

No: 95

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1988



ENROLLED

Committee Substitute for
SENATE BILL NO. 95

(By Senator *Jarrell*)



PASSED February 22, 1988

In Effect *unity days from* Passage



ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 95

(SENATOR JARRELL, *original sponsor*)

[Passed February 22, 1988; in effect ninety days from passage.]

AN ACT to amend and reenact section three, article five, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article eleven of said chapter by adding thereto a new section, designated section eight-a, all relating to the appointment of nonresident fiduciaries; expanding the list of nonresidents who may qualify and act as nonresident fiduciaries; permitting nonresidents to be appointed committee for a resident incompetent; prescribing the methods for qualification and appointment of such nonresident fiduciaries; setting forth new and changing certain present bond requirements therefor; appointment of county clerk as attorney-in-fact for service of process and prescribing procedures therefor; permitting other lawful methods of service; setting forth restrictions and procedure for removal of personal assets of an estate; providing for joint and several liability of nonresident fiduciaries and sureties on bonds; setting forth penalties; establishing a procedure for the removal of assets from this state by certain nonresident fiduciaries; providing for liability of the surety for a violation thereof; and holding nonresident fiduciaries accountable after removal of such assets.

Be it enacted by the Legislature of West Virginia:

That section three, article five, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that article eleven of said chapter be amended by adding thereto a new section, designated section eight-a, all to read as follows:

ARTICLE 5. GENERAL PROVISIONS AS TO FIDUCIARIES.

§44-5-3. Appointment of nonresident; bond; service of notice and process; fees; penalty.

1 (a) Notwithstanding any other provision of law, no
2 individual who is a nonresident of this state nor any
3 nonresident banking institution nor any corporation
4 having its principal office or place of business outside this
5 state may be appointed or act as executor, administrator,
6 curator, guardian or committee in this state, except that:

7 (1) An individual who is a nonresident of this state may
8 be appointed ancillary administrator of a nonresident
9 decedent's assets situate in this state if such nonresident
10 individual is lawfully acting as executor in said decedent's
11 state of domicile and submits letters of probate
12 authenticated by the probate authorities of the decedent's
13 state of domicile to the clerk of the county commission of
14 any county of this state wherein ancillary administration is
15 sought;

16 (2) An individual who is a nonresident of this state may
17 be appointed ancillary administrator of a nonresident
18 decedent's assets situate in this state if such nonresident
19 individual is acting as administrator in said decedent's
20 state of domicile and submits letters of administration
21 authenticated by the probate authorities of the decedent's
22 state of domicile to the clerk of the county commission of
23 any county of this state wherein ancillary administration is
24 sought;

25 (3) An individual who is a nonresident of this state may
26 be appointed and act as testamentary guardian of a
27 nonresident infant and thereby exercise dominion and
28 control over such nonresident infant's assets situate in this
29 state upon submission of authenticated documentation that
30 such nonresident testamentary guardian was so appointed
31 at the place of domicile of the nonresident infant. Such
32 authenticated documentation shall be submitted to the

33 clerk of the county commission of any county of this state
34 wherein assets belonging to such nonresident infant are
35 situate;

36 (4) An individual who is a nonresident of this state and
37 who is named executor by a resident decedent may qualify
38 and act as executor in this state;

39 (5) An individual who is a nonresident of this state may
40 be appointed and act as administrator of a nonresident
41 decedent's assets in this state if appointed in accordance
42 with the provisions of section four, article one of this
43 chapter;

44 (6) An individual who is a nonresident of this state may
45 be appointed as the testamentary guardian of a resident
46 infant if appointed in accordance with the provisions of
47 section one, article ten of this chapter;

48 (7) An individual who is a nonresident of this state may
49 be appointed as committee of a resident incompetent:
50 *Provided*, That such appointment is made in accordance
51 with the provisions of section one, article eleven, chapter
52 twenty-seven of this code and if such nonresident
53 individual may otherwise qualify as committee.

54 (b) Nonresident individuals enumerated in subsection
55 (a) of this section shall give bond with corporate surety
56 thereon, qualified to do business in this state, and the
57 amount of such bond shall not be less than double the value
58 of the personal assets and double the value of any real
59 property authorized to be sold or double the value of any
60 rents and profits from any real property which the
61 nonresident individual is authorized to receive, except that:

62 (1) Any nonresident individual enumerated in
63 subsection (a) of this section who is the spouse, parent,
64 sibling, lineal descendant or sole beneficiary of a resident or
65 nonresident decedent shall give bond with corporate surety
66 thereon qualified to do business in this state, with such
67 penalty as may be fixed pursuant to the provisions of
68 section seven, article one of this chapter, as approved by the
69 clerk of the county commission;

70 (2) Where the terms of a decedent's will direct that a
71 nonresident individual enumerated in subdivisions (1), (3),
72 (4) and (6) of subsection (a) of this section named in a
73 decedent's will shall not give bond or give bond at a
74 specified amount, it shall not be required or shall be
75 required only to the extent required under the terms of the

76 will, unless at the time the will is admitted to record or at
77 any time subsequently, on the application of any person
78 interested, or from the knowledge of the commission or
79 clerk admitting the will to record, it is deemed proper that
80 greater bond be given.

