extent that it is
56 not covered by such insurance is not stayed in respect to
57 the insured: *Provided*, That the filing of a bond by the
58 insured or someone for him or her, conditioned upon the
59 payment of the balance of the judgment and interest not
60 stayed by the insured as aforesaid if the judgment is

61 affirmed or the appeal is dismissed, shall stay execution
62 on the balance of said judgment not covered by such
63 insurance: *Provided, however,* That the filing of such
64 statement and bond hereunder by an insurance
65 corporation or other insurer shall not thereby make
66 such insurance corporation or other insurer a party to
67 such action, either in the trial court or in the appellate
68 court.

69 (b) Except for bonds required under section four,
70 article eleven-a, chapter four of this code, an appeal
71 bond required by a court in accordance with this section
72 may not exceed the amount of the total judgment, which
73 includes the actual judgment, plus costs, interest and
74 fees: *Provided,* That for all verdicts returned or
75 judgements rendered on or after the first day of July,
76 two thousand seven, in which the judgment exceeds
77 fifty million dollars, the court shall require an appeal
78 bond of no more than fifty million dollars. For purposes
79 of this subsection, multiple judgments resulting from
80 cases that have been consolidated or aggregated for
81 purpose of trial proceedings shall be treated as a single
82 judgment.

83 (c) If the appellee proves by a preponderance of the
84 evidence that the appellant is dissipating or diverting
85 assets outside the ordinary course of business, thereby
86 impairing the appellant's ability to pay the ultimate
87 judgment, the court is not bound by the limitations
88 stated in subsection (b) of this section and may set the
89 appeal bond at any amount not to exceed the total
90 judgment.

91 (d) The maximum amount allowed for a bond under
92 subsection (b) of this section shall be adjusted on the

93 first day of July, two thousand twelve, by an amount to
94 reflect the annual aggregate percentage change in the
95 Federal Consumer Price Index for All Urban
96 Consumers, as published by the United States
97 Department of Labor for the immediately preceding five
98 years, and shall thereafter be adjusted on the first day
99 of July every five years after that initial adjustment by
100 an amount determined by the aggregate change in the
101 Federal Consumer Price Index for All Urban Consumers
102 since the previous adjustment.

Enr. Com. Sub. for S. B. No. 194] 6


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


.....
Chairman Senate Committee


.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.


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Clerk of the Senate


.....
Clerk of the House of Delegates


.....
President of the Senate


.....
Speaker House of Delegates

The within *is approved* this
the *3rd* Day of *April*, 2007.


.....
Governor

PRESENTED TO THE
GOVERNOR

APR 03 2007

Time 1:35 pm