

SB 588 ** VETO **

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1996

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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SENATE BILL NO. 588

(By Senator WOOTEN, ET AL)

PASSED MARCH 9, 1996

In Effect NINETY DAYS FROM Passage

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OFFICE OF WEST VIRGINIA
SECRETARIAT OF SENATE

ENROLLED

Senate Bill No. 588

(BY SENATORS WOOTON, ANDERSON, BOWMAN, BUCKALEW,
DEEM, DITTMAR, GRUBB, OLIVERIO, ROSS, SCHOONOVER,
WAGNER, WHITE, WIEDEBUSCH AND YODER)

[Passed March 9, 1996; in effect ninety days from passage.]

AN ACT to repeal articles one and two, chapter fifty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section twenty-seven, article seven, chapter twenty-one-a of said code; to amend and reenact section four, article five, chapter twenty-nine-a of said code; to amend and reenact section seventeen, article one, chapter fifty-one of said code; and to amend and reenact sections one, two, three, four, five, six, seven, eight, nine and twenty-two, article five, chapter fifty-eight of said code, all relating generally to procedural and administrative matters affecting the exercise of judicial authority; eliminating statutory provisions which have been superseded by court rules; eliminating a forum for

review of contested administrative cases; revising the duties of the director of the administrative office of the supreme court of appeals; and reorganizing statutory provisions to conform to changes effected by the legislation.

Be it enacted by the Legislature of West Virginia:

That articles one and two, chapter fifty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section twenty-seven, article seven, chapter twenty-one-a of said code be amended and reenacted; that section four, article five, chapter twenty-nine-a of said code be amended and reenacted; that section seventeen, article one, chapter fifty-one of said code be amended and reenacted; and that sections one, two, three, four, five, six, seven, eight, nine and twenty-two, article five, chapter fifty-eight of said code be amended and reenacted, all to read as follows:

CHAPTER 21A. UNEMPLOYMENT COMPENSATION.

ARTICLE 7. CLAIM PROCEDURE.

§21A-7-27. Appeal to supreme court of appeals.

1 The judgment of the circuit court shall be final unless
2 reversed, vacated or modified on appeal to the supreme
3 court of appeals in accordance with the provisions of
4 section one, article six, chapter twenty-nine-a of this
5 code.

CHAPTER 29A. STATE ADMINISTRATIVE PROCEDURES ACT.

ARTICLE 5. CONTESTED CASES.

§29A-5-4. Judicial review of contested cases.

1 (a) Any party adversely affected by a final order or
2 decision in a contested case is entitled to judicial review
3 thereof under this chapter, but nothing in this chapter
4 shall be deemed to prevent other means of review,
5 redress or relief provided by law.

6 (b) Proceedings for review shall be instituted by filing

7 a petition in the circuit court of the county in which the
8 petitioner or any one of the petitioners resides or does
9 business within thirty days after the date upon which
10 such party received notice of the final order or decision
11 of the agency. A copy of the petition shall be served
12 upon the agency and all other parties of record by
13 registered or certified mail. The petition shall state
14 whether the appeal is taken on questions of law or
15 questions of fact, or both. No appeal bond shall be
16 required to effect any such appeal.

17 (c) The filing of the petition shall not stay enforcement
18 of the agency order or decision or act as a supersedeas
19 thereto, but the agency may stay such enforcement, and
20 the appellant, at any time after the filing of his petition,
21 may apply to such circuit court for a stay of or superse-
22 deas to such final order or decision. Pending the appeal,
23 the court may grant a stay or supersedeas upon such
24 terms as it deems proper.

