

Senate Bill No. 506

(By Senators Kirkendoll, Cann, Facemire, Green, D. Hall and
Barnes)

[Introduced February 6, 2014; referred to the Committee on
Government Organization; and then to the Committee on the
Judiciary.]

A BILL to amend and reenact §29A-5-2 of the Code of West Virginia,
1931, as amended, relating to contested cases; and clarifying
that the term "agency" as used in the section refers only to
the agency charged with conducting the administrative hearing
and not an agency appearing as a party in the proceeding.

Be it enacted by the Legislature of West Virginia:

That §29A-5-2 of the Code of West Virginia, 1931, as amended,
be amended and reenacted to read as follows:

ARTICLE 5. CONTESTED CASES.

**§29A-5-2. Rules of evidence; taking notice of facts; correction of
transcript.**

(a) In contested cases irrelevant, immaterial, or unduly

1 repetitious evidence shall be excluded. The rules of evidence as
2 applied in civil cases in the circuit courts of this state shall be
3 followed. When necessary to ascertain facts not reasonably
4 susceptible of proof under those rules, evidence not admissible
5 thereunder may be admitted, except where precluded by statute, if
6 it is of a type commonly relied upon by reasonably prudent men in
7 the conduct of their affairs. Agencies shall be bound by the rules
8 of privilege recognized by law. Objections to evidentiary offers
9 shall be noted in the record. Any party to any such hearing may
10 vouch the record as to any excluded testimony or other evidence.

11 (b) All evidence, including papers, records, agency staff
12 memoranda and documents in the possession of the agency, of which
13 it desires to avail itself, shall be offered and made a part of the
14 record in the case, and no other factual information or evidence
15 shall be considered in the determination of the case. Documentary
16 evidence may be received in the form of copies or excerpts or by
17 incorporation by reference.

18 (c) Every party shall have the right of cross-examination of
19 witnesses who testify, and shall have the right to submit rebuttal
20 evidence.

21 (d) Agencies may take notice of judicially cognizable facts.
22 All parties shall be notified either before or during hearing, or
23 by reference in preliminary reports or otherwise, of the material
24 so noticed, and they shall be afforded an opportunity to contest

1 the facts so noticed.

2 (e) Upon motion in writing served by any party as notice may
3 be served pursuant to section two, article seven of this chapter
4 and therein assigning error or omission in any part of any
5 transcript of the proceedings had and testimony taken at any such
6 hearing, the agency shall settle all differences arising as to
7 whether such transcript truly discloses what occurred at the
8 hearing and shall direct that the transcript be corrected and
9 revised in the respects designated by the agency, so as to make it
10 conform to the whole truth.

11 (f) For purposes of this section, the term "agency" refers
12 only to the agency charged with conducting the administrative
13 hearing.

NOTE: The purpose of this bill is to clarify that the term "agency" within §29A-5-2 refers only to the agency charged with conducting the administrative hearing and not an agency appearing as a party in the proceeding.

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