

# **WEST VIRGINIA LEGISLATURE**

## **2019 REGULAR SESSION**

**Introduced**

### **House Bill 2816**

BY DELEGATES CAMPBELL, CANESTRARO,  
HIGGINBOTHAM, LAVENDER-BOWE, ATKINSON, WILLIAMS,  
R. THOMPSON, CAPUTO, HORNBUCKLE, DEAN AND PACK

[Introduced February 1, 2019; Referred  
to the Committee on Government Organization.]



1 A BILL to amend and reenact §5-14-1, §5-14-2, §5-14-3, §5-14-5, and §5-14-8 of the Code of  
2 West Virginia, 1931, as amended; to amend and reenact §8-13-5a of said code; to amend  
3 and reenact §16-22A-4 of said code; to amend and reenact §16-35-2 of said code; to  
4 amend and reenact §18-20-1a and §18-20-1b of said code; to amend and reenact §29-3-  
5 16a of said code; to amend and reenact §52-1-8 of said code; and to amend and reenact  
6 §57-5-7 of said code, all relating to removing the terms “hearing impaired,” “hearing  
7 impairment,” and “deaf mute” from the West Virginia Code and substituting the terms “deaf  
8 or hard of hearing,” “hard of hearing,” “hearing difficulties,” or “difficulties in hearing”  
9 according to context.

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

**CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE  
GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL;  
BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES,  
COMMISSIONS, OFFICES, PROGRAMS, ETC.**

**ARTICLE 14. WEST VIRGINIA COMMISSION FOR THE DEAF AND HARD-OF-  
HEARING.**

**§5-14-1. Legislative findings.**

1 The Legislature hereby finds and declares that:

2 (a) There is a need for West Virginia to adequately identify the ~~hearing-impaired~~ deaf or  
3 hard of hearing population and provide efficient and effective services to such population;

4 (b) ~~Hearing-impaired~~ Deaf or hard of hearing people need to be more involved in the  
5 decisions and programs that affect their lives by soliciting and seriously considering their collective  
6 opinion on appropriate matters;

7 (c) Cooperation among state and local agencies must be facilitated in an effort to ensure  
8 that adequate and appropriate services are available and provided;

9 (d) In order to further the aforementioned goals it is necessary to determine what services  
10 exist and what services can be developed in order to match services to individual needs;

11 (e) A rubella epidemic from 1963 to 1965 caused a number of infants in West Virginia to  
12 be born ~~hearing-impaired~~ deaf or hard of hearing. These individuals are approaching the ages  
13 where they will no longer be eligible for educational services, thus requiring services as young  
14 adults. The Legislature, therefore, declares that there is an unprecedented and imperative need  
15 to plan and prepare for the multiplicity of services required in order to ensure a life-long continuum  
16 of services to this particular population;

17 (f) There must be more emphasis on the use of interpreters for deaf and hard-of-hearing  
18 people and on the quality control of such services;

19 (g) There must be more emphasis on the use of telecommunication devices for the deaf  
20 (TDDs) and means to provide them for ~~hearing-impaired~~ deaf or hard of hearing people;

21 (h) Through the implementation of the provisions of this article, the deaf and hard-of-  
22 hearing population of West Virginia will be aided in their efforts to live independent and productive  
23 lives.

**§5-14-2. Definitions.**

1 As used in this article:

2 (a) "Deaf" means severe to profound impairment of the sense of hearing whereby the  
3 understanding of speech is unattainable through the ear alone with or without amplification, and  
4 visual communication is used as the primary mode of communication.

5 (b) "Hard of hearing" means significant impairment to the sense of hearing, but not to the  
6 extent that the person must rely primarily on visual communication.

7 ~~(c) "Hearing-impaired" means persons who are either deaf or hard of hearing.~~

**§5-14-3. Continuation of commission; membership.**

1 (a) The West Virginia Commission for the Deaf and Hard of Hearing is continued within  
2 the Department of Health and Human Resources consisting of 17 persons, eight of whom shall

3 serve *ex officio*. The remaining members are appointed by the Governor by and with the advice  
4 and consent of the Senate. The commission shall meet no less than four times annually. All  
5 meetings and activities held by the commission shall be attended by at least two qualified  
6 interpreters who shall be hired at the commission's expense or provided free of charge by  
7 agencies, organizations or individuals willing to volunteer qualified interpreters.