25 (d) Within fifteen days after receipt of a copy of the
26 petition by the agency, or within such further time as the
27 court may allow, the agency shall transmit to such
28 circuit court the original or a certified copy of the entire
29 record of the proceeding under review, including a
30 transcript of all testimony and all papers, motions,
31 documents, evidence and records as were before the
32 agency, all agency staff memoranda submitted in con-
33 nection with the case, and a statement of matters offi-
34 cially noted; but, by stipulation of all parties to the
35 review proceeding, the record may be shortened. The
36 expense of preparing such record shall be taxed as a part
37 of the costs of the appeal. The appellant shall provide
38 security for costs satisfactory to the court. Any party
39 unreasonably refusing to stipulate to limit the record
40 may be taxed by the court for the additional costs
41 involved. Upon demand by any party to the appeal, the
42 agency shall furnish, at the cost of the party requesting
43 same, a copy of such record. In the event the complete
44 record is not filed with the court within the time pro-
45 vided for in this section, the appellant may apply to the

46 court to have the case docketed, and the court shall order
47 such record filed.

48 (e) Appeals taken on questions of law, fact or both,
49 shall be heard upon assignments of error filed in the
50 cause or set out in the briefs of the appellant. Errors not
51 argued by brief may be disregarded, but the court may
52 consider and decide errors which are not assigned or
53 argued. The court or judge shall fix a date and time for
54 the hearing on the petition, but such hearing, unless by
55 agreement of the parties, shall not be held sooner than
56 ten days after the filing of the petition, and notice of
57 such date and time shall be forthwith given to the
58 agency.

59 (f) The review shall be conducted by the court without
60 a jury and shall be upon the record made before the
61 agency, except that in cases of alleged irregularities in
62 procedure before the agency, not shown in the record,
63 testimony thereon may be taken before the court. The
64 court may hear oral arguments and require written
65 briefs.

66 (g) The court may affirm the order or decision of the
67 agency or remand the case for further proceedings. It
68 shall reverse, vacate or modify the order or decision of
69 the agency if the substantial rights of the petitioner or
70 petitioners have been prejudiced because of the adminis-
71 trative findings, inferences, conclusions, decision or
72 order are:

73 (1) In violation of constitutional or statutory provi-
74 sions; or

75 (2) In excess of the statutory authority or jurisdiction
76 of the agency; or

77 (3) Made upon unlawful procedures; or

78 (4) Affected by other error of law; or

79 (5) Clearly wrong in view of the reliable, probative and
80 substantial evidence on the whole record; or

81 (6) Arbitrary or capricious or characterized by abuse of
82 discretion or clearly unwarranted exercise of discretion.

83 (h) The judgment of the circuit court shall be final
84 unless reversed, vacated or modified on appeal to the
85 supreme court of appeals of this state in accordance with
86 the provisions of section one, article six of this chapter.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 1. SUPREME COURT OF APPEALS.

§51-1-17. Administrative office of supreme court of appeals — Duties of director.

1 The director shall, when authorized by the supreme
2 court of appeals, be the administrative officer of said
3 court and shall have charge, under the supervision and
4 direction of the supreme court of appeals, of:

5 (a) All administrative matters relating to the offices of
6 the clerks of the circuit and intermediary courts and of
7 the offices of justice of the peace, and all other clerical
8 and administrative personnel of said courts; but nothing
9 contained in this act shall be construed as affecting the
10 authority of the courts to appoint their administrative or
11 clerical personnel;

12 (b) Examining the state of the dockets of the various
13 courts and securing information as to their needs for
14 assistance, if any, and the preparation of statistical data
15 and reports of the business transacted by the courts;

16 (c) The preparation of a proper budget to secure the
17 appropriation of moneys for the maintenance, support
18 and operation of the courts;

19 (d) The purchase, exchange, transfer and distribution
20 of equipment and supplies, as may be needful or desir-
21 able;

22 (e) Such other matters as may be assigned to him by
23 the supreme court of appeals. The clerks of the circuit
24 courts, intermediate courts and courts of the justices of
25 the peace shall comply with any and all requests made

26 by the director or his assistants for information and
27 statistical data bearing on the state of the dockets of
28 such courts, or such other information as may reflect the
29 business transacted by them;

30 (f) *Annual report of activities and estimates of expendi-*
31 *tures.* — The director, when required to do so by the
32 supreme court of appeals, shall submit annually to the
33 court a report of the activities of the administrative
34 office and of the state of business of the courts, together
35 with the statistical data compiled by him, with his
36 recommendations.

CHAPTER 58. APPEAL AND ERROR.

