

HB 2893

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SENATE OF WEST VIRGINIA  
STATE HOUSE

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1997



# ENROLLED

HOUSE BILL No. 2893

(By Delegate Mahan, Kominar, Linch, Tillis,  
Hutchins, White and Riggs )



Passed April 12, 1997

In Effect From Passage

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

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# H. B. 2893

(BY DELEGATES MAHAN, KOMINAR, LINCH, TILLIS,  
HUTCHINS, WHITE AND RIGGS)

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[Passed April 12, 1997; in effect from passage.]

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AN ACT to amend and reenact section seventeen, article one, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the priority of legislative business for members and designated employees over actions and matters pending before tribunals of the executive and judicial branches.

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

That section seventeen, article one, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

#### **ARTICLE 4. THE LEGISLATURE.**

##### **§4-1-17. Priority of legislative business for members and designated employees.**

- 1 (a) In accordance with the constitutional separation
- 2 of powers and principles of comity, it is the purpose of
- 3 this section to provide that members of the Legislature and
- 4 certain designated legislative employees are not required
- 5 to attend to matters pending before tribunals of the execu-
- 6 tive and judicial branches of government when the timing
- 7 of those matters may present conflicts with the discharge
- 8 of the public duties and responsibilities that are incumbent
- 9 upon members or employees of the Legislature. During

10 legislative sessions or meetings and for reasonable time  
11 periods before and after, the judicial and executive  
12 branches should refrain from requiring the personal pres-  
13 ence and attention of a legislator or designated employee  
14 who is engaged in conducting the business of the Legisla-  
15 ture.

16 (b) For the purposes of this section, the words or  
17 terms defined in this subsection have the meanings as-  
18 cribed to them. These definitions are applicable unless a  
19 different meaning clearly appears from the context.

20 (1) "Applicable time period" means and includes  
21 the following:

22 (A) The ten-day time period immediately before any  
23 regular or extraordinary session of the Legislature;

24 (B) The time period during any regular or extraordi-  
25 nary session of the Legislature;

26 (C) The thirty-day time period immediately follow-  
27 ing the adjournment sine die of any regular or extraordi-  
28 nary session of the Legislature;

29 (D) The four-day time period before any interim  
30 meetings of any committee of the Legislature or before  
31 any party caucus;

32 (E) The time period during any interim meetings of  
33 the Legislature or any party caucus; or

34 (F) The four-day time period following the conclu-  
35 sion of any interim meetings of any committee of the  
36 Legislature or party caucus.

37 (2) "Designated employee" means any legislative  
38 employee designated in writing by the speaker of the West  
39 Virginia House of Delegates to the clerk of the House of  
40 Delegates or by the president of the West Virginia Senate  
41 to the clerk of the West Virginia Senate to be necessary to  
42 the operation of the Legislature, such that the legislative  
43 employee will be afforded the protections of this section.

44 (3) "Member" means a member of the West Virgin-  
45 ia House of Delegates or the West Virginia Senate.

46           (4) "Tribunal" means a judicial or quasi-judicial  
47 entity of the judicial or executive branch of government,  
48 or any legislative, judicial or quasi-judicial entity of a  
49 political subdivision, created or authorized under the Con-  
50 stitution or laws of this state.

51           (c) A notice filed with a tribunal pursuant to subsec-  
52 tion (e) of this section operates as an automatic stay of a  
53 judicial or administrative action or proceeding com-  
54 menced before or after the notice was filed. The automat-  
55 ic stay is in force for the applicable time period or periods  
56 described in the notice, unless it is otherwise waived in  
57 accordance with the provisions of subsection (f) of this  
58 section. In the event a session or meeting of the Legisla-  
59 ture is extended, the notice may be amended to reflect a  
60 longer applicable time period. The filing of the notice  
61 and the automatic stay do not prohibit the commencement  
62 of an action or proceeding, the issuance or employment of  
63 process, or other preliminary procedures that do not re-  
64 quire the presence or personal attention of the member or  
65 designated employee.