8 (b) The members are: The Secretary of the Department of Health and Human Resources,  
9 or his or her designee; the Commissioner of the Division of Labor, or his or her designee; the  
10 Commissioner of the Bureau for Public Health, or his or her designee; the State Superintendent  
11 of Schools, or his or her designee; the Director of the Division of Rehabilitation Services, or his or  
12 her designee; the Commissioner of the Division of Human Services, or his or her designee; the  
13 Chairman of the Advisory Council for the Education of Exceptional Children, or his or her  
14 designee; and the Superintendent of the West Virginia School for the Deaf and Blind, or his or her  
15 designee, all of whom serve *ex officio* with full voting privileges.

16 (c) The Governor shall appoint nine persons, at least five of whom are deaf or hard of  
17 hearing, one of whom is the parent of a deaf child, one of whom is a certified teacher of the  
18 ~~hearing-impaired~~ deaf or hard of hearing, one audiologist and one otolaryngologist. Of the five  
19 deaf people, at least three shall be selected from a list of five people recommended by the Board  
20 of the West Virginia Association of the Deaf.

**§5-14-5. Powers and duties of the commission; information clearinghouse; coordination  
of interpreters; outreach programs; seminars and training sessions.**

1 (a) The commission shall maintain a clearinghouse of information, the purpose of which  
2 is to aid ~~hearing-impaired~~ deaf or hard of hearing persons and others in obtaining appropriate  
3 services or information about such services, including, but not limited to, education,  
4 communication (including interpreters), group home facilities, independent living skills,  
5 recreational facilities, employment, vocational training, health and mental health services,  
6 substance abuse and other services necessary to assure their ability to function in society. The

7 commission shall consult existing public and private agencies and organizations in compiling and  
8 maintaining the clearinghouse.

9 (b) The commission shall establish, maintain and coordinate a statewide service to provide  
10 courts, state and local legislative bodies and others with a list of qualified and certified interpreters  
11 for the deaf and a list of qualified and certified teachers of American sign language.

12 (c) The Secretary of the Department of Health and Human Resources shall promulgate  
13 rules pursuant to §29A-3-1 *et seq.* of this code for the state quality assurance evaluation, including  
14 the establishment of required qualifications and ethical standards for interpreters, the approval of  
15 interpreters, the monitoring and investigation of interpreters and the suspension and revocation  
16 of approvals. The commission may conduct interpreter evaluations and collect and expend funds  
17 with regard thereto.

18 (d) The commission shall develop an outreach program to familiarize the public with the  
19 rights and needs of ~~hearing-impaired~~ deaf or hard of hearing people and of available services.

20 (e) The commission shall investigate the condition of the hearing-impaired in this state  
21 with particular attention to those who are aged, homeless, needy, victims of rubella and victims  
22 of abuse or neglect. It shall determine the means the state possesses for establishing group  
23 homes for its hearing-impaired citizens and the need for additional facilities. The commission shall  
24 also determine the advisability and necessity of providing services to the multi-handicapped  
25 ~~hearing-impaired~~ deaf or hard of hearing.

**§5-14-8. Executive director; staff.**

1 There shall be within the commission an executive director who shall be appointed by the  
2 commission and whose compensation shall be fixed by the commission within the budgetary  
3 appropriation thereof. The executive director shall be in the exempt class of civil service and may  
4 not be a member of the commission. The executive director may attend all meetings of the  
5 commission, as well as its committees, but has no vote on decisions or actions of the commission  
6 or its committees. The executive director shall carry out the decisions and actions of the

7 commission, hire all staff, administer all affairs of the commission in accordance with its policies  
8 and discharge such other duties as the commission shall from time to time determine. The  
9 commission may employ such other officers, employees and clerical assistants as it considers  
10 necessary and may fix their compensation within the amounts made available by appropriation.  
11 To the extent possible, the executive director shall be ~~hearing-impaired~~ deaf or hard of hearing  
12 and shall be proficient in communicating with ~~hearing-impaired~~ deaf or hard of hearing individuals  
13 using varying communication modes.