ARTICLE 5. APPELLATE RELIEF IN SUPREME COURT OF APPEALS.

§58-5-1. When appeal lies.

1 A party to a civil action may appeal to the supreme
2 court of appeals from a final judgment of any circuit
3 court or from an order of any circuit court constituting
4 a final judgment as to one or more but fewer than all
5 claims or parties upon an express determination by the
6 circuit court that there is no just reason for delay and
7 upon an express direction for the entry of judgment as to
8 such claims or parties. The defendant in a criminal
9 action may appeal to the supreme court of appeals from
10 a final judgment of any circuit court in which there has
11 been a conviction or which affirms a conviction obtained
12 in an inferior court.

§58-5-2. Certification to supreme court of appeals.

1 Any question of law arising upon the sufficiency of a
2 summons or return of service, upon a challenge of the
3 sufficiency of a pleading or the venue of the circuit
4 court, upon the sufficiency of a motion for summary
5 judgment where such motion is denied, or a motion for
6 judgment on the pleadings, upon the jurisdiction of the
7 circuit court of a person or subject matter, or upon
8 failure to join an indispensable party, may, in the
9 discretion of the circuit court in which it arises, be

10 certified by it to the supreme court of appeals for its
11 decision, and further proceedings in the case stayed until
12 such question shall have been decided and the decision
13 thereof certified back.

14 The procedure for processing questions certified
15 pursuant to this section shall be governed by rules of
16 appellate procedure promulgated by the supreme court
17 of appeals.

§58-5-3. Presentation of petition.

1 A party desiring to appeal may file a petition in
2 accordance with the provisions of rules of appellate
3 procedure promulgated by the supreme court of appeals.

§58-5-4. Time for appeal.

1 No petition shall be presented for an appeal from any
2 judgment rendered or made more than four months
3 before such petition is filed with the clerk of the court
4 where the judgment being appealed was entered:
5 *Provided*, That the judge of the circuit court or the
6 supreme court of appeals may, prior to the expiration of
7 such period of four months, by order entered of record
8 extend and reextend such period for such additional
9 period or periods, not to exceed a total extension of two
10 months, for good cause shown.

§58-5-5. Stay of proceedings; supersedeas bond.

1 At the instance of any person who desires to present
2 such petition, the court in which the judgment was
3 entered may, upon notice in writing to the opposite
4 party, make an order suspending the execution of such
5 judgment for a reasonable time to be specified in such
6 order, when such person gives bond before the clerk of
7 such court, in such penalty as the court or judge may
8 require, with a condition reciting such judgment and the
9 intention of such person to present such petition, and
10 providing for the payment of all such damages as any
11 person may sustain by reason of such suspension in case
12 supersedeas to such judgment should not be allowed and

13 that the bond will be effective during the time so speci-
14 fied.

§58-5-6. Filing of petition.

1 Petitions for appeal shall be filed and processed in
2 accordance with the provisions of rules of appellate
3 procedure promulgated by the supreme court of appeals.

§58-5-7. Contents of transcript of record.

1 The contents of the transcript of record shall be
2 governed in accordance with the provisions of rules of
3 appellate procedure promulgated by the supreme court
4 of appeals.

§58-5-8. Appeal bond generally.

1 When required by the court, an appeal shall not take
2 effect until bond is given by the appellants or petition-
3 ers, or one of them, or some other person, in a penalty to
4 be fixed by the court or judge by or in which the appeal
5 is allowed or entered with condition: If a supersedeas be
6 awarded, to abide by and perform the judgment, and to
7 pay to the opposite party, and to any person injured all
8 such costs and damages as they, or either of them, may
9 incur or sustain by reason of said appeal, in case such
10 judgment, or such part, be affirmed, or the appeal be
11 dismissed, and also, to pay all damages, costs and fees,
12 which may be awarded against or incurred by the
13 appellant or petitioners; and if it be an appeal from a
14 judgment dissolving an injunction, or dismissing a bill of
15 injunction, with a further condition, to indemnify and
16 save harmless the surety in the injunction bond against
17 loss or damage in consequence of his suretyship; and
18 with condition when no supersedeas is awarded to pay
19 such specific damages, and such costs and fees as may be
20 awarded or incurred: *Provided*, That whenever an
21 appeal be awarded in any action or suit wherein a
22 judgment for the payment of money has been entered
23 against an insured in an action which is defended by an
24 insurance corporation, or other insurer, on behalf of the
25 insured under a policy of insurance, the limit of liability

