

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 4294**

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

6
7 (Originating in the Committee on the Judiciary)

8 [February 14, 2014]

9
10 A BILL 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 and court reporting services, as well as
10 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 section 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;

19 (2) Provided by a court reporter based in this state in
20 connection with a legal proceeding commenced or maintained in a
21 foreign jurisdiction; and

22 (3) Provided by a court reporter based in this state, whether
23 the parties appear in person or by remote means.

24 (d) The provisions of this article do not apply to the conduct
25 of official court reporters or their substitutes, appointed by

1 judges pursuant to section one, article seven, chapter fifty-one of
2 this code, when acting in their official capacities, reporters of
3 government proceedings not relating to a legal proceeding, local or
4 federal courts providing real-time services for hard-of-hearing
5 litigants, or the provision of pro bono services to litigants who
6 would qualify for the same through West Virginia Legal Aid or other
7 similar organizations. A legal proceeding includes, but is not
8 limited to, the following:

9 (1) A court proceeding;

10 (2) A deposition;

11 (3) An arbitration hearing; and

12 (4) An examination under oath.

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

18 **§47-27-2. Prohibited conduct.**

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

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

22 (2) A party to the action;

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

24 (4) Someone with a financial interest in the action or its
25 outcome; or

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

3 (b) Court reporters may not:

4 (1) Give an economic or other advantage to a party, a party's
5 attorney, representative, agent, insurer or employee without
6 offering such economic or other advantage to all parties. This
7 includes failing to offer comparable services, including price or
8 credit terms, to all parties: Provided, That different credit terms
9 may be offered by court reporters based on payment experience and
10 credit worthiness.

11 (2) Base the compensation for the court reporting services on
12 the outcome of the proceeding or otherwise giving the court
13 reporter or court reporting business, entity or firm a financial
14 interest in the action. Court reporters or businesses, entities or
15 firms providing or arranging for court reporting services may not
16 offer or provide court reporting services where payment for those
17 services will be made contingent on the outcome of the action.

18 (3) Enter into an agreement, whether formal or informal, for
19 court reporting services which restricts the noticing attorney or
20 party to a legal proceeding from selecting and using the court
21 reporter of his or her own choosing or otherwise requires the
22 noticing attorney or party to a legal proceeding to select or use
23 a court reporter not of his or her own choosing.

24 (4) Allow the format, content or body of the transcript as
25 certified by the court reporter to be manipulated in a manner that

1 increases the cost of the transcript.

2 (5) Charge a fee for the electronic copy or paper copy of a
3 transcript that is more than one-half of the cost of the original
4 transcript, except by agreement of all parties to a legal
5 proceeding. This prohibition does not apply to real-time court
6 reporting services.

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

11 (7) Charge fees for the delivery of the transcript in excess
12 of the actual cost to a court reporter or entity providing court
13 reporting services.

14 **§47-27-3. Disclosure and limitations on practices.**

15 (a) Prior to the commencement of a legal proceeding, and at
16 any time during or following the conclusion of a legal proceeding,
17 an attorney or a party to that legal proceeding has the right to an
18 itemized statement of all rates and charges for all services that
19 have been or will be provided by the court reporter or business,
20 entity or firm providing or arranging for court reporting services
21 to any party to the legal proceeding.

22 (b) A court reporter shall certify on the certification page
23 of each transcript of a legal proceeding, the following: "I certify
24 that the attached transcript meets the requirements set forth
25 within article twenty-seven, chapter forty-seven of the West

1 Virginia Code.”

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

4 (1) No fewer than twenty-four typed lines on standard 8-1/2 by
5 11 inches pages.

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

7 (3) A full line of text shall be no less than fifty-six
8 characters and/or spaces unless timestamping is used, in which case
9 no fewer than fifty-two characters and/or spaces shall be used on
10 a full line of text.

11 (4) Timestamping may only be printed on a transcript under any
12 of the following circumstances: (A) when a deposition is
13 videotaped; (B) when requested by counsel on the record; and (C)
14 when a transcript will have not less than fifty-six characters per
15 line.

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

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

20 (7) Each question and answer to begin no more than five spaces
21 from the left-hand margin with no more than five spaces from the
22 question and answer to the text.

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

25 (9) Colloquy material to begin no more than fifteen spaces

1 from the left-hand margin, with carryover colloquy to the left-hand
2 margin. In colloquy, text shall begin no more than two spaces after
3 the colon following speaker identification.

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

7 (11) Parentheticals and exhibit markings to begin no more than
8 fifteen spaces from the left-hand margin, with carry-over lines to
9 begin no more than fifteen spaces from the left-hand margin.

10 **§47-27-4. Penalties for violations; civil actions; and damages.**

11 A court reporter which violates the provisions of sections two
12 or three of this article is subject to civil penalty in a court of
13 competent jurisdiction as follows: Any party to a civil action, a
14 court reporter, attorney or other person who has been subject to a
15 violation of the provisions of sections two or three of this
16 article may recover a civil penalty for any willful violation of
17 this section and the court shall assess a civil penalty of no less
18 than \$2,500 for each violation, and if the court finds that the
19 court reporter has engaged in a course of repeated and willful
20 violations of this section, it may assess a civil penalty of up to
21 \$5,000 for each violation of this section.