## **CHAPTER 8. MUNICIPAL CORPORATIONS.**

### **ARTICLE 13. TAXATION AND FINANCE.**

#### **PART I. POWERS OF TAXATION**

##### **§8-13-5a. Public utilities tax.**

1 Every municipality has the plenary power and authority to levy and collect an excise tax  
2 on the privilege of purchasing, using or consuming, within the corporate limits of the municipality,  
3 public utility services and tangible personal property from public utilities subject to the jurisdiction  
4 of the Public Service Commission of West Virginia. The tax is computed on the basis of an amount  
5 not to exceed two percent of the gross amount of each periodic statement rendered purchasers  
6 or consumers by public utilities: *Provided*, That sales of tangible personal property such as  
7 appliances or the like, as distinguished from the public service supplied, are not included in the  
8 gross amount subject to the measure of this tax: *Provided, however*, That this tax does not apply  
9 to sales of telecommunications services to another telecommunications provider for the purposes  
10 of access, interconnection or resale to consumers. Charges or fees for items on the periodic  
11 statement that are not public utility services, including surcharges for telecommunications relay  
12 services for the ~~hearing-impaired~~ deaf or hard of hearing and fees for enhanced emergency  
13 telephone systems, are not included in the gross amount subject to the measure of this tax. The  
14 purchasers or consumers shall pay to the public utilities the amount of the tax levied pursuant to

15 this section which is added to and constitutes a part of the cost of the service or property so  
16 purchased or consumed and is collectible as such by the public utilities who shall account to the  
17 municipality levying same for all tax paid by the purchasers or consumers pursuant to the  
18 provisions of any ordinance imposing the tax.

19 Any ordinance imposing the tax shall require the collection thereof uniformly from all  
20 purchasers and consumers of all the services and property within the corporate limits of the  
21 municipality and contain reasonable rules governing the collection thereof by the utilities and the  
22 method of its payment and accounting to the municipality: *Provided*, That the tax is not effective  
23 until the municipality gives 60 days written notice by certified mail to any utility doing business  
24 therein of the effective date of the ordinance. Any required separation of gross income shall occur  
25 in the ordinance whenever necessary to comply with state or federal law: *Provided, however*, That  
26 the tax authorized by this section may not be levied upon charges for telephone services which  
27 are paid by the insertion of coins into coin-operated telephones, and specific charges for  
28 telephone calls to points outside the taxing municipality: *Provided further*, That specific charges  
29 for telephone calls to points outside the taxing municipality is construed to mean separately  
30 itemized or bulk-billed charges for long distance telecommunications service to points outside the  
31 local exchange service area. The charges subject to the tax authorized by this section include  
32 local usage charges applicable to telephone calls originating within the corporate limits of the  
33 municipality which imposes the tax, regardless of where the calls terminate, and also include the  
34 federal subscriber line charge.

35 Notwithstanding any other provisions of the law to the contrary contained in the Code of  
36 West Virginia, 1931, as amended, the provisions of this section are in addition to all other taxing  
37 authority heretofore granted municipalities.

## **CHAPTER 16. PUBLIC HEALTH.**

### **ARTICLE 22A. TESTING OF NEWBORN INFANTS FOR HEARING IMPAIRMENTS.**

#### **§16-22A-4. Hearing impairment testing advisory committee established.**



1 (a) There is hereby established a West Virginia hearing ~~impairment~~ difficulties testing  
2 advisory committee which shall advise the Director of the Division of Health regarding the  
3 protocol, validity, monitoring and cost of testing procedures required under this article. This  
4 committee is to meet four times per year for the initial two years and on the call of the director  
5 thereafter. The director shall serve as the chair and shall appoint 12 members, one representing  
6 each of the following groups:

- 7 (1) A representative of the health insurance industry;
- 8 (2) An otolaryngologist or otologist;
- 9 (3) An audiologist with experience in evaluating infants;
- 10 (4) A neonatologist;
- 11 (5) A pediatrician;
- 12 (6) A hospital administrator;
- 13 (7) A speech or language pathologist;
- 14 (8) A teacher or administrative representative from the West Virginia school of the deaf;
- 15 (9) A parent of a ~~hearing-impaired~~ deaf or hard of hearing child;
- 16 (10) A representative from the office of early intervention services within the Department  
17 of Health and Human Resources;
- 18 (11) A representative from the state Department of Education; and
- 19 (12) A representative from the West Virginia commission for the deaf and hard-of-hearing.

20 (b) Members of this advisory committee shall serve without compensation. A majority of  
21 members constitutes a quorum for the transaction of all business. Members shall serve for two-  
22 year terms and may not serve for more than two consecutive terms.

**ARTICLE 35. LEAD ABATEMENT.**

**§16-35-2. Legislative findings.**

- 1 (a) The Legislature hereby finds and declares that:
- 2 (1) Lead is a toxic substance and harmful to the citizens of this state;

3 (2) Lead poisoning is a devastating health hazard, particularly to young children, and  
4 results in serious long-term health effects;

5 (3) Children exposed to even low levels of lead exhibit learning disabilities, decreased  
6 growth, hyperactivity, ~~impaired hearing~~ deafness or hearing difficulties, and neurological damage;

7 (4) Workers and others who come into contact with lead when removing or remediating  
8 lead-based materials are also at risk of lead poisoning;

9 (5) Exposure occurs from contact with materials containing lead, including, but not limited  
10 to, lead-based paint chips, lead dust, and lead-contaminated soil;

11 (6) The most significant source of exposure is lead-based paint, particularly in houses built  
12 prior to one thousand nine hundred seventy-eight;

13 (7) The danger posed by lead-based paint hazards can be controlled by abatement or  
14 interim controls that limit exposure to lead-based paint hazards; and

15 (8) The public health and safety of this state will be better protected when all persons who  
16 handle lead-contaminated substances are thoroughly trained and knowledgeable regarding safe  
17 methods of handling and disposing of such materials.

18 (b) Therefore, It is the purpose of this article to protect the health of the children of the  
19 state and those who undertake remediation of the lead health hazard by establishing guidelines  
20 for the assessment and removal of lead hazards from homes and other buildings where children  
21 are frequently present and exposed to the danger of lead poisoning.

## **CHAPTER 18. EDUCATION.**

### **ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.**

#### **§18-20-1a. Preschool programs for severely disabled children; rules and regulations.**

1 (a) During the school year beginning on July 1, 1985, each county board of education shall  
2 develop a coordinated service delivery plan in accordance with standards for preschool programs  
3 for severely disabled children to be developed by the State Board of Education and begin services  
4 where plans are already developed.

5 (b) Only in any year in which funds are made available by legislative appropriation, and  
6 only to the extent of such funding, each county board of education shall establish and maintain a  
7 special educational program, including, but not limited to, special classes and home-teaching and  
8 visiting-teacher services for all severely disabled children between the ages of three and five  
9 according to the following schedule:

10 (1) By the school year beginning on July 1, 1986, and thereafter, for severely disabled  
11 children who are age four before September 1, 1986;

12 (2) By the school year beginning on July 1, 1987, and thereafter, for severely disabled  
13 children who are age three before September 1, 1987.

14 As used in this section, the term "severely disabled children" means those children who  
15 fall in any one of the following categories as defined or to be defined in the State Board of  
16 Education standards for the education of exceptional children: Severe behavioral disorders,  
17 severely speech and language impaired, deaf-blind, ~~hearing-impaired~~ deafness or hearing  
18 difficulties, autistic, physically handicapped, disabled profoundly intellectually disabled, trainable  
19 intellectually disabled or visually impaired.

20 Before August 1, 1985, the State Board of Education shall adopt rules and regulations to  
21 advance and accomplish this program and to assure that an appropriate educational program is  
22 available to all such children in the state, including children in mental health facilities, residential  
23 institutions and private schools.