26 of which is less than the amount of said judgment,
27 execution on the judgment to the extent of the policy
28 coverage shall be stayed until final determination of
29 such appeal, and no execution shall be issued, or action
30 brought, maintained or continued against such insured,
31 insurance corporation, or other insurer, for the amount
32 of such judgment so stayed, by either the injured party,
33 the insured, or the legal representative, heir or assigns of
34 any of them, during the pendency of such proceeding,
35 provided such insurance corporation, or other insurer,
36 shall:

37 (1) File with the clerk of the court in which the judg-
38 ment 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 or
42 some other person for him a bond in a penalty to be fixed
43 by the court or judge by or in which the appeal is al-
44 lowed or entered, not to exceed the amount of such
45 insurance coverage set out in the sworn statement above
46 required, with condition to pay the amount of such
47 coverage upon said judgment if the judgment or such
48 part be affirmed or the appeal be dismissed, plus interest
49 on said sum and cost;

50 (3) Serve a copy of such sworn statement and bond
51 upon the judgment creditor or his attorney;

52 (4) Deliver or mail to the insured at the latest address
53 of the insured appealing upon the records of such
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
58 insured or someone for him, conditioned upon the
59 payment of the balance of the judgment and interest not
60 stayed by the insured as aforesaid if the judgment be
61 affirmed or the appeal be dismissed, shall stay execution
62 on the balance of said judgment not covered by such
63 insurance: *Provided, however*, That the filing of such

64 statement and bond hereunder by an insurance corpora-
65 tion or other insurer shall not thereby make such insur-
66 ance corporation or other insurer a party to such action,
67 either in the trial court or in the appellate court.

§58-5-9. Appeal by state of judgment quashing indictment.

1 Whenever in any criminal case an indictment is held
2 bad or insufficient by the judgment of a circuit court, the
3 state, on the application of the attorney general or the
4 prosecuting attorney, may appeal such judgment to the
5 supreme court of appeals. No such appeal is allowed
6 unless the state presents its petition therefor to the
7 supreme court of appeals within thirty days after the
8 entry of such judgment. No such judgment finally
9 discharges, or has the effect of finally discharging, the
10 accused from further proceedings on the indictment
11 unless the state fails, within such period of thirty days,
12 to file a petition for appeal with the clerk of the court in
13 which the judgment is entered, but after the entry of
14 such judgment or order, the accused may not be kept in
15 custody or required to give bail pending the hearing and
16 determination of the case by the supreme court of
17 appeals.

18 Except as herein otherwise provided, all the provisions
19 of the other sections of this article shall, so far as appro-
20 priate, be applicable to a petition for an appeal under
21 this section, and to all subsequent proceedings thereon
22 in the supreme court of appeals in case such appeal is
23 granted.

§58-5-22. Recusal and disqualification of justices.

1 (a) The Legislature's purpose in enacting the provisions
2 of this section is to provide, consistent with an under-
3 standing and respect for the separation of powers
4 doctrine and the provisions of article VIII of the Consti-
5 tution of West Virginia, a procedure for seeking disquali-
6 fication of justices of the supreme court of appeals in the
7 rare instances, consistent with the code of judicial
8 conduct, where a person's right to an impartial tribunal

9 might be jeopardized or appear to be jeopardized by a
10 justice's involvement in a particular appellate matter.

