

H. B. 3067

(By Delegates Fleischauer, Lawrence, Poore, Brown, Mahan, Guthrie, Miley, Hunt, T. Campbell, Reynolds and Morgan)

[Introduced February 9, 2011; referred to the Committee on the Judiciary then Finance.]

A BILL to amend and reenact §59-1-4, §59-1-11 and §59-1-13 of the Code of West Virginia, 1931, as amended, all relating to fees collected for docketing of civil appeals to be used to enhance funding for civil legal services for the poor.

Be it enacted by the Legislature of West Virginia:

That §59-1-4, §59-1-11 and §59-1-13 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-4. Fees collected by Secretary of State, Auditor and Clerk of Supreme Court of Appeals to be paid into State Treasury; accounts; reports.

Except as otherwise provided by law, the fees to be charged by the Auditor, Secretary of State and Clerk of the Supreme Court of Appeals, by virtue of this article or any other law, shall be are the property of the State of West Virginia. ~~and they and each of them~~ The Auditor, Secretary of State and Clerk of the Supreme Court of Appeals shall account for and pay into the State Treasury at

1 least once every thirty days all fees ~~by any of them~~ collected or
 2 appearing to be due to the state, to the credit of the general
 3 state fund or other fund as provided by law. The Auditor,
 4 Secretary of State and Clerk of the Supreme Court of Appeals shall
 5 each keep a complete and accurate ~~account by items~~ itemized account
 6 of all fees collected by them and the nature of the services
 7 rendered for which all fees were charged and collected, in
 8 accordance with generally accepted accounting principles, as
 9 provided in article two, chapter five-a of this code. ~~and~~ All
 10 accounts shall be open to inspection and audit as provided in
 11 article two, chapter four of this code.

12 **§59-1-11. Fees to be charged by clerk of circuit court.**

13 (a) The clerk of a circuit court shall charge and collect for
 14 services rendered by the clerk the following fees which shall be
 15 paid in advance by the parties for whom services are to be
 16 rendered:

17 (1) For instituting any civil action under the Rules of Civil
 18 Procedure, any statutory summary proceeding, any extraordinary
 19 remedy, the docketing of civil appeals, including appeals from
 20 Family Court or any other action, cause, suit or proceeding, ~~\$145,~~
 21 \$155, of which \$30 ~~of that amount~~ shall be deposited in the
 22 Courthouse Facilities Improvement Fund created by section six,
 23 article twenty-six, chapter twenty-nine of this code and ~~\$10 shall~~
 24 ~~be~~ \$20 deposited in the special revenue account created in section
 25 six hundred three, article twenty-six, chapter forty-eight of this
 26 code to provide legal services for domestic violence victims;

1 (2) For instituting an action for medical professional
2 liability, \$260, of which \$10 ~~of that amount~~ shall be deposited in
3 the Courthouse Facilities Improvement Fund created by section six,
4 article twenty-six, chapter twenty-nine of this code;

5 (3) Beginning on and after July 1, 1999, for instituting an
6 action for divorce, separate maintenance or annulment, \$135;

7 (4) For petitioning for the modification of an order involving
8 child custody, child visitation, child support or spousal support,
9 \$85; and

10 (5) For petitioning for an expedited modification of a child
11 support order, \$35.

12 (b) In addition to the foregoing fees, the following fees
13 shall ~~likewise~~ be charged and collected:

14 (1) For preparing an abstract of judgment, \$5;

15 (2) For ~~any~~ a transcript, copy or paper made by the clerk for
16 use in any other court or otherwise to go out of the office, for
17 each page, \$1;

18 (3) For issuing a suggestion and serving notice to the debtor
19 by certified mail, \$25;

20 (4) For issuing an execution, \$25;

21 (5) For issuing or renewing a suggestee execution and serving
22 notice to the debtor by certified mail, \$25;

23 (6) For vacation or modification of a suggestee execution, \$1;

24 (7) For docketing and issuing an execution on a transcript of
25 judgment from magistrate court, \$3;

26 (8) For arranging the papers in a certified question, writ of

1 error, appeal or removal to any other court, \$10, of which \$5 of
2 ~~that amount~~ shall be deposited in the Courthouse Facilities
3 Improvement Fund created by section six, article twenty-six,
4 chapter twenty-nine of this code;