24 This section does not prevent county boards of education from providing special education  
25 programs, including, but not limited to, special schools, classes, regular class programs and  
26 home-teaching or visiting-teacher services for severely disabled preschool children prior to such  
27 times as are required by this section. In addition, county boards of education may provide these  
28 services to preschool exceptional children in disability categories other than those listed above.

**§18-20-1b. Preschool programs for handicapped children; rules and regulations.**

1 (a) During the school year beginning on July 1, 1991, each county board of education shall  
2 develop a coordinated service delivery plan in accordance with standards for preschool programs  
3 for handicapped children to be developed by the State Board of Education and begin services  
4 where plans are already developed.

5 (b) Each county board of education shall establish and maintain special education  
6 programs, including, but not limited to, special classes, regular classes and home-teaching and  
7 visiting-teacher services for all handicapped children ages three through five, inclusive.

8 As used in this section, the term "handicapped children" means those children who fall in  
9 any one of the following categories as defined or to be defined in the State Board of Education  
10 standards for the education of exceptional children: Severe behavioral disorders, communication  
11 disordered, deaf-blind, developmentally delayed, ~~hearing impaired~~ deaf or hard of hearing, other  
12 health impaired including autism, physically handicapped, mentally impaired or visually impaired.

13 Before August 1, 1991, the State Board of Education shall adopt rules to advance and  
14 accomplish this program and to assure that an appropriate educational program is available to all  
15 such children in the state, including children in mental health facilities, residential institutions,  
16 foster care, correctional facilities and private schools.

17 This section does not prevent county boards of education from providing special education  
18 programs, including, but not limited to, special schools or classes, regular class programs and  
19 home-teaching or visiting-teacher services for severely handicapped preschool children prior to  
20 such times as are required by this section.

## **CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.**

### **ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.**

#### **§29-3-16a. Smoke detectors in one- and two-family dwellings; carbon monoxide detectors in residential units, schools, and daycare facilities; penalty.**

1 (a) An operational smoke detector shall be installed in the immediate vicinity of each  
2 sleeping area within all one-and two-family dwellings, including any "manufactured home" as that

3 term is defined in §21-9-2(j) of this code. The smoke detector shall be capable of sensing visible  
4 or invisible particles of combustion and shall meet the specifications and be installed as provided  
5 in the current edition of the National Fire Protection Association Standard 72, “Standard for the  
6 Installation, Maintenance, and Use of Household Fire Warning Equipment” and in the  
7 manufacturer’s specifications. When activated, the smoke detector shall provide an alarm suitable  
8 to warn the occupants of the danger of fire.

9 (b) The owner of each dwelling described in subsection (a) of this section shall provide,  
10 install, and replace the operational smoke detectors required by this section. To assure that the  
11 smoke detector continues to be operational, in each dwelling described in subsection (a) of this  
12 section which is not occupied by the owner of the dwelling, the tenant in any dwelling shall perform  
13 routine maintenance on the smoke detectors within the dwelling.

14 (c) Where a dwelling is not occupied by the owner and is occupied by an individual who is  
15 deaf or ~~hearing-impaired~~ hard of hearing, the owner shall, upon written request by or on behalf of  
16 the individual, provide and install a smoke detector with a light signal sufficient to warn the deaf  
17 or hard of hearing individual of the danger of fire.

18 (d) An automatic fire sprinkler system installed in accordance with the current edition of  
19 the National Fire Protection Association Standard 13D, “Standard for the Installation of Sprinkler  
20 Systems in Residential Occupancies” may be provided in lieu of smoke detectors.

21 (e) After investigating a fire in any dwelling described in subsection (a) of this section, the  
22 local investigating authority shall issue to the owner a smoke detector installation order in the  
23 absence of the required smoke detectors.

