

SB 781

FILED

2008 MAR 27 AM 11:04

WEST VIRGINIA LEGISLATURE
SEVENTY-EIGHTH LEGISLATURE OF STATE
REGULAR SESSION, 2008

COMMITTEE SUBSTITUTE
FOR

ENROLLED
Senate Bill No. 781

(SENATORS HELMICK, SHARPE, PLYMALE, CHAFIN, PREZIOSO,
EDGELL, LOVE, BAILEY, BOWMAN, McCABE, UNGER,
SYPOLT, FANNING, FACEMYER, BOLEY, SPROUSE
AND GUILLS, *original sponsors*)

[Passed March 7, 2008; in effect ninety days from passage.]

FILED

2008 MAR 27 AM 11:04

OFFICE OF THE
SECRETARY OF STATE

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 781

(SENATORS HELMICK, SHARPE, PLYMALE, CHAFIN, PREZIOSO,
EDGELL, LOVE, BAILEY, BOWMAN, MCCABE, UNGER,
SYPOLT, FANNING, FACEMYER, BOLEY, SPROUSE
AND GUILLS, *original sponsors*)

[Passed March 7, 2008; in effect ninety days from passage.]

AN ACT to amend and reenact §38-5A-4 and §38-5A-5 of the Code of West Virginia, 1931, as amended; to amend and reenact §38-5B-4 of said code; and to amend and reenact §59-1-11 of said code, all relating to service of suggestee execution and notice; and clarifying certain fees assessed by circuit clerks.

Be it enacted by the Legislature of West Virginia:

That §38-5A-4 and §38-5A-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §38-5B-4 of said code be amended and reenacted; and that §59-1-11 of said

code be amended and reenacted, all to read as follows:

CHAPTER 38. LIENS

ARTICLE 5A. SUGGESTIONS OF SALARY AND WAGES OF PERSONS ENGAGED IN PRIVATE EMPLOYMENT.

§38-5A-4. Notice to judgment debtor; time for service on suggestee; fee.

1 A certified copy of an execution issued under this
2 article against salary or wages shall be served upon the
3 judgment debtor. Such service shall be made by the
4 court or the clerk of the court who issued the execution
5 by mailing the copy to the judgment debtor or his or her
6 agent authorized to accept service of process by
7 certified mail, return receipt requested. The day and
8 hour of such mailing shall be clearly noted on the face
9 of the original execution and the clerk of the court or
10 the officer to whom it is delivered for collection shall
11 not make service upon the suggestee until the
12 expiration of five days from that time.

§38-5A-5. Service of suggestee execution upon suggestee; payments in satisfaction of execution; action for failure or refusal to pay; payments to be made every ninety days.

1 (a) Service of a suggestee execution against salary or
2 wages may be made by the clerk of the circuit court or
3 the magistrate court clerk, as the case may be, by
4 sending a copy of the suggestee execution to the
5 suggestee by certified mail, return receipt requested,
6 with delivery restricted to the addressee as provided by
7 subdivision (1), section (d) of rule four of the Rules of
8 Civil Procedure for trial courts of record. If the
9 registered mail is unclaimed or otherwise is not
10 accepted or is refused by the suggestee, then service of
11 the suggestee execution shall be made in the same
12 manner as a summons commencing an action is served
13 in accordance with the Rules of Civil Procedure for trial
14 courts of record: *Provided*, That if the suggestee is
15 located in a county other than the county where the

16 suggestee execution issues, the clerk may mail the
17 suggestee execution by first class mail to the sheriff of
18 the other county for such service. If the service is made
19 on a corporation, limited liability company or other
20 person or entity through the Secretary of State, it shall
21 be submitted along with the fee required by section
22 two, article one, chapter fifty-nine of this code.

