# WEST VIRGINIA CODE CHAPTER 14 ARTICLE 1

WV Legislature

## §14-1-1. Who may prosecute debt proceedings.

The Auditor, commissioner of finance and administration and any other officer or body authorized by law shall cause appropriate proceedings, in the manner provided for in this article, to be instituted and prosecuted to enforce payment of any debt or liability due the state.

WV Legislature

## §14-1-2. Method of proceeding; jurisdiction; venue; suing in name of state.

When the proceeding is at law, it may be by motion on twenty days' notice, or by action; and whether at law or in chancery, it may be brought in any court which would have jurisdiction thereof if the proceeding were brought by an individual, or in the circuit court of the county in which the seat of government is; or, if property or a debt be attached, in the circuit court of the county where such property may be found or the person owing such debt may reside; and it may be in the name of the state though the liability is created or secured by bond or other instrument, payable to, or covenant or contract with, any public officer or other person or official body acting on behalf of the state.

WV Legislature

## §14-1-3. Parties defendant; form of judgment.

The action or motion at law may be against any person indebted or liable in any way whatever to the state, his sureties and his and their personal representatives, or any one or more of them. But a judgment against a personal representative shall only bind him to the extent to which he is accountable for assets of the estate which he represents. If several defendants be proceeded against jointly, judgments may be rendered against any one of them shown to be liable and the proceeding be dismissed as to the others, or judgments rendered in their favor, or the case continued as to them for service of process or notice or other cause. Any party dismissed for want of service or process may be subsequently sued and an unsatisfied judgment against one or more of several persons jointly liable shall not be a bar to any subsequent proceedings against the others.

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## §14-1-4. Expedition of proceedings.

Courts wherein cases are pending to which the state is a party may hear them before other cases and expedite the proceedings therein by such rules as to them may seem proper.

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## §14-1-5. Form of writ of fieri facias; sale of real estate.

In a writ of fieri facias issuing out of any court of record upon a judgment or decree against any person indebted or liable to the state, or against any surety of his after the words "we command you that of the" the clerk shall insert the words "goods, chattels and real estate," and conform the subsequent part of such writ thereto. And under any writ so issued real estate may be taken and sold.

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## §14-1-6. To whom execution directed.

An execution in favor of the state, from any court, may be directed to the sheriff of any county.

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## §14-1-7. Order of levy.

Every writ of fieri facias issued according to the fifth section of this article shall be levied first on the goods and chattels. If the officer having such writ can find no goods and chattels liable thereto, or not a sufficiency thereof, then he shall levy it on the real estate.

WV Legislature

## §14-1-8. Sale of real estate under execution -- Notice; place.

When a levy is so made upon real estate, the officer making it shall publish notice thereof and of the time and place of sale as a Class III-O legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county. The sale shall take place at the premises or at the front door of the courthouse, as the officer may deem most advisable.

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## §14-1-9. Sale of real estate under execution -- Conduct; sale of parcels.

If the amount of the execution and all the costs and expenses be not sooner paid, such officer shall proceed on the day mentioned in the notice to sell at public auction the interest of the party against whom the execution issued, in the real estate, or so much thereof as the officer may deem sufficient; and if a part only be sold it shall be laid off in one parcel in such place and manner as the debtor or his agent may direct, or if he give no direction, as the officer may deem best.

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## §14-1-10. Sale of real estate under execution -- Terms of sale.

The sale shall be upon six months' credit; and, if the land be not purchased for the state, the officer shall take the note of the purchaser with sureties for the payment of the purchase money to the state. Every such note shall mention on what occasion the same was taken and shall be returned to the office of the court from which the execution issued, and the clerk shall indorse thereon the date of its return. The officer and his sureties shall be liable to the state if insufficient security be taken on such bond.

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## §14-1-11. Sale of real estate under execution -- Conveyance.

So soon as the purchaser shall pay the purchase money, a deed shall be executed at his costs, reciting the execution, the sale and the price, and conveying the land to him The grantor in such deed may either be the sheriff himself or the deputy or other person who acted in making the sale, but such deputy or other person shall not be such grantor unless the sheriff is legally disqualified from acting. Such deed shall pass to the purchaser all the interest which the party against whom the execution issued had in the land at the date of the judgment or decree.

