

1 ENROLLED

2 COMMITTEE SUBSTITUTE

3 FOR

4 **H. B. 4294**

5 (By Delegates Ashley, Westfall, Manchin, Hunt, Skinner,
6 Ellem, McCuskey, Shott, Morgan, Craig and Lane)

7
8 [Passed March 8, 2014; in effect ninety days from passage.]

9
10 AN ACT to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto four new sections, designated §47-27-1,
12 §47-27-2, §47-27-3 and §47-27-4, all relating to the
13 establishment of standards for court reporters and entities
14 providing court reporting services; prohibiting certain
15 conduct by court reporters and persons utilizing or arranging
16 for court reporting services; exempting certain court
17 reporters and court reporting services; authorizing disclosure
18 and certification of certain information; and creating civil
19 penalties for violations.

20 *Be it enacted by the Legislature of West Virginia:*

21 That the Code of West Virginia, 1931, as amended, be amended
22 by adding thereto a new article, designated §47-27-1, §47-27-2,
23 §47-27-3 and §47-27-4, all to read as follows:

24 **ARTICLE 27. COURT REPORTER SERVICES.**

25 **§47-27-1. Fair trade standards for use of court reporter services.**

1 (a) The purpose of this article is to ensure the integrity of
2 the use of court reporter services by establishing standards for
3 private court reporters and entities providing or arranging for
4 court reporting services. It is declared the policy of the State of
5 West Virginia that fair, ethical and impartial selection and use of
6 court reporting services are integral to the equitable
7 administration of justice.

8 (b) For purposes of this article, "court reporter" means
9 private court reporters providing court reporting services, as well
10 as businesses, entities or firms that provide or arrange for court
11 reporting services, and "original transcript" means the original
12 transcription requested by a party along with a certified copy of
13 same for purposes of filing with a court.

14 (c) The provisions described in this article apply to court
15 reporting services performed in this state that are:

16 (1) Provided by a court reporter, wherever based, in
17 connection with a legal proceeding commenced or maintained in this
18 state; and

19 (2) Provided by a court reporter based in this state, whether
20 the parties appear in person or by remote means.

21 (d) The provisions of this article do not apply to the conduct
22 of official court reporters or their substitutes, appointed by
23 judges pursuant to section one, article seven, chapter fifty-one of
24 this code, when acting in their official capacities, reporters of
25 government proceedings not relating to a legal proceeding, local or

1 federal courts, providing real-time services for hard-of-hearing
2 litigants, the provision of pro bono services to litigants who
3 would qualify for the same through West Virginia Legal Aid or other
4 similar organizations, workers' compensation proceedings or legal
5 proceedings recorded with sound-and-visual devices. A legal
6 proceeding includes, but is not limited to, the following:

7 (1) A court proceeding;

8 (2) A deposition;

9 (3) An arbitration hearing; and

10 (4) An examination under oath.

11 (e) Court reporters, businesses, entities, insurers or firms
12 providing or arranging for court reporting services are subject to
13 the provisions of this section even if the businesses, entities,
14 insurers or firms are not subject to registration or other
15 regulatory oversight in the state.

16 **§47-27-2. Prohibited conduct.**

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

18 (1) An individual who engages in a prohibited action as
19 provided in this section;

20 (2) A party to the action;

21 (3) A relative, employee or attorney of one of the parties;

22 (4) Someone with a financial interest in the action or its
23 outcome; or

24 (5) A relative, employee or attorney of someone with a
25 financial interest in the action or its outcome.

1 (b) Court reporters may not:

2 (1) Base the compensation for the court reporting services on
3 the outcome of the proceeding or otherwise giving the court
4 reporter or court reporting business, entity or firm a financial
5 interest in the action. Court reporters or businesses, entities or
6 firms providing or arranging for court reporting services may not
7 offer or provide court reporting services where payment for those
8 services will be made contingent on the outcome of the action.

9 (2) Enter into an agreement, whether formal or informal, for
10 court reporting services which restricts the noticing attorney or
11 party to a legal proceeding from selecting and using the court
12 reporter of his or her own choosing or otherwise requires the
13 noticing attorney or party to a legal proceeding to select or use
14 a court reporter not of his or her own choosing. Before accepting
15 an assignment for court reporting services, the court reporter is
16 obligated to make reasonable efforts to ascertain whether any
17 arrangement exists which is prohibited under this article .