11 (b) Whenever any attorney on behalf of a client or a
12 litigant acting on his or her own behalf with a matter
13 pending before the supreme court of appeals has reason-
14 able cause to believe that a justice of the supreme court
15 of appeals:

16 (1) Has a personal bias or prejudice concerning a party
17 or a party's lawyer, or personal knowledge of disputed
18 evidentiary facts concerning the proceeding;

19 (2) Has served as a lawyer in the matter in controversy,
20 or a lawyer with whom the justice previously practiced
21 law served during such association as a lawyer concern-
22 ing the matter, or the justice has been a material witness
23 concerning it;

24 (3) Knows that he or she, individually or as fiduciary,
25 or the justice's spouse, parent or child wherever residing,
26 or any other member of the justice's family residing in
27 the justice's household, has an economic interest in the
28 subject matter in controversy or in a party to the pro-
29 ceeding or has any other more than de minimis interest
30 that could be substantially affected by the proceeding;

31 (4) Has been made aware of facts or circumstances
32 involving the case which are not public record or con-
33 tained within the pleadings;

34 (5) Has publicly expressed his or her personal opinion
35 regarding a matter or matters peculiar to the matter in
36 which disqualification is sought or that the justice; or

37 (6) The justice's spouse, or a person within the third
38 degree of relationship to either of them, or the spouse of
39 such a person:

40 (i) Is a party to the proceeding, or an officer, director
41 or trustee, of a party;

42 (ii) Is acting as a lawyer in the proceeding;

43 (iii) Is known by the justice to have a more than

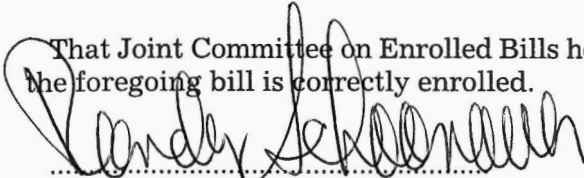
44 deminimis interest that could be substantially affected
45 by the proceeding; or

46 (iv) Is to the justice's knowledge likely to be a material
47 witness in the proceeding.

48 The attorney or the person acting on his or her own
49 behalf may file, under seal, with the justice whose
50 disqualification is sought and the clerk of the supreme
51 court of appeals, a written motion, along with any
52 supporting documentation, seeking the justice's disquali-
53 fication and setting forth the grounds for disqualifica-
54 tion.

55 (c) When a motion to disqualify a justice is filed and
56 the justice whose disqualification is sought deems the
57 motion to disqualify to be without merit the matter shall
58 be referred to the other justices for a decision on the
59 motion. A retired justice or present or retired circuit
60 judge may be named where necessary to reach a majority
61 decision on a motion to disqualify.

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



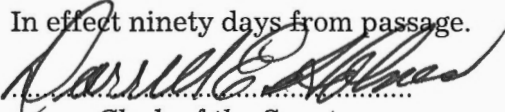
Chairman Senate Committee



Chairman House Committee

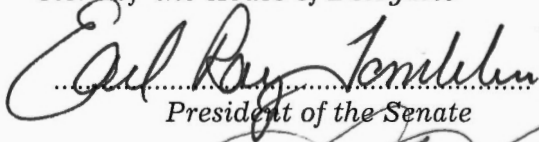
Originated in the Senate.

In effect ninety days from passage.

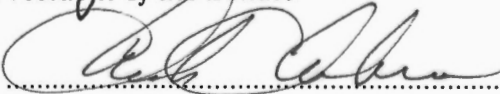


Clerk of the Senate

Bryan D. Perry
Clerk of the House of Delegates

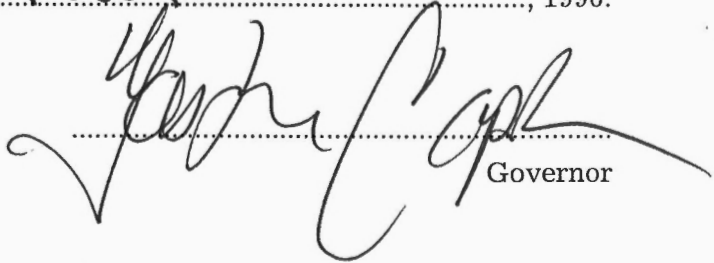


President of the Senate



Speaker House of Delegates

The within *is disapproved* this the *14th* day of *March*, 1996.



Governor

PRESENTED TO THE
GOVERNOR

Date 3/3/96

Time 4:56pm