81 (c) When a nonresident individual is appointed as
82 executor, administrator, testamentary guardian or
83 committee pursuant to the provisions of subsection (a) of
84 this section, said individual thereby constitutes the clerk of
85 the county commission wherein such appointment was
86 made as his true and lawful attorney-in-fact upon whom
87 may be served all notices and process in any action or
88 proceeding against him as executor, administrator,
89 testamentary guardian or committee or with respect to such
90 estate, and such qualification shall be a manifestation of
91 said nonresident individual's agreement that any notice or
92 process, which is served in the manner hereinafter provided
93 in this subsection, shall be of the same legal force and
94 validity as though such nonresident was personally served
95 with notice and process within this state. Service shall be
96 made by leaving the original and two copies of any notice or
97 process, together with a fee of five dollars, with the clerk of
98 such county commission. The fee of five dollars shall be
99 deposited with the county treasurer. Such clerk shall
100 thereupon endorse upon one copy thereof the day and hour
101 of service and shall file such copy in his office and such
102 service shall constitute personal service upon such
103 nonresident: *Provided*, That the other copy of such notice or
104 process shall be forthwith sent by registered or certified
105 mail, return receipt requested, deliver to addressee only, by
106 said clerk to such nonresident at the address last furnished
107 by him to said clerk and either: (1) Such nonresident's
108 return receipt signed by him or (2) the registered or certified
109 mail bearing thereon the stamp of the post office
110 department showing that delivery therefor was refused by
111 such nonresident is appended to the original notice or
112 process filed therewith in the office of the clerk of the
113 county commission from which such notice or process was
114 issued. No notice or process may be served on such clerk of
115 the county commission or accepted by him less than thirty
116 days before the return day thereof. The clerk of such county
117 commission shall keep a record in his office of all such
118 notices and processes and the day and hour of service

119 thereof. The provision for service of notice or process herein
 120 provided is cumulative and nothing herein contained shall
 121 be construed as a bar to service by publication where proper
 122 or the service of notice or process in any other lawful mode
 123 or manner.

124 (d) The personal estate of a resident decedent, infant or
 125 incompetent may not be removed from this state until the
 126 inventory or appraisal of that resident decedent's,
 127 infant's or incompetent's assets has been filed and any new
 128 or additional bond required to satisfy the penalties
 129 specified in subsection (b) of this section has been
 130 furnished. The liability of a nonresident executor,
 131 administrator, testamentary guardian or committee and of
 132 any such surety shall be joint and several and a civil action
 133 on any such bond may be instituted and maintained against
 134 the surety, notwithstanding any other provision of this code
 135 to the contrary, even though no civil action has been
 136 instituted against such nonresident.

137 (e) Any such nonresident who removes from this state
 138 assets administered in and situate in this state without
 139 complying with the provisions of this section, the provisions
 140 of article eleven, chapter forty-four of this code or any other
 141 requirement pertaining to fiduciaries generally, shall be
 142 guilty of a misdemeanor, and, upon conviction thereof, shall
 143 be fined not more than one thousand dollars or confined in
 144 the county jail for not more than one year, or, in the
 145 discretion of the court, by both such fine and imprisonment.

146 (f) If a nonresident appointed pursuant to subsection (a)
 147 of this section fails or refuses to file an accounting required
 148 by this chapter, and the failure continues for two months
 149 after the due date, he may, upon notice and hearing, be
 150 removed or subjected to any other appropriate order by the
 151 county commission, and if his failure or refusal to account
 152 continues for six months, he shall be removed by the county
 153 commission.

**ARTICLE 11. TRANSFER OF PROPERTY OF NONRESIDENTS AND
 RESIDENTS.**

**§44-11-8a. Removal of property of resident infant,
 incompetent or insane person from this state by
 nonresident testamentary guardian or
 nonresident committee.**

1 (a) No property or money in this state belonging to a

2 resident infant, incompetent or insane person may be
3 removed from this state by a nonresident testamentary
4 guardian or nonresident committee appointed or qualified
5 in this state unless:

6 (1) Such nonresident testamentary guardian or
7 nonresident committee files a petition to remove such
8 property or money in the circuit court of the county wherein
9 such guardian or committee was appointed or qualified, or
10 in which the property or money, or some part thereof, is
11 located;

12 (2) The infant, incompetent or insane person is made a
13 party defendant to such petition;

14 (3) Notice of the petition is filed as a Class II legal
15 advertisement in compliance with the provisions of article
16 three, chapter fifty-nine of this code, and publication area
17 for such publication is the county in which the petition is
18 filed; and

19 (4) The court determines, after a hearing, that the
20 removal of such property or money will not impair the
21 rights of or be prejudicial to the interests of such infant,
22 incompetent or insane person, or of any other person.

23 (b) If any nonresident testamentary guardian or
24 nonresident committee removes from this state property or
25 money belonging to a resident infant, incompetent or insane
26 person without obtaining an order entered pursuant to the
27 provisions of subsection (a) of this section, the same shall
28 work a forfeiture of his bond, and the liability of such
29 nonresident guardian or committee and of his surety shall
30 be joint and several, and a civil action on any such bond may
31 be instituted and maintained against the surety,
32 notwithstanding any other provision of this code to the
33 contrary, even though no civil action has been instituted
34 against the nonresident testamentary guardian or
35 nonresident committee.

36 (c) Notwithstanding any provision of section nine of
37 this article to the contrary, any nonresident testamentary
38 guardian or nonresident committee who obtains an order
39 described in subsection (a) of this section shall remain
40 accountable to the county commission of the county in
41 which he was appointed or qualified.

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

Blair O. Williams
Chairman Senate Committee

Bernard V. Kelly
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Judd C. Skiles
Clerk of the Senate

Donald L. Papp
Clerk of the House of Delegates

Sam Tenenbaum
President of the Senate

John W. Alford
Speaker House of Delegates

The within *appeared* this the *1st*
March day of 1988.

Arthur S. Shaffer
Governor

PRESENTED TO THE

GOVERNOR

Date 2/24/88

Time 10:35 a.m.

RECEIVED

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OFFICE OF THE ATTORNEY GENERAL
STATE OF CALIFORNIA