

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 608

FISCAL
NOTE

BY SENATORS ASHLEY, HALL, KESSLER, PALUMBO,
ROMANO, WILLIAMS, WOELFEL, YOST, PLYMALE AND
FACEMIRE

[Introduced February 16, 2016;

Referred to the Committee on Government Organization;

and then to the Committee on the Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §30-41-1, §30-41-2, §30-41-3, §30-41-4, §30-41-5, §30-41-6, §30-41-7, §30-
3 41-8, §30-41-9, §30-41-10, §30-41-11, §30-41-12, §30-41-13, §30-41-14 and §30-41-15,
4 all relating to the West Virginia Court Reporter Act of 2016; providing a short title; defining
5 certain terms; providing licensure and reporting firm requirements; providing court
6 reporters are not required to be involved in all legal proceedings; providing for the creation
7 of the West Virginia Board of Court Reporting; designating membership requirements and
8 setting terms of service for board members; establishing duties for the board; providing a
9 procedure to handle complaints against court reporters and reporting firms; providing for
10 fines for certain violations and noncompliance with the article; providing for reciprocal
11 agreements with governmental or other entities; providing guidelines for determining when
12 state licensure laws apply over another state's licensure laws in case of conflict; requiring
13 and providing for fees for licensure or registration; addressing license and registration
14 renewal; requiring continuing legal education for licensees; requiring licensees to provide
15 changes of address; providing guidelines for grandfathering licensure of court reporters;
16 providing for the disposition and disbursement of moneys collected by the board; requiring
17 the board to annually establish a budget; and authorizing the board to contract for services
18 under certain circumstances.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
2 article, designated §30-41-1, §30-41-2, §30-41-3, §30-41-4, §30-41-5, §30-41-6, §30-41-7, §30-
3 41-8, §30-41-9, §30-41-10, §30-41-11, §30-41-12, §30-41-13, §30-41-14 and §30-41-15, all to
4 read as follows:

ARTICLE 41. THE COURT REPORTER ACT OF 2016.

§30-41-1 Short title; legislative findings and declarations.

1 (a) This article shall be known and may be cited as the "West Virginia Court Reporter Act

2 of 2016.”

3 (b) The Legislature finds and declares that one of the core functions of the state is ensuring
4 that justice is administered properly and all actors in the judicial and legal system competently
5 and fairly perform their functions. To this end, it is necessary to assure the public that the court
6 reporter, as an officer of the court, has the necessary skills and qualifications to perform their
7 duties. The certified reporter’s transcript is an important document before, during and after a trial.
8 Its veracity cannot be questioned, nor can the veracity of the guardian court reporter with whom
9 the transcript resides. The paper transcript and its electronic version are used for trial preparation,
10 briefs, impeachment purposes and appellate review. A self-supporting state board shall be
11 established to prescribe the qualifications, ethical conduct, supervision, and adherence to the
12 other requirements of the West Virginia Code relating to court reporting of court reporters and
13 reporting firms, and to issue licenses to persons and to register reporting firms.

§30-41-2. Article definitions.

1 As used in this article, unless the context otherwise requires:

2 (1) “Board” means the West Virginia Board of Court Reporting;

3 (2) “Court reporting” means the making of a verbatim record by means of manual
4 shorthand, machine shorthand, or closed microphone voice dictation silencer of any testimony
5 given under oath before or for submission to, any court, referee or court examiner, by any board,
6 commission or other body or in any other proceeding where a verbatim record is required. The
7 taking of a deposition is the making of a verbatim record. “Court reporting” does not include the
8 following:

9 (A) Use of video equipment and recordings by attorneys or their agents representing
10 parties in any court proceeding, administrative law proceeding, deposition or any other
11 proceeding;

12 (B) Use of tape recorders and video equipment and recordings by judges, court officers
13 and employees, administrative agency officials and employees, and officials and employees of

14 any board, commission or other body.