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## §14-1-12. Sale of real estate under execution -- Execution of deeds in certain cases.

When the officer and his deputy who acted in making the sale shall both have died or removed out of the state before making such deed, or fail or refuse to act, or if the term of the officer within whose term such sale was made shall have expired, the deed may be executed by any successor of such officer, or by a commissioner appointed by the circuit court of the county for that purpose, which deed shall have the same force and effect as if made by the officer who made the sale.

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## §14-1-13. Sale of real estate under execution -- Resale on default of purchaser -- Judgment and execution on purchaser's note.

When any note taken under section ten of this article shall become due and not be paid, the officer shall sell the real estate for which such note was given, upon such notice as is provided in section eight of this article, and according to the provisions of section nine thereof, for cash, and shall credit the same upon such note. If the proceeds of sale for cash be not sufficient to pay such note so due as aforesaid, the clerk of such court shall enter in the law order book a judgment as near as may be in the form prescribed in section twenty-three, article three, chapter thirty-seven of this code, against such of the obligors therein as may then be alive. Execution may issue against them on such judgment, and such execution may be proceeded under in like manner as an execution issued on any other judgment or decree, in favor of the state, save only that the clerk shall indorse that no security is to be taken, and the officer shall govern himself accordingly and sell for cash any real estate or personal property which he may levy on under the same.

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## §14-1-14. Sale of real estate under execution -- Resale on default of purchaser -- Judgment against personal representatives.

Against the personal representatives of such of the obligors as may have died before judgment was entered under the preceding section, judgment may be obtained by action or motion.

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## §14-1-15. Sale of real estate under execution -- Property unsold for want of bidders.

When return is made on any execution issued under the provisions of this article, that personal property or real estate remains unsold for want of bidders, or to that effect, the provisions of section eighteen, article four, chapter thirty- eight of this code shall be applicable.

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## §14-1-16. Sale of real estate under execution -- Purchase of lands for state.

When land levied on under execution on behalf of the state will not sell for the amount thereof, the Auditor, or such agent as is mentioned in section nineteen of this article, may purchase such land for the state.

WV Legislature

## §14-1-17. Sale of real estate under execution -- Return of execution where property encumbered.

In any case in which an officer having an execution issued under the provisions of this article shall decline levying it because of any previous conveyance, execution or encumbrance, a return shall be made setting forth the nature of such conveyance, execution or encumbrance, in whose favor and for what amount, and the office in which the conveyance or encumbrance is recorded, or from which the execution issued.

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## §14-1-18. Settlement or dismissal of claims.

The commissioner of finance and administration, Auditor or other officer or official body having authority to collect the same may, with the advice of the Attorney General, adjust and settle upon just and equitable principles without regard to strict legal rules any account or claim, in favor of the state, which may at the time have been standing upon the books of his or its office more than five years; and, with the like advice, may dismiss any proceedings instituted by him or it.

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## §14-1-18a. Consignment of claims to debt collector.

Any account, claim or debt that an agency of this state is not able to collect within three months after trying with due diligence to do so may be referred to the commissioner of finance and administration for consignment by the commissioner to a responsible licensed and bonded debt collection agency or similar other responsible agent for collection. The commissioner shall not handle or consign any such account, claim or debt unless he is satisfied that the referring agency has made a diligent effort to collect the debt on its own; that the account or claim is justly, properly and clearly due the state; and that the collection of any such debt would not impose an undue, unjust, unfair or unreasonable hardship or burden upon the health or general welfare of the party owing the debt. In any such case of undue, unjust, unfair or unreasonable hardship or burden, the commissioner may, in his discretion, and with the review and approval of the Attorney General, compromise, settle or dismiss the debt or claim. If he is satisfied that the aforesaid terms of and conditions for collectibility have been met, the commissioner may consign the account, claim or debt to a responsible licensed and bonded debt collection agency or similar other responsible agent for collection. In any such case, the collection agency or other agent shall stand in the place of the state as creditor and shall have the same claims, rights and remedies against the debtor as the state has, and the debtor shall have the same rights, claims, defenses and setoffs against the collection agency or other agent as he has against the state.

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## §14-1-18b. Regulations applicable to debt collectors.

