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WEST VIRGINIA LEGISLATUREY OF STATE

SEVENTY-EIGHTH LEGISLATURE REGULAR SESSION, 2007

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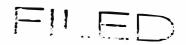
COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 194

(SENATORS KESSLER AND PLYMALE, original sponsors)

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



2007 APR -4 AMII: 19

OFFICE WEST WHIGINIA SECRETARY OF STATE

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COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 194

(SENATORS KESSLER AND PLYMALE, original sponsors)

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

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:

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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 appeal, in case such judgment, or such part, be 10 affirmed, or the appeal be dismissed, and also, to pay all 11 damages, costs and fees, which may be awarded against 12 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, to indemnify and save harmless the surety in the 16 injunction bond against loss or damage in consequence 17 of his or her suretyship; and with condition when no 18 19 supersedeas is awarded to pay such specific damages 20 and such costs and fees as may be awarded or incurred: *Provided*, That whenever an appeal is awarded in any 21 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

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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 statement above required, with condition to pay the 46 47 amount of such coverage upon said judgment if the judgment or such part is affirmed or the appeal is **48** 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 of the insured appealing upon the records of such 53 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 insured or someone for him or her, conditioned upon the 58 59 payment of the balance of the judgment and interest not stayed by the insured as aforesaid if the judgment is 60

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61 affirmed or the appeal is dismissed, shall stay execution 62 on the balance of said judgment not covered by such insurance: *Provided*, *however*, That the filing of such 63 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 bond required by a court in accordance with this section 71 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 judgements rendered on or after the first day of July, 75 76 two thousand seven, in which the judgment exceeds fifty million dollars, the court shall require an appeal 77 bond of no more than fifty million dollars. For purposes 78 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.

(c) If the appellee proves by a preponderance of the 83 84 evidence that the appellant is dissipating or diverting assets outside the ordinary course of business, thereby 85 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 under92 subsection (b) of this section shall be adjusted on the

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

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

Chairman Senate Committee man House Committee Chai

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

yh. Clerk of the House of Delegates

Jonalu President of the Senate

Speaker House of Delegates

The within N. approved this the 3rd Day of ... April 007. Governor

PRESENTED TO THE GOVERNOR

APR 0 3 2007

1:35pm Time __

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