5 (9) For postage and express and for sending or receiving
6 decrees, orders or records, by mail or express, three times the
7 amount of the postage or express charges;

8 (10) For each subpoena, on the part of either plaintiff or
9 defendant, to be paid by the party requesting the same, 50¢;

10 (11) For additional service, plaintiff or appellant, where any
11 case remains on the docket longer than three years, for each
12 additional year or part year, \$20; and

13 (12) For administering funds deposited into a federally
14 insured interest-bearing account or interest-bearing instrument
15 pursuant to a court order, \$50, to be collected from the party
16 making the deposit. A fee collected pursuant to this subdivision
17 shall be paid into the general county fund.

18 (c) The clerk shall tax the following fees for services in ~~any~~
19 a criminal case against ~~any~~ a defendant convicted in such court:

20 (1) In the case of ~~any~~ a misdemeanor, \$85; and

21 (2) In the case of ~~any~~ a felony, \$105, of which \$10 ~~of that~~
22 ~~amount~~ shall be deposited in the Courthouse Facilities Improvement
23 Fund created by section six, article twenty-six, chapter twenty-
24 nine of this code.

25 (d) The clerk of a circuit court shall charge and collect a
26 fee of \$25 per bond for services rendered by the clerk for

1 processing of criminal bonds and the fee shall be paid at the time
2 of issuance by the person or entity set forth below:

3 (1) For cash bonds, the fee shall be paid by the person
4 tendering cash as bond;

5 (2) For recognizance bonds secured by real estate, the fee
6 shall be paid by the owner of the real estate serving as surety;

7 (3) For recognizance bonds secured by a surety company, the
8 fee shall be paid by the surety company;

9 (4) For ten-percent recognizance bonds with surety, the fee
10 shall be paid by the person serving as surety; and

11 (5) For ten-percent recognizance bonds without surety, the fee
12 shall be paid by the person tendering ten percent of the bail
13 amount.

14 In instances in which the total of the bond is posted by more
15 than one bond instrument, the above fee shall be collected at the
16 time of issuance of each bond instrument processed by the clerk and
17 all fees collected pursuant to this subsection shall be deposited
18 in the Courthouse Facilities Improvement Fund created by section
19 six, article twenty-six, chapter twenty-nine of this code. Nothing
20 in this subsection ~~may be construed as authorizing~~ authorizes the
21 clerk to collect the above fee from any person for the processing
22 of a personal recognizance bond.

23 (e) The clerk of a circuit court shall charge and collect a
24 fee of \$10 for services rendered by the clerk for processing of
25 bailpiece and the fee shall be paid by the surety at the time of
26 issuance. All fees collected pursuant to this subsection shall be

1 deposited in the Courthouse Facilities Improvement Fund created by
2 section six, article twenty-six, chapter twenty-nine of this code.

3 (f) No clerk ~~shall be~~ is required to handle or accept for
4 disbursement any fees, cost or amounts of any other officer or
5 party not payable into the county treasury except on written order
6 of the court or in compliance with the provisions of law governing
7 such fees, costs or accounts.

8 **§59-1-13. Fees to be charged by Clerk of Supreme Court of Appeals.**

9 The Clerk of the Supreme Court of Appeals shall charge the
10 following fees to be paid by the parties for whom the services are
11 rendered:

12 For all copies of petitions, records, orders, opinions or
13 other papers, per page.. 25¢

14 For each certificate under seal of the court.. . . . \$5

15 For license to practice law, suitable for framing... . \$25

16 For docketing any civil appeals, including appeals from Family
17 Courts, but not including, appeals in workers' compensations cases,
18 any action in the Supreme Court's original jurisdiction or any other
19 action, cause or proceeding \$100

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

23 Fees collected for docketing civil appeals shall, in the
24 discretion of the West Virginia Supreme Court of Appeals, be paid
25 over either to the Legal Aid of West Virginia or, for distribution,
26 to the Interest on Lawyers' Trust Accounts Fund.

NOTE: The purpose of this bill is to enhance funding for civil legal services for the poor.

Strike-throughs indicate language that would be stricken from the present law and underscoring indicates new language that would be added.