66           (d) During any applicable time period, a member or  
67 designated employee who does not otherwise consent to a  
68 waiver of the stay is not required to do any of the follow-  
69 ing:

70           (1) Appear in any tribunal, whether as an attorney,  
71 party, witness or juror;

72           (2) Respond in any tribunal to any complaint, peti-  
73 tion, pleading, notice or motion that would require a per-  
74 sonal appearance or the filing of a responsive pleading;

75           (3) File in any tribunal any brief, memorandum or  
76 motion;

77           (4) Respond to any motion for depositions upon oral  
78 examination or written questions;

79           (5) Respond to any written interrogatories, request  
80 for production of documents or things, request for admis-  
81 sions or any other discovery procedure, whether or not  
82 denominated as such; or

83           (6) Appear or respond to any other act or thing in  
84 the nature of those described in subdivisions (1), (2), (3),  
85 (4) or (5) of this subsection, or

86           (7) Make any other appearance before a tribunal or  
87 attend to any other matter pending in a tribunal that in the  
88 discretion of the member or designated employee would  
89 inhibit the member or designated employee in the exercise  
90 of the legislative duties and responsibilities owed to the  
91 public.

92           (e) A member or designated employee who desires  
93 to exercise the protections afforded by this section shall  
94 not be required to appear in any tribunal to assert the  
95 protections. In all cases, it shall be sufficient if the mem-  
96 ber or designated employee notifies the tribunal in ques-  
97 tion orally or in writing, stating that he or she is invoking  
98 the protections of this section, describing the action, pro-  
99 ceeding or act to be stayed, and further identifying the  
100 applicable period or periods for which the notice will  
101 operate as a stay. An oral communication with the tribu-  
102 nal shall be followed by a written notice or facsimile trans-  
103 mission to the tribunal mailed or transmitted no later than  
104 two business days after the oral communication. From the  
105 time of the oral communication or the mailing or trans-  
106 mission of the written notice, whichever is earlier, the no-  
107 tice operates as a stay of all proceedings in the pending  
108 matter until the applicable time periods have passed and  
109 expired.

110           (f) Notwithstanding the filing of a notice that oper-  
111 ates as a stay, a member or designated employee may later  
112 consent to waive the stay and make an appearance or at-  
113 tend to a matter that would otherwise be stayed. However,  
114 a waiver as to a particular appearance or act does not ter-  
115 minate, annul, modify or condition the stay for any other  
116 purpose.

117           (g) The deference afforded by this section to mem-  
118 bers and designated employees who are serving a client in  
119 a representative capacity is also fully and completely ex-  
120 tended to their clients, so that no person whose representa-  
121 tive before a tribunal is a member or designated employee  
122 may be required, during any applicable time period, to do

123 anything that his or her representative is not required to  
124 do under subsection (d) above.

125 (h) Unless the member or designated employee  
126 consents thereto, no co-counsel, partner, associate, spouse  
127 or employee of the member or designated employee may  
128 be required to make any appearance or do any act during  
129 any applicable time period in the place and stead of the  
130 member or designated employee.

131 (i) Any sentence, judgment, order, decree, finding,  
132 decision, recommendation or award made contrary to the  
133 provisions of this section in any action or proceeding in  
134 any tribunal, without the consent of the member or desig-  
135 nated employee, is void.

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

*[Handwritten Signature]*  
Chairman Senate Committee

*[Handwritten Signature]*  
Chairman House Committee

Originating in the House.

Takes effect from passage.

*[Handwritten Signature]*  
Clerk of the Senate

*[Handwritten Signature]*  
Clerk of the House of Delegates

*[Handwritten Signature]*  
President of the Senate

*[Handwritten Signature]*  
Speaker of the House of Delegates

The within is approved this the 7<sup>th</sup>  
day of May, 1997.

*[Handwritten Signature]*  
Governor

PRESENTED TO THE

GOVERNOR

Date 5/1/97

Time 3:00 pm