23 (b) If the suggestee served with the execution is
24 indebted or will in the future become indebted to the
25 judgment debtor for salary or wages, then during the
26 time the execution remains a lien on any indebtedness
27 for salary and wages the suggestee is required to pay
28 over to the officer serving the same or to the judgment
29 creditor the percentage of the indebtedness required by
30 section three of this article until the execution is wholly
31 satisfied. The suggestee shall deduct the amounts paid
32 from the amounts payable to the judgment debtor as
33 salary or wages and the deduction of these amounts is
34 a bar to any further action by the judgment creditor
35 against the wages or salary of the judgment debtor.

36 (c) Once every ninety days during the life of such
37 execution and any renewal execution the suggestee
38 upon whom the execution or any renewal execution is
39 served shall pay over to the officer who served the same
40 or to the judgment creditor the full amount of money
41 held or retained pursuant to such execution or renewal
42 execution during the preceding ninety days.

43 If the suggestee upon whom the execution is served
44 fails or refuses to pay over to the officer serving the
45 execution or to the judgment creditor the required
46 percentage of the indebtedness, as aforesaid, he or she
47 shall be liable to an action therefor by the judgment
48 creditor named in the execution and the amount
49 recovered in the action shall be applied in satisfaction
50 of the execution.

**ARTICLE 5B. SUGGESTION OF THE STATE AND POLITICAL
SUBDIVISIONS; GARNISHMENT AND SUGGESTION
OF PUBLIC OFFICERS.**

§38-5B-4. Notice to judgment debtor of execution against salary or wages; time for service on officer of suggestee.

1 A certified copy of an execution issued under this
2 article against salary or wages shall be served by the
3 clerk of the court who issued the execution upon the
4 judgment debtor or his or her agent authorized to
5 accept service of process, by certified mail, return
6 receipt requested. The day and hour of mailing shall be
7 clearly noted on the face of the original execution and
8 the officer to whom it is delivered for collection shall
9 not make service upon the proper officer until the
10 expiration of five days from that time.

**CHAPTER 59. FEES, ALLOWANCES AND COSTS;
NEWSPAPERS; LEGAL ADVERTISEMENTS.**

ARTICLE 1. FEES AND ALLOWANCES.

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

1 (a) The clerk of a circuit court shall charge and collect
2 for services rendered by the clerk the following fees
3 which shall be paid in advance by the parties for whom
4 services are to be rendered:

5 (1) For instituting any civil action under the Rules of
6 Civil Procedure, any statutory summary proceeding,
7 any extraordinary remedy, the docketing of civil
8 appeals or any other action, cause, suit or proceeding,
9 one hundred forty-five dollars, of which thirty dollars
10 of that amount shall be deposited in the Courthouse
11 Facilities Improvement Fund created by section six,
12 article twenty-six, chapter twenty-nine of this code and
13 ten dollars shall be deposited in the special revenue
14 account created in section six hundred three, article
15 twenty-six, chapter forty-eight of this code to provide
16 legal services for domestic violence victims;

17 (2) For instituting an action for medical professional
18 liability, two hundred sixty dollars, of which ten dollars

19 of that amount shall be deposited in the Courthouse
20 Facilities Improvement Fund created by section six,
21 article twenty-six, chapter twenty-nine of this code;

22 (3) Beginning on and after the first day of July, one
23 thousand nine hundred ninety-nine, for instituting an
24 action for divorce, separate maintenance or annulment,
25 one hundred thirty-five dollars;

26 (4) For petitioning for the modification of an order
27 involving child custody, child visitation, child support
28 or spousal support, eighty-five dollars; and

29 (5) For petitioning for an expedited modification of a
30 child support order, thirty-five dollars.

