

COMMITTEE SUBSTITUTE

FOR

H. B. 2938

(BY DELEGATE(S) ASHLEY, ELLEM, MILEY, WESTFALL, LAWRENCE,
McCUSKEY, POORE, HOUSEHOLDER, HUNT, MANCHIN AND LANE)

(Originating in the House Committee on the Judiciary)

[March 28, 2013]

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 25. COURT REPORTER SERVICES.

§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 the
2 use and fees charged for court reporter services by establishing
3 standards for private court reporters and entities that provide
4 court reporting services. It is declared the policy of the state of
5 West Virginia that fair and impartial selection and use of court
6 reporting services are an integral part of the equitable adminis-
7 tration 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
25 limited to, the following:

26 (1) A court proceeding;

27 (2) A deposition; and

28 (3) An arbitration hearing.

29 (d) Court reporters, businesses, entities or firms providing or
30 arranging for court reporting services are subject to the provi-
31 sions of this section even if the businesses, entities or firms are
32 not subject to registration or other regulatory oversight in the
33 state.

§47-25-2. Prohibited conduct.

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

2 (1) An individual court reporter or court reporter associated
3 with a business, entity or firm with a contractual relationship
4 with a party or an attorney, representative, agent or insurer of a
5 party;

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

8 (3) A party to the action;

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

10 (5) Someone with a financial interest in the action or its
11 outcome; or

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

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

17 (1) Enter into an oral or written contractual agreement for
18 more than one case, action, or proceeding with an attorney, party
19 to an action, insurance company, third-party administrator or
20 other person or entity that has a financial interest in the case,
21 action, or proceeding.

22 (2) Give an economic or other advantage to a party, a party's
23 attorney, representative, agent, insurer or employee without
24 offering it to all parties. This includes failing to offer comparable
25 services, including price or credit terms, to all parties or other-
26 wise requiring the court reporter or entity providing court
27 reporting services to provide financial terms or other services
28 that are not offered at the same time and on the same terms to all

29 other parties in the legal proceeding. Different credit terms can
30 be offered based on payment experience and credit worthiness.

31 (3) Base the compensation for the court reporting services on
32 the outcome of the proceeding or otherwise giving the court
33 reporter or court reporting business, entity or firm a financial
34 interest in the action. Court reporters or businesses, entities or
35 firms providing or arranging for court reporting services may not
36 offer or provide court reporting services where payment for
37 those services will be made contingent on the outcome of the
38 action.

39 (4) Enter into an agreement for court reporting services that
40 restricts the noticing attorney from using the court reporter or
41 entity providing court reporting services of the attorney's
42 choosing including a court reporter or business, entity or firm
43 providing or arranging for court reporter services on any list of
44 preferred providers of court reporting services that is maintained
45 by a person, business, entity or firm that has entered into an oral
46 or written contractual agreement for more than one case, action
47 or proceeding with an attorney, party to an action, insurance
48 company, third-party administrator or other person or entity that
49 has a financial interest in the case, action, or proceeding.

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

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

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

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

11 (b) The provisions of this section may be waived by agree-
12 ment of all parties.

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

1 (a) A reporter shall comply with the following transcript
2 format standards when producing a transcript in a legal proceed-
3 ing. If a reporter is employed by a court, either as an official or
4 pro tem official reporter, the transcript format set forth by state
5 or local rules of court, or adopted by that jurisdiction, if any, will
6 supersede. If there are no transcript format guidelines established
7 within a jurisdiction, the following minimum transcript format
8 standards shall apply:

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

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

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

16 (A) when a deposition is videotaped;

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

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

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

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

23 (6) Text is to begin no more than 10 spaces from the left
24 margin. “Q” and “A” symbols shall appear within the first 8
25 spaces from the left-hand margin;

26 (7) Carry-over “Q” and “A” lines to begin at the left-hand
27 margin;

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

31 (9) Quoted material to begin no more than 14 spaces from
32 the left-hand margin with carry-over lines to begin no more than
33 10 spaces from the left-hand margin;

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

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

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

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

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

6 (b) A court reporter, business, entity or firm that provides or
7 arranges for court reporting services which violate the prohibi-
8 tions of sections one, two or three of this article is subject to civil
9 penalty in a court of competent jurisdiction as follows:

10 (1) Any party to a civil action, a court reporter, attorney or
11 other person who has been subject to a violation of the provi-
12 sions of sections one, two or three of this article, may recover a
13 civil penalty for any willful violation of this section and the
14 court shall assess a civil penalty of no less that \$2,500.00 for
15 each violation, and if the court finds that the defendant has

16 engaged in a course of repeated and willful violations of this
17 section, it may assess a civil penalty of up to \$5,000.00 for each
18 violation of this section; and

19 (2) Any person who shall be injured in his or her business or
20 property by reason of a violation of the provisions of sections
21 one, two or three of this article may bring an action therefor and
22 shall recover threefold the damages sustained by him or her,
23 together with reasonable attorneys' fees, filing fees and reason-
24 able costs of the action.