24 (f) An operational single station carbon monoxide detector with a suitable alarm or a  
25 combination smoke detector and carbon monoxide detector, which shall be alternating current  
26 (AC) powered, either plugged directly in to an electrical outlet that is not controlled by a switch or  
27 hardwired into an alternating current (AC) electrical source, with battery backup, shall be installed,

28 maintained, tested, repaired, or replaced, if necessary, in accordance with the manufacturer's  
29 direction:

30 (1) In any newly constructed residential unit which has a fuel-burning heating or cooking  
31 source including, but not limited to, an oil or gas furnace or stove;

32 (2) In any residential unit which is connected to a newly constructed building, including,  
33 but not limited to, a garage, storage shed, or barn, which has a fuel-burning heating or cooking  
34 source, including, but not limited to, an oil or gas furnace or stove;

35 (3) Effective September 1, 2012, in either a common area where the general public has  
36 access or all rooms in which a person will be sleeping that are adjoining to and directly below and  
37 above all areas or rooms that contain permanently installed fuel-burning appliances and  
38 equipment that emit carbon monoxide as a byproduct of combustion located within all apartment  
39 buildings, boarding houses, dormitories, long-term care facilities, adult or child care facilities,  
40 assisted living facilities, one- and two-family dwellings intended to be rented or leased, hotels and  
41 motels.

42 (g) Effective January 1, 2013, all single station carbon monoxide detectors with a suitable  
43 alarm or a combination smoke detector and carbon monoxide detectors shall be hardwired into  
44 an alternating current (AC) electrical source, with battery backup, when installed in all newly  
45 constructed apartment buildings, boarding houses, dormitories, hospitals, long-term care  
46 facilities, adult or child care facilities, assisted living facilities, one- and two-family dwellings  
47 intended to be rented or leased, hotels and motels.

48 (h) In any long-term care facility that is staffed on a 24 hour, seven day a week basis, the  
49 single station carbon monoxide detector with a suitable alarm or a combination smoke detector  
50 and carbon monoxide detector is only required to be installed in an area of the facility that permits  
51 the detector to be audible to the staff on duty.

52 (i) Effective January 1, 2019, carbon monoxide detectors shall be installed in every public  
53 or private school or daycare facility that uses a fuel-burning heating system or other fuel-burning

54 device that produces combustion gases. A carbon monoxide detector shall be located in each  
55 area with a fuel-burning heating system or other fuel-burning device that produces combustion  
56 gases.

57 (j) Any person installing a carbon monoxide detector in a residential unit shall inform the  
58 owner, lessor, or the occupant or occupants of the residential unit of the dangers of carbon  
59 monoxide poisoning and instructions on the operation of the installed carbon monoxide detector.

60 (k) When repair or maintenance work is undertaken on a fuel-burning heating or cooking  
61 source or a venting system in an existing residential unit, the person making the repair or  
62 performing the maintenance shall inform the owner, lessor, or the occupant or occupants of the  
63 unit being served by the fuel-burning heating or cooking source or venting system of the dangers  
64 of carbon monoxide poisoning and recommend the installation of a carbon monoxide detector.

65 (l) Any person who violates any provision of this section is guilty of a misdemeanor and,  
66 upon conviction thereof, for a first offense, shall be fined \$250. For a second offense, the person  
67 is guilty of a misdemeanor and, upon conviction thereof, shall be fined \$750. For a third and  
68 subsequent offenses, the person is guilty of a misdemeanor and, upon conviction thereof, shall  
69 be fined \$2000.

70 (m) A violation of this section may not be considered to constitute evidence of negligence  
71 or contributory negligence or comparative negligence in any civil action or proceeding for  
72 damages.

73 (n) A violation of this section may not constitute a defense in any civil action or proceeding  
74 involving any insurance policy.

75 (o) Nothing in this section shall be construed to limit the rights of any political subdivision  
76 in this state to enact laws imposing upon owners of any dwelling or other building described in  
77 subsection (a) or (f) of this section a greater duty with regard to the installation, repair, and  
78 replacement of the smoke detectors or carbon monoxide detectors than is required by this section.