31 (b) In addition to the foregoing fees, the following fees
32 shall likewise be charged and collected:

33 (1) For preparing an abstract of judgment, five
34 dollars;

35 (2) For any transcript, copy or paper made by the
36 clerk for use in any other court or otherwise to go out of
37 the office, for each page, fifty cents;

38 (3) For issuing a suggestion and serving notice to the
39 debtor by certified mail, twenty-five dollars;

40 (4) For issuing an execution, twenty-five dollars;

41 (5) For issuing or renewing a suggestee execution and
42 serving notice to the debtor by certified mail, twenty-
43 five dollars;

44 (6) For vacation or modification of a suggestee
45 execution, one dollar;

46 (7) For docketing and issuing an execution on a
47 transcript of judgment from magistrate court, three
48 dollars;

49 (8) For arranging the papers in a certified question,
50 writ of error, appeal or removal to any other court, ten
51 dollars, of which five dollars of that amount shall be
52 deposited in the Courthouse Facilities Improvement
53 Fund created by section six, article twenty-six, chapter
54 twenty-nine of this code;

55 (9) For postage and express and for sending or
56 receiving decrees, orders or records, by mail or express,
57 three times the amount of the postage or express
58 charges;

59 (10) For each subpoena, on the part of either plaintiff
60 or defendant, to be paid by the party requesting the
61 same, fifty cents;

62 (11) For additional service (plaintiff or appellant)
63 where any case remains on the docket longer than three
64 years, for each additional year or part year, twenty
65 dollars; and

66 (12) For administering funds deposited into a
67 federally insured interest-bearing account or interest-
68 bearing instrument pursuant to a court order, fifty
69 dollars, to be collected from the party making the
70 deposit. A fee collected pursuant to this subdivision
71 shall be paid into the general county fund.

72 (c) The clerk shall tax the following fees for services
73 in any criminal case against any defendant convicted in
74 such court:

75 (1) In the case of any misdemeanor, eighty-five
76 dollars; and

77 (2) In the case of any felony, one hundred five dollars,
78 of which ten dollars of that amount shall be deposited
79 in the Courthouse Facilities Improvement Fund created
80 by section six, article twenty-six, chapter twenty-nine
81 of this code.

82 (d) The clerk of a circuit court shall charge and collect

83 a fee of twenty-five dollars per bond for services
84 rendered by the clerk for processing of criminal bonds
85 and the fee shall be paid at the time of issuance by the
86 person or entity set forth below:

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

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

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

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

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

100 In instances in which the total of the bond is posted
101 by more than one bond instrument, the above fee shall
102 be collected at the time of issuance of each bond
103 instrument processed by the clerk and all fees collected
104 pursuant to this subsection shall be deposited in the
105 Courthouse Facilities Improvement Fund created by
106 section six, article twenty-six, chapter twenty-nine of
107 this code. Nothing in this subsection may be construed
108 as authorizing the clerk to collect the above fee from
109 any person for the processing of a personal
110 recognizance bond.

111 (e) The clerk of a circuit court shall charge and collect
112 a fee of ten dollars for services rendered by the clerk for
113 processing of bailpiece and the fee shall be paid by the
114 surety at the time of issuance. All fees collected
115 pursuant to this subsection shall be deposited in the
116 Courthouse Facilities Improvement Fund created by
117 section six, article twenty-six, chapter twenty-nine of

118 this code.

119 (f) No clerk shall be required to handle or accept for
120 disbursement any fees, cost or amounts of any other
121 officer or party not payable into the county treasury
122 except on written order of the court or in compliance
123 with the provisions of law governing such fees, costs or
124 accounts.

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


.....
Chairman Senate Committee

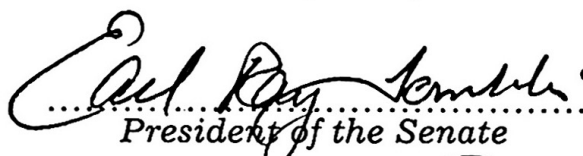

.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.


.....
Clerk of the Senate


.....
Clerk of the House of Delegates


.....
President of the Senate


.....
Speaker House of Delegates

The within is approved this
the 2th Day of March, 2008.


.....
Governor

PRESENTED TO THE
GOVERNOR

MAR 18 2008

Time 3:15pm