15 (3) "Licensed court reporter" or "LCR" means any person licensed pursuant to this article
16 to practice court reporting. Licenses shall indicate the method or methods in which the applicant
17 has successfully passed examination of the organization or organizations approved by the West
18 Virginia Board of Court Reporting. The reporting method practiced shall only be in the method or
19 methods in which the license was granted.

20 (4) "Court reporting firm," "reporting firm," "registered reporting firm" or "affiliate office"
21 mean businesses, entities or firms that provide or arrange for court reporting services as referred
22 to in article twenty-seven, chapter forty-seven of this code, and other applicable sections of this
23 code related to court reporting, but do not personally provide the service as a court reporter as
24 defined in section two of this article.

**§30-41-3. Licensure and reporting firm registration requirements; Court reporter not
required at all proceedings; exceptions.**

1 (a) No person, except as otherwise provided by law, shall practice or attempt to practice
2 court reporting in this state or hold themselves out to be a court reporter unless the person is a
3 licensed court reporter. This licensure requirement may not be waived.

4 (b) Nothing in this article may be construed to require a court reporter at any court
5 proceeding, administrative proceeding, deposition or other proceeding. In the event a court
6 reporter is retained for a proceeding, then the court reporter must be licensed under this article.

7 (c) Notwithstanding any provision to the contrary, a licensed court reporter is not required
8 to be a notary public to record any court proceeding, administrative law proceeding, deposition or
9 other proceeding. A transcript taken and submitted by a licensed court reporter is not required to
10 be notarized. A licensed court reporter is authorized to administer oaths and swear in witnesses
11 in person, by telephone, or other remote electronic means, within the State of West Virginia, or
12 outside the State of West Virginia if the proceeding involves a West Virginia action or the action
13 is managed within a court in West Virginia.

14 (d) This article does not apply to: Court reporting services paid for by a federal agency or
15 other instrumentality of the United States; official court reporters or their substitutes, appointed by
16 judges pursuant to section one, article seven, chapter fifty-one of this code, when acting solely in
17 their official capacities; reporters of government proceedings not relating to a legal proceeding,
18 local or federal courts or workers' compensation proceedings.

19 (e) Any reporting firm, its affiliate office or entity as defined in section two of this article
20 and all applicable provisions under article twenty-seven, chapter forty-seven of this code related
21 to court reporting in this state is required to register as a registered reporting firm under this article
22 and with the State Tax Department of West Virginia. This registration requirement may not be
23 waived.

24 (1) A reporting firm shall register with the West Virginia Board of Court Reporting, created
25 under section four of this article by providing to the board on a form approved by the board, the
26 following information:

27 (A) Full legal name;

28 (B) Address;

29 (C) Telephone number;

30 (D) Email address;

31 (E) Contact individual, including name address, telephone number and email address;

32 (F) Tax ID number.

33 (2) Before the registration is effective:

34 (A) The reporting firm shall certify, on a form acceptable to the board, that the firm agrees
35 to comply with the provisions of this article and all other legal requirements related to court
36 reporting in the same manner in which it would need to comply if it were a licensed reporter;

37 (B) The reporting firm shall be subject to the oversight and authority of the state Supreme
38 Court of Appeals, to the extent it performs activities regulated by this article;

39 (C) The reporting firm shall pay the fee set forth in section eleven of this article.

40 (3) A registered reporting firm that contracts with, employs or arranges with a licensed
41 reporter to perform services regulated by this article shall ensure that in the performance of those
42 duties the licensed reporter and registered reporting firm adhere to the provisions of this article
43 and other applicable legal requirements related to court reporting.

