

1 **Senate Bill No. 589**

2 (By Senators Kessler (Mr. President), Cookman, Jenkins, Nohe,
3 Palumbo, Williams, Tucker, Fitzsimmons and Plymale)

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5 [Introduced March 21, 2013; referred to the Committee on the
6 Judiciary.]

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10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new section, designated §51-7-1a, relating to
12 the establishment of ethical standards for court reporters and
13 entities that provide court reporting services; oversight
14 administration; and sanctions and penalties.

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

16 That the Code of West Virginia, 1931, as amended, be amended
17 by adding thereto a new section, designated §51-7-1a, to read as
18 follows:

19 **ARTICLE 7. OFFICIAL REPORTERS.**

20 **§51-7-1a. Ethical standards for court reporters.**

21 (a) The purpose of this legislation is to ensure the integrity
22 of the record by establishing ethical standards for court reporters
23 and entities that provide court reporting services. Court

1 reporters serve as officers of the court and both the appearance
2 and the existence of impartiality are no less important for
3 officers who report legal proceedings than they are for the
4 judicial officers and other persons whose responsibilities are
5 integral to the fair and impartial administration of justice.

6 (b) The provisions described in this section apply to court
7 reporting services performed in this state that are:

8 (1) Provided by a court reporter, business, entity or firm,
9 wherever based, in connection with a court or other legal
10 proceeding commenced or maintained in this state;

11 (2) Provided by a court reporter, business, entity or firm
12 based in this state in connection with a court or other legal
13 proceeding that is commenced or maintained in a foreign
14 jurisdiction; and

15 (3) Provided by a court reporter, business, entity or firm
16 based in this state whether the parties appear in person or by
17 remote means.

18 (c) Court reporters, businesses, entities or firms providing
19 or arranging for court reporting services are subject to the
20 provisions of this section even if the businesses, entities or
21 firms are not subject to registration or other regulatory oversight
22 in the state.

23 (d) A legal proceeding may not be reported by:

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

5 (2) An individual who engages in a prohibited action as
6 defined in subsection (f) of this section;

7 (3) A party to the action;

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

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

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

13 (e) A legal proceeding includes, but is not limited to, the
14 following:

15 (1) A court proceeding;

16 (2) A deposition;

17 (3) An administrative hearing;

18 (4) An arbitration hearing;

19 (5) Examinations under oath; and

20 (6) Sworn statements.

21 (f) In order to preserve the court reporter's impartiality,
22 court reporters or businesses, entities or firms that provide or
23 arrange for court reporting services may not engage in any of the

1 following:

2 (1) Enter into an oral or written contractual agreement for
3 more than one case, action, or proceeding with an attorney, party
4 to an action, insurance company, third-party administrator or other
5 person or entity that has a financial interest in the case, action,
6 or proceeding.

7 (2) Give an economic or other advantage to a party, a party's
8 attorney, representative, agent, insurer or employee without
9 offering it to all parties. This includes failing to offer
10 comparable services, including price or credit terms, to all
11 parties or otherwise requiring the court reporter or entity
12 providing court reporting services to provide financial terms or
13 other services that are not offered at the same time and on the
14 same terms to all other parties in the legal proceeding. Different
15 credit terms can be offered based on payment experience and credit
16 worthiness.

17 (3) Base the compensation for the court reporting services on
18 the outcome of the proceeding or otherwise giving the court
19 reporter or court reporting business, entity or firm a financial
20 interest in the action. Court reporters or businesses, entities or
21 firms providing or arranging for court reporting services may not
22 offer or provide court reporting services where payment for those
23 services will be made contingent on the outcome of the action.

1 (4) Enter into an agreement for court reporting services that
2 restricts the noticing attorney from using the court reporter or
3 entity providing court reporting services of the attorney's
4 choosing including a court reporter or business, entity or firm
5 providing or arranging for court reporter services on any list of
6 preferred providers of court reporting services that is maintained
7 by a person, business, entity or firm that has entered into an oral
8 or written contractual agreement for more than one case, action or
9 proceeding with an attorney, party to an action, insurance company,
10 third-party administrator or other person or entity that has a
11 financial interest in the case, action, or proceeding.

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

15 (g)(1) At any time during or following the conclusion of a
16 legal proceeding, an attorney or a party to that proceeding has the
17 right to an itemized statement of all rates and charges for all
18 services that have been or will be provided by the court reporter
19 or business, entity or firm providing or arranging for court
20 reporting services to any party to the litigation.

21 (2) Information on prices, terms and conditions shall be made
22 available in sufficient time prior to the commencement of the
23 proceeding which will allow all parties to have the opportunity to

1 effectively negotiate for any changes necessary to ensure that
2 comparable terms and conditions will be made available to all
3 parties.

4 (3) Upon request, the West Virginia Court Reporters
5 Association shall also be provided with an itemized invoice of all
6 rates and charges for services that have been provided.

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

11 (h) The provisions of this legislation may not be waived by
12 disclosure, agreement, stipulation or any other means for any
13 reason.

14 (i) Governmental entities may, if required by law, obtain
15 court reporting services on a long-term basis through competitive
16 bidding.

17 (j) Penalties for violations of these provisions include any
18 or all of the following:

19 (1) The transcript of the legal proceeding shall be deemed
20 void and ineligible for admission into a court or for use or
21 submission in any legal or administrative proceeding; and

22 (2) A court reporter, business, entity or firm that provides
23 or arranges for court reporting services which willfully violate

1 these prohibitions is subject to a fine or sanction as follows:

2 (A) The fine for a first offense shall be no less than \$5,000.

3 (B) The fine for each subsequent violation shall be increased
4 by an additional \$2,500 per violation.

5 (C) Fines or sanctions shall be administered by the West
6 Virginia Court Reporters Association which shall also have
7 jurisdiction over businesses, entities or firms that provide or
8 arrange for court reporting services that violate these
9 prohibitions even if such businesses, entities or firms are not
10 subject to registration or other regulatory oversight in the state.

11 (3) The court reporter or business, entity or firm providing
12 or arranging for court reporter services is subject to disciplinary
13 proceedings before the West Virginia Court Reporters Association.
14 Potential penalties include, but are not limited to, suspension or
15 revocation of the license, registration, or certificate of the firm
16 and/or the court reporter, business, entity or firm. If businesses,
17 entities or firms providing or arranging court reporting services
18 are not subject to registration or other regulatory oversight in
19 the state, they may still be suspended or barred from doing
20 business for violating the provisions of this legislation.

21 (4) The West Virginia Court Reporters Association has the
22 jurisdiction and authority to administer the penalty provisions of
23 this section and otherwise enforce this legislation.

1 (k) If the complaint is against a local court reporter,
2 business, entity or firm in connection with a court or other legal
3 proceeding pending in a foreign jurisdiction, the complaint may be
4 filed with the Attorney General or other appropriate governmental
5 authority in this state.

6 (l) Complaints alleging violation of these provisions may be
7 filed by any person with knowledge of the offense or by the West
8 Virginia Court Reporters Association or Attorney General on its own
9 initiative.

10 (m) The West Virginia Court Reporters Association shall
11 publicly disclose the final action taken and also issue periodic
12 reports indicating the number and nature of complaints received and
13 the disposition thereof.

14 (n) This legislation is applicable to all court reporters and
15 to businesses, entities or firms that provide or arrange for court
16 reporting services provided on or after July 1, 2013.

NOTE: The purpose of this bill is to codify ethical standards for court reporters and entities providing court reporter services, to provide for its administration and to establish penalties and sanctions for violations.

This section is new; therefore, strike-throughs and underscoring have been omitted.