18 (3) Allow the format, content or body of the transcript as
19 certified by the court reporter to be manipulated in a manner that
20 increases the cost of the transcript.

21 (4) Charge a fee for the electronic copy or paper copy of a
22 transcript that is more than fifty-five percent of the cost of the
23 original transcript, except by agreement of all parties to a legal
24 proceeding. This prohibition does not apply to real-time court
25 reporting services or accelerated transcript delivery requests made

1 by the party requesting a copy of the transcript when the party
2 requesting the original has not requested accelerated delivery.

3 (5) Require the attorney purchasing the original or a copy of
4 the transcript to purchase extra services that were neither ordered
5 nor desired from the court reporter as a condition for the sale of
6 the transcript.

7 **§47-27-3. Disclosure and limitations on practices.**

8 (a) Prior to the commencement of a legal proceeding, and at
9 any time during or following the conclusion of a legal proceeding,
10 an attorney or a party to that legal proceeding has the right to an
11 itemized statement of all rates and charges for all services that
12 have been or will be provided by the court reporter or business,
13 entity or firm providing or arranging for court reporting services
14 to any party to the legal proceeding.

15 (b) A court reporter shall certify on the certification page
16 of each transcript of a legal proceeding, the following: "I certify
17 that the attached transcript meets the requirements set forth
18 within article twenty-seven, chapter forty-seven of the West
19 Virginia Code."

20 (c) Each transcript of a legal proceeding shall conform to the
21 following minimum standards:

22 (1) No fewer than twenty-four typed lines on standard 8-1/2 by
23 11 inches pages.

24 (2) No fewer than nine characters to the typed inch.

25 (3) A full line of text shall be no less than fifty-six

1 characters and/or spaces unless timestamping is used, in which case
2 no fewer than forty-eight characters and/or spaces shall be used on
3 a full line of text.

4 (4) Timestamping may only be printed on a transcript under any
5 of the following circumstances: (A) when a deposition is
6 videotaped; (B) when requested by counsel on the record; and (C)
7 when a transcript will have not less than forty-eight characters
8 per line.

9 (5) The page numbers, headers and footers do not count as a
10 line of text. Line numbers and the spaces preceding text do not
11 count as a character.

12 (6) Each question and answer to begin on a separate line.

13 (7) Each question and answer to begin no more than five spaces
14 from the left-hand margin with no more than five spaces from the
15 question and answer to the text.

16 (8) Carry-over question and answer lines to begin at the left-
17 hand margin.

18 (9) Colloquy material to begin no more than fifteen spaces
19 from the left-hand margin, with carryover colloquy to the left-hand
20 margin. In colloquy, text shall begin no more than two spaces after
21 the colon following speaker identification.

22 (10) Quoted material to begin no more than fifteen spaces from
23 the left-hand margin, with carry-over lines to begin no more than
24 ten spaces from the left-hand margin.

25 (11) Parentheticals and exhibit markings to begin no more than

1 fifteen spaces from the left-hand margin, with carry-over lines to
2 begin no more than fifteen spaces from the left-hand margin.

3 (d) The provisions of sections one, two or three of this
4 article may not be waived or otherwise modified.

5 **§47-27-4. Penalties for violations; civil actions; and damages.**

6 A court reporter or the entity that produces and bills for the
7 transcript which violates the provisions of sections two or three
8 of this article is subject to civil penalty in a court of competent
9 jurisdiction as follows: Any party to a civil action, a court
10 reporter, attorney or other person who has been subject to a
11 violation of the provisions of sections two or three of this
12 article may recover, payable to the prevailing party, a civil
13 penalty for any willful violation of this section and the court
14 shall assess a civil penalty of no less than \$2,500 for each
15 violation: *Provided*, That no more than one civil penalty under this
16 section may be assessed in any one matter pending before the court;
17 and if the court finds that the court reporter has engaged in a
18 course of repeated and willful violations of this section, it may
19 assess an additional civil penalty of up to \$5,000 for each
20 violation of this section. For any action filed pursuant to this
21 section, the court, in its discretion, may award all or a portion
22 of the costs of litigation, including reasonable attorney fees,
23 court costs and fees, to the prevailing party.