

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 2938**

4 (By Delegates Ashley, Ellem, Miley, Westfall, Lawrence, McCuskey,
5 Poore, Householder, Hunt, Manchin and Lane)

6
7 (Originating in the House Committee on the Judiciary)

8 [March 28, 2013]

9
10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto five new sections, designated §47-25-1, §47-25-
12 2, §47-25-3, §47-25-4 and §47-25-5, all relating to the
13 establishment of standards for court reporters and entities
14 that provide court reporting services; providing certain
15 conduct by court reporters and persons utilizing court
16 reporters; establishing transcript format standards; exempting
17 certain reporters and reporting services; authorizing
18 disclosure of certain information on certain practices; and
19 creating civil penalties for violations of this article; and
20 creating right to treble damages.

21 *Be it enacted by the Legislature of West Virginia:*

22 That the Code of West Virginia, 1931, as amended, be amended
23 by adding thereto five new sections, designated §47-25-1, §47-25-2,
24 §47-25-3, §47-25-4 and §47-25-5, all to read as follows:

25 **ARTICLE 25. COURT REPORTER SERVICES.**

26 **§47-25-1. Fair trade standards for use of court reporter services.**

1 (a) The purpose of this article is to ensure the integrity of
2 the use and fees charged for court reporter services by
3 establishing standards for private court reporters and entities
4 that provide court reporting services. It is declared the policy
5 of the state of West Virginia that fair and impartial selection and
6 use of court reporting services are an integral part of the
7 equitable administration of justice.

8 (b) The provisions described in this section apply to court
9 reporting services performed in this state that are:

10 (1) Provided by a court reporter, business, entity or firm,
11 wherever based, in connection with a court or other legal
12 proceeding commenced or maintained in this state;

13 (2) Provided by a court reporter, business, entity or firm
14 based in this state in connection with a court or other legal
15 proceeding that is commenced or maintained in a foreign
16 jurisdiction; and

17 (3) Provided by a court reporter, business, entity or firm
18 based in this state whether the parties appear in person or by
19 remote means.

20 (c) The provisions of this article do not apply to the actions
21 of official court reporters or their substitutes, appointed by
22 judges pursuant to section one, article seven, chapter fifty-one of
23 this code, or reporters of government proceedings not relating to
24 a legal proceeding. A legal proceeding includes, but is not limited
25 to, the following:

26 (1) A court proceeding;

1 (2) A deposition; and

2 (3) An arbitration hearing.

3 (d) Court reporters, businesses, entities or firms providing
4 or arranging for court reporting services are subject to the
5 provisions of this section even if the businesses, entities or
6 firms are not subject to registration or other regulatory oversight
7 in the state.

8 **§47-25-2. Prohibited conduct.**

9 (a) A legal proceeding may not be reported by:

10 (1) An individual court reporter or court reporter associated
11 with a business, entity or firm with a contractual relationship
12 with a party or an attorney, representative, agent or insurer of a
13 party;

14 (2) An individual who engages in a prohibited action as
15 provided in this section;

16 (3) A party to the action;

17 (4) A relative, employee or attorney of one of the parties;

18 (5) Someone with a financial interest in the action or its
19 outcome; or

20 (6) A relative, employee or attorney of someone with a
21 financial interest in the action or its outcome.

22 (b) Court reporters or businesses, entities or firms that
23 provide or arrange for court reporting services may not engage in
24 any of the following:

25 (1) Enter into an oral or written contractual agreement for
26 more than one case, action, or proceeding with an attorney, party

1 to an action, insurance company, third-party administrator or
2 other person or entity that has a financial interest in the case,
3 action, or proceeding.

4 (2) Give an economic or other advantage to a party, a party's
5 attorney, representative, agent, insurer or employee without
6 offering it to all parties. This includes failing to offer
7 comparable services, including price or credit terms, to all
8 parties or otherwise requiring the court reporter or entity
9 providing court reporting services to provide financial terms or
10 other services that are not offered at the same time and on the
11 same terms to all other parties in the legal proceeding. Different
12 credit terms can be offered based on payment experience and credit
13 worthiness.

14 (3) Base the compensation for the court reporting services on
15 the outcome of the proceeding or otherwise giving the court
16 reporter or court reporting business, entity or firm a financial
17 interest in the action. Court reporters or businesses, entities or
18 firms providing or arranging for court reporting services may not
19 offer or provide court reporting services where payment for those
20 services will be made contingent on the outcome of the action.