The commissioner of finance and administration shall promulgate rules and regulations for the determination and regulation of responsible licensed and bonded debt collection agencies and other responsible agents for collection. The commissioner shall determine the collection fees to be paid to any such agency or agent, which fees shall be a percentage of the amount of the debt recovered, but the commissioner shall not under any circumstances pay any agency or agent a fee of more than fifty percent of the amount of the debt recovered.

WV Legislature

## §14-1-18c. List of eligible debt collectors; statutory limitations applicable to debt collectors.

The State Tax Commissioner shall establish and maintain a list of debt collection agencies bonded and licensed with the state. When choosing collection agencies under the provisions of sections eighteen-a and eighteen-b of this article, the commissioner of finance and administration shall select and use only those collection agencies on the State Tax Commissioner's list. In collecting debts under sections eighteen-a and eighteen-b of this article, each debt collection agency and agent shall strictly abide by the provisions of (a) sections one hundred twenty-two through one hundred twenty-nine, inclusive, of article two, chapter forty-six-a of this code; (b) sections one through five, inclusive, of article sixteen, chapter forty-seven of this code; and (c) the federal Fair Debt Collection Practices Act, being Public Law 95-109 of the United States Congress. If any debt collection agency or agent violates any provision of the aforesaid laws, the State Tax Commissioner shall remove the agency from his aforesaid list and the commissioner of finance and administration shall immediately stop his employment and use of the agency or agent.

WV Legislature

## §14-1-19. Appointment of collection agents by Auditor.

The Auditor, subject to the approval of the commissioner of finance and administration, may appoint agents to superintend the collection of those debts to or claims of the state he is by law responsible for. The Auditor may authorize them to secure payments thereof by installments or otherwise and give further credit in consideration of additional security or indemnity satisfactory to him

WV Legislature

## §14-1-20. Lands of state — List by clerk.

The clerks of the county courts shall transmit to the Auditor a list of all lands in their respective counties obtained by the state, under the provisions of §14-1-16 of this code, and set forth in such list all the information which they can obtain in relation to the lands mentioned therein. For each tract of land or lot so mentioned by any clerk of the county court, he or she shall receive $1 from the Treasury.

WV Legislature

## §14-1-21. Lands of state — Registration by Auditor.

(a) The Auditor shall, in a book kept for the purpose, register all lands in the lists described in §14-1-20 of this code, describing when, how, and of whom, they were obtained, their situation, quantity and the title thereto, together with the price paid therefor by the state.

(b) The Auditor shall create an index system to reference lands purchased by the state, similar to those created and maintained by the counties of this state. The Auditor shall create a standard naming system to easily cross reference lands purchased by the state in the county indexes. The naming system, at a minimum, must include:

(1) The state agency purchasing the lands; and

(2) The county or counties where the land is located.

(c) The Auditor shall have rule-making authority relating to this index system under §29A-3-1 *et seq.* of this code. Any deed for state lands purchased after December 31, 2020, shall be recorded pursuant to the provisions of this section.

WV Legislature

## §14-1-22. Lands of state -- Sale.

The Auditor may sell, or appoint an agent to sell, any of such lands on such terms as the Auditor may think best, taking the bond of such agent, with good security, if any money is to come into his hands.

WV Legislature

## §14-1-23. Lands of state -- Record of sale.

In the book kept under the provisions of section twenty-one of this article, the Auditor shall enter the time when any of the lands are disposed of, the price and terms of sale, the names of the agents and purchasers, and the amount paid into the treasury on account of the sale.

WV Legislature

## §14-1-24. Compensation of Auditor's agents for collection of debts.

For the service rendered to the Auditor by any agent under the pertinent sections of this article, the Auditor shall recommend such compensation as may seem to him reasonable, not exceeding in any case fifty percent of the money actually paid into the treasury. The Governor shall authorize the payment of what may be so recommended or so much thereof as in his judgment may be proper.