44 (4) A registered reporting firm that fails to comply with its obligations as set forth in this
45 article and other applicable legal requirements related to court reporting may have its registration
46 revoked, suspended or the registered reporting firm may receive such other discipline as a
47 licensed reporter may receive upon finding by the board that the registered reporting firm violated
48 the provisions of this article or other sections of this code relating to court reporting. Any
49 disciplinary action imposed upon a registered reporting firm is also imposed upon the registered
50 reporting firm's affiliates. If the registered reporting firm's registration is revoked the firm may not
51 reapply for registration for twelve months from the date of revocation and before registration is
52 reinstated by the board, the board must determine that the conduct resulting in the revocation is
53 unlikely to reoccur.

§30-41-4. Creation of West Virginia Board of Court Reporting.

1 (a) There is created the West Virginia Board of Court Reporting, which shall be subject to
2 the oversight and authority of the state Supreme Court of Appeals. The board is authorized to
3 administer all the necessary administrative functions and duties, except those discretionary
4 regulatory duties and powers vested by law in the board members:

5 (b) The board shall be comprised of seven members, as follows:

6 (1) One circuit judge;

7 (2) Two attorneys licensed to practice in the state;

8 (3) Three freelance court reporters;

9 (4) One freelance firm owner with three or more court reporters.

10 (c) All court reporter members shall be licensed pursuant to this article: *Provided*, That the
11 initial court reporters appointed shall not be required to be licensed pursuant to this article until

12 July 1, 2017;

13 (d) All members of the board shall be citizens of the United States and the State of West
14 Virginia, or be an owner or principal of a court reporting firm that is incorporated in the State of
15 West Virginia. The initial terms shall begin July 1, 2016, and all appointments shall be made by
16 the Governor prior to July 1, in any year for which appointments are to be made. In making court
17 reporter appointments to the board, the Governor shall receive, but shall not be bound by,
18 recommendations from interested court reporter groups, including, but not limited to, the West
19 Virginia Court Reporters Association;

20 (e) The initial members shall serve the following terms as designated by the Governor:

21 (1) Three members shall serve for two years;

22 (2) Two members shall serve for three years; and

23 (3) Two members shall serve for four years.

24 (f) Subsequent terms of office shall be for four years. No member shall serve more than
25 two consecutive terms. In the event of a vacancy, the Governor shall fill the vacancy for the
26 unexpired term. Each member shall serve until a successor is duly appointed and qualified;

27 (g) At its first meeting each calendar year, the board shall elect a chair, vice chair and
28 secretary from its membership. No member shall be elected to serve more than two consecutive
29 years in the same office;

30 (h) After the initial appointments have been made, the board shall meet during the month
31 of July 2016, or as soon thereafter as practicable, for the purpose of organizing and transacting
32 business. Thereafter, the board shall meet not less than twice annually and as frequently as
33 deemed necessary by the chair or a majority of the members. The board shall meet at a time and
34 place designated by the board. A quorum shall consist of four members;

35 (i) Board members shall receive reasonable travel expenses as prescribed by law.

§30-41-5. Duties and responsibilities of the board.

1 The board shall have the duty to:

2 (1) Act on matters concerning competency licensure and firm registration and the process
3 of granting, suspending, reinstating and revoking a license or firm registration;

4 (2) Establish and maintain requirements for the ethical behavior of court reporters and
5 reporting firms, including, but not limited to, conflict of interest provisions, inappropriate
6 relationships with a party or a party's attorney, failure to honor a contract or commitment to furnish
7 transcripts and adherence to all requirements of law relating to court reporters, reporting firms, or
8 reporting entities;

9 (3) Establish a procedure for the investigation of complaints against licensed court
10 reporters and reporting firms;

11 (4) Set a fee schedule for granting licenses and renewals of licenses;

12 (5) Maintain a current registry of licensed court reporters, a current registry of registered
13 reporting firms, and a current registry of temporarily licensed court reporters. Registries shall be
14 matters of public record.

15 (6) Maintain a complete record of all proceedings of the board;

16 (7) Adopt continuing education requirements no later than July 1, 2017. The requirements
17 shall be implemented no later than November 30, 2017.