## CHAPTER 52. JURIES.

### ARTICLE 1. PETIT JURIES.

#### §52-1-8. Disqualification from jury service.

1           (a) The court, shall determine whether any prospective juror is disqualified for jury service  
2 on the basis of information provided on the juror qualification form or interview with the prospective  
3 juror or other competent evidence. The clerk shall enter this determination in the space provided  
4 on the juror qualification form and on the alphabetical lists of names drawn from the jury wheel or  
5 jury box.

6           (b) A prospective juror is disqualified to serve on a jury if the prospective juror:

7           (1) Is not a citizen of the United States, at least 18 years old and a resident of the county;

8           (2) Is unable to read, speak and understand the English language. For the purposes of  
9 this section, the requirement of speaking and understanding the English language is met by the  
10 ability to communicate in American Sign Language or Signed English;

11           (3) Is incapable, by reason of substantial physical or mental disability, of rendering  
12 satisfactory jury service. A person claiming this disqualification may be required to submit a  
13 physician's certificate as to the disability and the certifying physician is subject to inquiry by the  
14 court at its discretion;

15           (4) Has, within the preceding two years, been summoned to serve as a petit juror, grand  
16 juror or magistrate court juror and has attended sessions of the magistrate or circuit court and  
17 been reimbursed for his or her expenses as a juror pursuant to the provisions of §52-1-21 or  
18 §52-2-13 of this code, or pursuant to an applicable rule or regulation of the Supreme Court of  
19 Appeals promulgated pursuant to the provisions of §50-5-8 of this code;

20           (5) Has lost the right to vote because of a criminal conviction; or

21           (6) Has been convicted of perjury, false swearing or any crime punishable by  
22 imprisonment in excess of one year under the applicable law of this state, another state or the  
23 United States.



24 (c) A prospective juror 70 years of age or older is not disqualified from serving but shall be  
25 excused from service by the court upon his or her request.

26 (d) A prospective grand juror is disqualified to serve on a grand jury if he or she is an  
27 officeholder under the laws of the United States or of this state except that the term "officeholder"  
28 does not include, notaries public.

29 (e) A person who is physically disabled and can render competent service with reasonable  
30 accommodation is not ineligible to act as juror and may not be dismissed from a jury panel on the  
31 basis of disability alone. The circuit judge shall, upon motion by either party or upon his or her  
32 own motion, disqualify a disabled juror if the circuit judge finds that the nature of potential evidence  
33 in the case including, but not limited to, the type or volume of exhibits or the disabled juror's ability  
34 to evaluate a witness or witnesses, unduly inhibits the disabled juror's ability to evaluate the  
35 potential evidence. For purposes of this section:

36 (1) Reasonable accommodation includes, but is not limited to, certified interpreters for the  
37 ~~hearing-impaired~~ deaf and hard of hearing, spokespersons for the speech impaired, real-time  
38 court reporting and readers for the visually impaired.

39 (2) The court shall administer an oath or affirmation to any person present to facilitate  
40 communication for a disabled juror. The substance of the oath or affirmation shall be that any  
41 person present as an accommodation to a disabled juror will not deliberate on his or her own  
42 behalf, although present throughout the proceedings, but act only to accurately communicate for  
43 and to the disabled juror.

44 (f) Nothing in this article limits a party's right to preemptory strikes in civil or criminal  
45 actions.

## **CHAPTER 57. EVIDENCE AND WITNESSES.**

### **ARTICLE 5. MISCELLANEOUS PROVISIONS.**

#### **§57-5-7. Interpreters required.**

1           (a) In any court proceeding wherein a party or witness or juror cannot readily understand  
2 or verbally communicate the English language because the witness or juror is deaf ~~or a deaf mute~~  
3 or because of any other hearing ~~impairment~~ difficulties, such person shall have the right to have  
4 a qualified interpreter to assist the witness or juror at every stage of the proceeding. Such right  
5 shall also pertain in any proceeding before administrative boards, commissions or agencies of  
6 this state or any political subdivision or municipality thereof, and in coroners' inquests and grand  
7 jury proceedings.

8           (b) The director of the administrative office of the Supreme Court of Appeals shall establish  
9 a program to facilitate the use of interpreters in courts of this state and in extra-judicial criminal  
10 proceedings as provided for in this section.