21 (4) Enter into an agreement for court reporting services that
22 restricts the noticing attorney from using the court reporter or
23 entity providing court reporting services of the attorney's
24 choosing including a court reporter or business, entity or firm
25 providing or arranging for court reporter services on any list of
26 preferred providers of court reporting services that is maintained

1 by a person, business, entity or firm that has entered into an oral
2 or written contractual agreement for more than one case, action or
3 proceeding with an attorney, party to an action, insurance company,
4 third-party administrator or other person or entity that has a
5 financial interest in the case, action, or proceeding.

6 (5) Allow the format, content or body of the transcript as
7 submitted by the court reporter to be manipulated in a manner that
8 increases the cost of the transcript.

9 **§47-26-3. Disclosure and limitations on practices.**

10 (a) (1) At any time during or following the conclusion of a
11 legal proceeding, an attorney or a party to that proceeding has the
12 right to an itemized statement of all rates and charges for all
13 services that have been or will be provided by the court reporter
14 or business, entity or firm providing or arranging for court
15 reporting services to any party to the litigation.

16 (2) In order to prevent the shifting of costs from one party
17 to another party, the page rate charged for a copy of the
18 transcript may not exceed sixty percent of the page rate charged
19 for the original transcript of the legal proceeding.

20 (b) The provisions of this section may be waived by agreement
21 of all parties.

22 **§47-26-4. Minimum Transcript Format Standards.**

23 (a) A reporter shall comply with the following transcript
24 format standards when producing a transcript in a legal proceeding.
25 If a reporter is employed by a court, either as an official or pro
26 tem official reporter, the transcript format set forth by state or

1 local rules of court, or adopted by that jurisdiction, if any, will
2 supersede. If there are no transcript format guidelines
3 established within a jurisdiction, the following minimum transcript
4 format standards shall apply:

5 (1) No fewer than 24 typed text lines per page;

6 (2) A full line of text shall be no less than 56 characters
7 and/or spaces unless timestamping is used, in which case no fewer
8 than 52 characters and/or spaces shall be used on a full line of
9 text;

10 (3) Timestamping may only be printed on a transcript under any
11 of the following circumstances:

12 (A) when a deposition is videotaped;

13 (B) when requested by counsel on the record, or

14 (C) when a transcript will have not less than 56 characters
15 per line.

16 (4) Left-hand margin is defined as the first character of a
17 line of text;

18 (5) Each question and answer is to begin on a separate line;

19 (6) Text is to begin no more than 10 spaces from the left
20 margin. "Q" and "A" symbols shall appear within the first 8 spaces
21 from the left-hand margin;

22 (7) Carry-over "Q" and "A" lines to begin at the left-hand
23 margin;

24 (8) Colloquy and paragraphed material to begin no more than 10
25 spaces from the left-hand margin with carry-over colloquy to the
26 left-hand margin;

1 (9) Quoted material to begin no more than 14 spaces from the
2 left-hand margin with carry-over lines to begin no more than 10
3 spaces from the left-hand margin;

4 (10) Parenthetical and exhibit markings of two lines or more
5 shall be no less than 35 characters per line; and

6 (11) In colloquy, text shall begin no more than two spaces
7 after the colon following speaker "ID."

8 (b) Failure to comply with the requirements of this section
9 constitutes a violation of this section, and subjects the court
10 reporter to a civil penalty of \$100 for each violation.

11 **§47-26-5. Penalties for violations; civil actions; and treble**
12 **damages.**

13 (a) Upon finding a violation or violations of the provisions
14 of sections one, two or three of this article, a court may order
15 any transcript of a legal proceeding shall be deemed void and
16 ineligible for admission into a court or for use or submission in
17 any legal or administrative proceeding as a matter of law.

18 (b) A court reporter, business, entity or firm that provides
19 or arranges for court reporting services which violate the
20 prohibitions of sections one, two or three of this article is
21 subject to civil penalty in a court of competent jurisdiction as
22 follows:

23 (1) Any party to a civil action, a court reporter, attorney or
24 other person who has been subject to a violation of the provisions
25 of sections one, two or three of this article, may recover a civil
26 penalty for any willful violation of this section and the court

1 shall assess a civil penalty of no less than \$2,500.00 for each
2 violation, and if the court finds that the defendant has engaged in
3 a course of repeated and willful violations of this section, it may
4 assess a civil penalty of up to \$5,000.00 for each violation of
5 this section; and

6 (2) Any person who shall be injured in his or her business or
7 property by reason of a violation of the provisions of sections
8 one, two or three of this article may bring an action therefor and
9 shall recover threefold the damages sustained by him or her,
10 together with reasonable attorneys' fees, filing fees and
11 reasonable costs of the action.