18 (8) Determine the content of and administer examinations to be given to applicants for
19 licensure as licensed court reporters and issue numbered licenses to applicants found qualified;
20 and,

21 (9) Maintain records of its proceedings and a registry of all persons licensed by the board
22 and all reporting firms registered by the board, which shall be a public record and open to
23 inspection.

§30-41-6. Complaints; Remedies.

1 (a) All complaints shall be in writing, signed by the person making the complaint, and
2 addressed to the chair of the board. All complaints shall contain the name and address of the
3 person or reporting firm against whom the complaint is brought and a description of the conduct

4 giving rise to the complaint. Complaints must be submitted within ninety days of the conduct
5 complained about, or within ninety days of the knowledge of the conduct complained about, and
6 a copy shall be provided to the licensed court reporter or reporting firm within five business days
7 of receipt by the board. The copy shall be sent by certified mail or by such other means of delivery
8 to ensure that the licensed court reporter or reporting firm charged in the complaint receives actual
9 notice. After investigation of the charges, the board shall determine if a hearing is warranted,
10 dismiss the complaint, or take other action the board deems appropriate. Any hearing deemed
11 warranted shall be conducted in accordance with the contested case provisions of article five,
12 chapter twenty-nine-a of this code.

13 (b) The board may, when it deems appropriate, seek civil remedies at law or equity to
14 restrain or enjoin any unauthorized practice or violation of this article.

§30-41-7. Board to propose rules.

1 The board shall propose legislative rules necessary to implement, administer and
2 otherwise effectuate the purposes of this article. Upon legislative enactment, the rules shall be
3 published in the standards of professional practice and made available to all licensees.

§30-41-8. Fines for practicing court reporting without a license; for reporting firms who fail
to register; or for a violation of the West Virginia Court Reporter Act of 2016.

1 After December 1, 2017, any person or reporting firm who undertakes or attempts to
2 undertake the practice of court reporting for remuneration without first having procured a license
3 or registration, or who knowingly presents or files false information with the board for the purpose
4 of obtaining a license or registration, or who violates this article shall be subject to a civil fine not
5 exceeding \$500. Each day's violation is a separate offense. A person or reporting firm who is not
6 licensed or registered may not bring or maintain an action to recover fees for court reporting
7 services that the person or reporting firm performed in violation of this article.

§30-41-9. Qualification for licensure.

1 (a) To be licensed as a court reporter, an applicant shall submit proof of passage of the

2 National Court Reporters Association Registered Professional Reporter examination, or the
3 National Verbatim Reporters Association Certified Verbatim Reporter examination, the State of
4 West Virginia Supreme Court of Appeals' Certified Court Reporter examination, or otherwise
5 pursuant to the requirements of section thirteen of this article. Applications for licensure shall be
6 signed and sworn by the applicants and submitted on forms furnished by the board. All applicants
7 who are found qualified to engage in the practice of court reporting pursuant to this article shall
8 be issued a license as a licensed court reporter containing an identifying number. The license
9 shall be valid for two years from the date of issuance. Notwithstanding any other law to the
10 contrary, a licensed court reporter shall not be required to be a notary public to administer oaths
11 to witnesses in the performance of their professional duties as a court reporter.

12 (b) No licensed court reporter may authorize the use of the court reporter's license number
13 on any transcript not produced through the court reporter's personal effort or authorization, or
14 both. Violation of this subsection may be grounds for license suspension or revocation.

§30-41-10. Reciprocal agreements with other entities; licensure conflict with other states.

1 (a) The board may enter into reciprocal agreements with any state, agency or other entity
2 that licenses, certifies or registers court reporters, such as the National Court Reporters
3 Association (NCRA), the National Verbatim Reporters Association (NVRA) or the Supreme Court
4 of Appeals of this state if the board finds that the state, agency or other entity has substantially
5 the same or more stringent requirements as the board. This does not apply to firm registration.