WV Legislature

## §14-1-25. Execution of deeds in certain cases.

Any agent selling land under the provisions of section twenty-two of this article shall, when directed, execute a deed, with the written direction of the Auditor thereto annexed conveying to the purchaser all the interest which the state may have in such land; and, where such sale is made by the Auditor in person, such deed shall be made by him

WV Legislature

## §14-1-26. Reports to Legislature.

The commissioner of finance and administration and the Auditor shall biennially report to the Legislature their proceedings under this article, setting forth particularly all the agents appointed by them, and the agents' compensation, all debts collected and property purchased by them, and all arrangements made with public debtors.

WV Legislature

## §14-1-27. Debts due state from sheriffs or other officers -- Sale.

The Auditor may, with the advice and consent of the Attorney General, whenever any claim or account of any kind, against a sheriff or other officer has been due for more than seven years, and the same is for any reason difficult or expensive to collect, certify a transcript of such claim or accounts to the sheriff of the county in which the officer, from whom the same is due, resided at the time his indebtedness to the state was incurred, and may authorize such sheriff to sell the same as hereinafter directed: Provided, That any claim or account, upon which judgment has been obtained and execution has been returned unsatisfied, may be sold after the expiration of five years from the time such claim or account was due, either in whole or in part as shown by the Auditor's book.

WV Legislature

## §14-1-28. Debts due state from sheriffs or other officers -- Notice of sale.

The sheriff, after having received a transcript of the account which is to be sold, shall give notice by publication as a Class III-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county. Such notice shall be so published within the twenty-one consecutive days next preceding the date of sale. The notice shall state that he will proceed to sell to the highest bidder the claims or accounts mentioned in such notice. Such notice shall show the name of the sheriff or other officer and his sureties, in case there is evidence of his having executed a bond, the year or years for which he was indebted to the state, upon what account such indebtedness exists, and the amount shown to be due thereon by the Auditor's books, exclusive of interest, as well as the amount appearing to be due, with interest calculated to the day of sale.

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## §14-1-29. Debts due state from sheriffs or other officers -- Mode and terms of sale.

The sheriff to whom such claim or account is certified under the provisions of this article shall on the first day of the term of the circuit court of his county succeeding the publication of such notice, make sale of such claim or account to the highest bidder, and, in case the amount bid therefor be less than $100, he shall require the payment thereof in cash; and if the amount bid therefor be more than $100, he shall require one third thereof to be paid in cash, and shall receive the notes of the purchaser for the residue in two equal installments, payable respectively in six and twelve months, with legal interest thereon until paid. Such notes shall have the names of at least two persons signed thereto as sureties, whom the prosecuting attorney of the county, by indorsement on the back of such notes, shall certify are in his opinion responsible and solvent.

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**§14-1-30. Debts due state from sheriffs or other officers -- Return of sale; exceptions to sale; resale.**

Within ten days after making such sale, the sheriff shall return and file in the clerk's office of the circuit court of his county a report showing the name of the officer against whom the claim is, the date of sale, the date and character of the claim sold, the name of the purchaser, the amount for which sold, including cash and notes, and, in cases where notes are taken, the names of the securities thereon. Immediately after such report is filed in the clerk's office as aforesaid, the clerk shall post a notice of that fact at the front door of the courthouse and shall state therein that exceptions may be filed to such report with the clerk of the circuit court. If, before the first day of the term of the circuit court beginning after the filing of such report, any person shall file exceptions thereto and such exceptions shall be accompanied by a bond with two or more good securities, conditioned that if a resale be ordered the person who files such exceptions will at the second sale give for the claim or account a sum ten per cent greater than the amount for which it first sold and will pay all the cost of advertising and making resale, then the court may in its discretion set such sale aside and order the sheriff to make another sale, upon such terms as the court may deem proper.

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## §14-1-31. Debts due state from sheriffs or other officers -- Confirmation of sale; certification to Auditor.

In cases where no exceptions are filed to the report, the court shall confirm the sale, and within twenty days after such confirmation the clerk of the court shall certify to the Auditor a copy of such report and the order of confirmation.

WV Legislature

**§14-1-32. Debts due state from sheriffs or other officers -- Sending purchase money and notes for debts to Auditor; collection of notes.**

Within thirty days after the confirmation of said report, the sheriff shall transmit to the Auditor a certificate of deposit for the amount received by him in cash, and also any notes which may have been executed for the balance of purchase money, and in case of the failure of persons who execute such notes to pay the same when due, it shall be the duty of the Auditor to proceed to enforce the collection thereof, in the same manner that other claims due the state are recovered.

