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SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1993



ENROLLED

HOUSE BILL No. 2610

(By Delegates West, L. White and Beane)



Passed April 10, 1993

In Effect Ninety Days From Passage

ENROLLED
H. B. 2610

(By DELEGATES VEST, L. WHITE AND BEANE)

[Passed April 10, 1993; in effect ninety days from passage.]

AN ACT to amend chapter fifty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article four, relating to providing for awards of attorney fees and certain expenses against the state in civil actions brought by the state and in proceedings for judicial review of administrative orders; exempting certain state agencies; defining terms; providing exceptions to the awarding of fees and other expenses; and defining persons eligible for the awards.

Be it enacted by the Legislature of West Virginia:

That chapter fifty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article four, to read as follows:

**ARTICLE 4. ATTORNEY FEES AND EXPENSES AWARDED
AGAINST THE STATE.**

§59-4-1. Definitions.

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

3 (a) "Fees and other expenses" include reasonable
4 attorney fees, reasonable expenses for investigation, case
5 development and expert witnesses and court costs, but
6 do not include any portion of an attorney's fees or salary
7 which is paid by any public funds of an agency or

8 instrumentality of a local, state or federal government
9 for the attorney's services in a case.

10 (b) "State" includes the state of West Virginia, each
11 agency, board, commission, department or division
12 thereof, and each official thereof while acting in his or
13 her official capacity: *Provided*, That for the purposes of
14 this article, the state does not include the division of
15 highways or the bureau of employment programs.

§59-4-2. Award of attorney fees.

1 (a) Unless otherwise provided by law, the court having
2 jurisdiction over a civil action brought by the state or
3 an action for review of an administrative proceeding
4 may award fees and other expenses to the prevailing
5 party unless the prevailing party is the state: *Provided*,
6 That the court may not make an award pursuant to this
7 section if it finds one of the following:

8 (1) The position of the state was substantially justified;
9 or

10 (2) Special circumstances exist which would make
11 such an award unjust.

12 (b) A party seeking an award of attorney fees and
13 other expenses pursuant to this section shall, not later
14 than thirty days after a final judgment or dismissal
15 order is entered in the action, submit to the court a
16 verified petition which sets forth evidence of eligibility
17 for an award pursuant to this section and which
18 specifies the amount sought. If the amount sought
19 includes attorney fees or fees for investigation, case
20 development or expert witnesses, the petition shall
21 include an itemized statement of such fees indicating the
22 actual time expended in the prosecution of the case and
23 the rates at which fees and expenses have been
24 computed.

25 (c) When awarding fees and other expenses to the
26 prevailing party pursuant to this section in an action for
27 judicial review of an administrative proceeding, the
28 court shall include in the award the fees and other
29 expenses for services performed during the administra-
30 tive proceeding, if the court finds that the position or

31 claim of the state was substantially without merit.

32 (d) Fees and other expenses awarded pursuant to this
33 section may be ordered in addition to any damages
34 awarded in a judgment.

35 (e) The provisions of this section apply only to legal
36 and administrative proceedings initiated after the
37 effective date of this article.

38 (f) The provisions of this article apply only to parties
39 to legal and administrative proceedings who are
40 individuals in their capacities as doing business as a sole
41 proprietorship and who have obtained a business
42 franchise license to do business in the state and to firms,
43 partnerships or corporations.

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

[Handwritten Signature]
Chairman Senate Committee

Ernest C Moore
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

[Handwritten Signature]
Clerk of the Senate

Donald Z Hopp
Clerk of the House of Delegates

[Handwritten Signature]
President of the Senate

[Handwritten Signature]
Speaker of the House of Delegates

The within *is disapproved* this the *7th* day of *May* 1993.

[Handwritten Signature]
Governor

PRESENTED TO THE

GOVERNOR

Date 4/27/93

Time 2:20 PM