6 (b) The reciprocity agreement shall provide that the board shall license a person who is
7 currently licensed, certified or registered in another state or by another agency or other entity
8 having substantially the same or more stringent requirements as the board if that state, agency
9 or other entity agrees to license, certify or register any licensees licensed pursuant to this article.

10 (c) The board shall establish fees appropriate for processing reciprocal licensing.

11 (d) If there is a conflict with another state's court reporter licensure laws and a verbatim
12 record of testimony is made in West Virginia, the West Virginia court reporter licensure laws shall

13 apply.

§30-41-11. Fees for licensure or registration.

1 The fees for licensure or registration pursuant to this article shall be established by the
 2 board and shall cover a two-year period from the date of issuance or renewal of the license or
 3 registration. All licenses or registrations shall expire June 30, in the year of expiration and all
 4 renewals will be effective July 1: *Provided*, That an initial license or registration not issued on July
 5 1 shall be valid from the date of issuance until June 30 of the second year from June 30, preceding
 6 the date of issuance. The board shall impose a prorated fee for any license or registration that is
 7 for a period less than twenty-four months. All moneys collected pursuant to this article shall be
 8 deposited into the board of court reporting fund. All expenses incurred by the board in
 9 implementing and administering this article shall be paid out of the fund: *Provided, however*, That
 10 the expenses of the board shall not be in excess of the moneys in the fund. The board may charge
 11 and collect the following fees, which shall be deposited into the fund:

- 12 (1) An application fee for a temporary or regular license or registration;
 13 (2) An examination fee, if applicable;
 14 (3) A renewal fee for a temporary or regular license or registration;
 15 (4) A reinstatement fee for any application for reinstatement of a temporary or regular
 16 license or registration that has been revoked or suspended; and
 17 (5) A late charge renewal fee for the renewal of a license or registration after the due date,
 18 which shall be payment of the renewal fee plus a penalty as set by the board for each month that
 19 elapses before payment is tendered: *Provided*, That delinquency of more than six months shall
 20 result in revocation of licensure or registration.

§30-41-12. License and registration renewal; continuing education; notification of change of address.

1 (a) Each person and reporting firm licensed or registered pursuant to this article shall apply
 2 for renewal of the license or registration pursuant to dates established by the board. A renewal

3 fee in an amount determined by the board shall be paid for renewal of the license or registration
4 for a two-year period.

5 (b) The board shall require specific areas of continuing education as a condition precedent
6 for license renewal. In order to maintain licensure, all licensed court reporters shall be required to
7 obtain a minimum of twenty hours of continuing education credits over a two-year period in
8 courses approved by the board or in compliance with the continuing education requirements of
9 approved national or state associations. The two-year period will begin on July 1, 2017, of the
10 year during which the reporter is initially licensed. No credits may be carried over to the following
11 two-year term.

12 (c) The board may provide for the late renewal of a license or registration that has lapsed
13 and may require the payment of a late fee or an examination, or both, prior to issuing a renewal
14 license or registration.

15 (d) Licensees or reporting firms shall notify the board in writing of any change of address
16 within thirty days of the change.

§30-41-13. Applications for grandfathering licensure to practice as court reporter.

1 (a) Any person who is and has been engaged in the practice of court reporting in West
2 Virginia prior to June 30, 2011, and who:

3 (1) Provides to the board an affidavit setting forth past education and that the applicant
4 has, at least, five years of work experience as a court reporter and:

5 (A) An affidavit of a judge for whom the person has worked as an official court reporter; or

6 (B) Affidavits of three licensed attorneys; or

7 (C) Affidavits of two licensed attorneys and:

8 (2) One court reporting firm owner, unrelated by blood or marriage to the person, and who
9 has utilized the services of the court reporter or the affidavit of the court reporting firm owner may
10 state that the applicant has engaged in the practice of court reporting, which attest to the court
11 reporter's proficiency, work experience time period and position held in court reporting; or

12 (3) Provides proof of passage and current certification of the National Court Reporters
 13 Association Registered Professional Reporter examination, the National Verbatim Reporters
 14 Association Certified Verbatim Reporter examination or the West Virginia Supreme Court of
 15 Appeals' Certified Court Reporter examination; or

16 (4) Provides proof of a court reporter license issued by any state: *Provided*, That the state
 17 has the same or more stringent requirements of this article; and upon payment of a fee in an
 18 amount determined by the board, shall be licensed to practice as a court reporter.