11           (1) The director shall prescribe, determine and certify the qualifications of persons who  
12 may serve as certified interpreters in courts of this state in proceedings involving the ~~hearing~~  
13 ~~impaired~~ deaf and hard of hearing. Persons certified by the director shall be interpreters certified  
14 by the national registry of interpreters for the deaf, or the West Virginia registry of interpreters for  
15 the deaf or approved by the chief of services for the deaf and ~~hearing-impaired~~ hard of hearing of  
16 West Virginia of the West Virginia Division of Vocational Rehabilitation, or shall be such other  
17 persons deemed by the director to be qualified by education, training and experience. The director  
18 shall maintain a current master list of all interpreters certified by the director and shall report  
19 annually on the frequency of requests for, and the use and effectiveness of, interpreters.

20           (2) Each circuit court shall maintain on file in the office of the clerk of the court a list of all  
21 persons who have been certified as oral or manual interpreters for the ~~hearing-impaired~~ deaf and  
22 hard of hearing by the director of the administrative office of the Supreme Court of Appeals in  
23 accordance with the certification program established pursuant to this section.

24           (3) In any criminal or juvenile proceeding, or other proceeding described in §51-11-5 of  
25 this code, the judge of the circuit court in which such proceeding is pending, or, if such proceeding  
26 is in a magistrate court, then the judge of the circuit court to which such proceeding may be

27 appealed or presented for judicial review, shall, with the assistance of the director of the  
28 administrative office of the Supreme Court of Appeals, utilize the services of the most available  
29 certified interpreter, or when no certified interpreter is reasonably available, as determined by the  
30 judge, the services of an otherwise competent interpreter, if the judge determines on his or her  
31 own motion or on the motion of a party that such party or a witness who may present testimony  
32 in the proceeding suffers from ~~a hearing impairment~~ hearing difficulties so as to inhibit such party's  
33 comprehension of the proceedings or communication with counsel or the presiding judicial officer,  
34 or so as to inhibit such witness' comprehension of questions and the presentation of such  
35 testimony. The utilization of an interpreter shall be appropriate at any stage of the proceeding,  
36 judicial or extra-judicial, at which a person would be entitled to representation by an attorney and  
37 a waiver of the right to counsel shall not constitute a waiver of the right to an interpreter as  
38 provided for by this section.

39 (c) Whenever a qualified interpreter is appointed pursuant to the provisions of subsection  
40 (b) of this section, or to accommodate a juror, the court shall, at the conclusion of the proceedings  
41 or interrogation, by order, fix the compensation of such interpreter. The compensation shall  
42 include reimbursement for all reasonable and necessary expenses actually incurred in the  
43 performance of such duties, but expenses shall not be incurred in excess of the prevailing rate  
44 for state employees. In all such appointments arising from subdivision (3), subsection (b) of this  
45 section, the compensation shall be paid by the State Auditor from the fund administered by the  
46 Supreme Court of Appeals for other court costs. In other proceedings before any circuit or  
47 magistrate court, Supreme Court of Appeals or before any administrative boards, commissions  
48 and agencies, the compensation shall be fixed by such court, board, commission or agency and  
49 paid, within the limit of available funds, by such court, board, commission or agency.

50 (d) In any proceeding described in subdivision (3), subsection (b) of this section, if the  
51 circuit judge does not appoint an interpreter, an individual requiring the services of an interpreter

52 may seek the assistance of the clerk of the circuit court or the director of the administrative office  
53 of the Supreme Court of Appeals in obtaining the assistance of a certified interpreter.

54 (e) Whenever an interpreter is necessary in any court proceeding because a witness or  
55 party speaks only a foreign language or for any other reason, an interpreter shall be sworn truly  
56 to interpret.

NOTE: The purpose of this bill is to remove the terms "hearing impaired" and "hearing impairment" from the West Virginia Code and to substitute, based upon appropriate context, the terms "deaf and hard of hearing," "hard of hearing," or "hearing difficulties" in all instances of the removed words.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.