19 (b) Any person who provides to the board satisfactory proof of graduation from a court
 20 reporting program, or who has practiced as a court reporter in West Virginia for less than five
 21 years prior to July 1, 2017, and provides satisfactory proof of his or her position and work
 22 experience time period shall, upon application to the board, on the forms approved by the board,
 23 and payment of a fee in an amount determined by the board, be issued a temporary license to
 24 practice as a court reporter. This temporary license shall expire one year after issuance. No more
 25 than two temporary licenses may be issued.

26 (c) The deadline for receiving applications under subsections (a) and (b) of this section
 27 shall be July 1, 2018.

§30-41-14. Inactive status.

1 The board shall establish an inactive status for persons who are not actively engaged in
 2 the practice of court reporting, as that term is defined in section two of this article.

§30-41-15. Disposition and disbursement of moneys collected. budget; contracting for
services.

1 (a) Notwithstanding any other law to the contrary, all moneys collected pursuant to this
 2 article shall be deposited in the State Treasury in a separate fund to be known as the West Virginia
 3 Board of Court Reporting Fund.

4 (b) Disbursements from this fund shall be made solely for the purpose of defraying
 5 expenses incurred in the implementation and enforcement of this article.

6 (c) No such expenses shall be payable from the General Fund of the state; except for the
7 initial expenses of the board prior to the collection of licensure fees sufficient to defray such
8 expenses.

9 (d) Any part of the West Virginia Board of Court Reporting Fund remaining at the end of a
10 fiscal year shall not revert to the General Fund of the state, but shall be carried forward until
11 expended in accordance with this article.

12 (e) The board shall budget annually, in advance, its expenditures for programs, services,
13 allocated overhead or chargebacks and other normal operating expenses as determined by the
14 board. These expenditures so established shall be budgeted at the beginning of the fiscal year
15 by the board, not to exceed the fees to be received by the board, including the excesses
16 accumulated in the fund of the board. The Commissioner of Finance and Administration shall
17 inform the board annually, in advance for budgeting purposes, of the allocation of all overhead or
18 chargebacks to the board.

19 (f) Subject to approval of the State Treasurer and the Commissioner of Finance and
20 Administration, the board may also contract for services to carry out this article.

NOTE: The purpose of this bill is to create the "West Virginia Court Reporter Act of 2016". In so doing, the bill contains the following provisions that: (1) Provide a short title; (2) define certain terms; (3) provide licensure and reporting firm requirements; (4) provide court reporters are not required to be involved in all legal proceedings; (5) provide for the creation of the "West Virginia Board of Court Reporting; (6) designate membership requirements and setting terms of service for board members; (7) establish duties for the board; (8) provide a procedure to handle complaints against court reporters and reporting firms; (9) provide for fines for certain violations and noncompliance with the article; (10) provide for reciprocal agreements with governmental or other entities; (11) provide guidelines for determining when state licensure laws apply over another state's licensure laws in case of conflict; (12) require and provide for fees for licensure or registration; (13) address license and registration renewal; (14) require continuing legal education for licensees; (15) require licensees to provide changes of address; (16) provide guidelines for grandfathering licensure of court reporters; (17) provide for the disposition and disbursement of moneys collected by the board; (18) require the board to annually establish a budget; and (19) authorize the board to contract for services under certain circumstances.

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