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## §14-1-33. Debts due state from sheriffs or other officers -- Rights of purchaser of such debts.

The purchaser of any accounts or claims so sold under the provisions of this article shall have the same right to recover that the state now has, and shall be substituted to all the rights of the state concerning the same. But in case there be any error in any account or claim sold under this article, or it shall appear that the officer, against whom the claim is, is entitled to credits which do not appear upon the account or claim, the purchaser shall not be allowed any claim against the state by reason thereof.

WV Legislature

## §14-1-34. Commissions to sheriff; payment of publication costs.

The sheriff, for performing the duties required of him by this article, shall be allowed five per cent on the first $100 and two per cent on the residue, which commission shall be deducted from the purchase money and the balance credited on the debt due the state. The costs of publishing notice in a newspaper shall be paid out of the proceeds of such sale.

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## §14-1-35. Transfer by defaulting officer or surety.

In any proceeding had under the provisions of this article against sheriffs or collectors and their sureties, or any, or either of them, for money due the state, any transfer, assignment or alienation of property, real or personal, or any judgment or decree obtained against or suffered by such sheriff or collector and their sureties or either of them after service upon them, respectively, of summons or notice shall be deemed fraudulent or void as to any judgment that may be thereafter rendered in favor of the state in pursuance of such summons or notice. But this section shall not apply to a bona fide purchaser of any such property, without notice.

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## §14-1-36. Settlement with sureties.

Whenever it shall appear to the satisfaction of the Auditor that the sureties of a defaulting assessor or sheriff will be compelled to pay the indebtedness of such defaulting officer, he may, with the advice and consent of the Attorney General, settle with such sureties by receiving the amount of the principal with interest thereon at the rate of six per cent per annum: Provided, That the sureties will pay the amount into the treasury before suit is brought.

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## §14-1-37. United States Treasury offset program authorized; setoff of federal debts.

(a) The auditor is authorized to enter into an agreement with the Secretary of the Treasury to participate in the Treasury Offset Program pursuant to 31 U.S.C. §3716 for the collection of any debts owed to the state or to state agencies from federal payments to vendors, contractors and taxpayers. The agreement may provide for the United States to submit nontax debts owed to federal agencies for offset against state payments otherwise due and owing to taxpayers, vendors and contractors providing goods or services to the state, its departments, agencies or institutions.

(b) For purposes of this section the following words have the meanings indicated.

(1) "Federal official" means a unit or official of the federal government charged with the collection of nontax liabilities payable to the federal government and with the authority to enter into the offset agreement.

(2) "Offset agreement" is the agreement authorized by this section.

(3) "Person" means an individual, vendor, contractor, partnership, society, association, joint stock company, limited liability company, corporation, estate, receiver, trustee, assignee, and any other person acting in a fiduciary or representative capacity whether appointed by a court or otherwise, or any combination of the foregoing.

(4) "State payments" shall include tax refunds pursuant to the Tax Procedure and Administration Act, article ten, chapter eleven of this code, and vendor or contractor payments made by the state to any person including expense reimbursements to an employee of the state: Provided, That "state payments" do not include salary, wages, pension and any other type, class or amount of payment as the auditor determines to impact the health or welfare of the citizens of the state.

(c) Pursuant to the agreement authorized herein, a federal official may:

(1) Certify to the auditor the existence of a person's delinquent, nontax debt owed by the person to the federal government by providing:

(A) The name of the person;

(B) The social security number or federal tax identification number;

(C) The amount of the nontax debt; and

(D) Any other information pursuant to the agreement authorized herein;

(2) Request the auditor to withhold any state payment to which the person is entitled; and

(3) Retain a portion of the proceeds of any federal administrative setoff pursuant to 31 CSR

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(d) As required or permitted by state law, federal law or the offset agreement, the State Auditor:

(1) Shall determine if a person for whom a certification is received is due a state payment;

(2) Shall withhold a state payment that is due a person whose name has been certified by a federal official;

(3) Shall notify the person of the amount withheld in accordance with the offset agreement;

(4) Shall pay to the federal official the lesser of:

(A) The entire state payment; or

(B) The amount certified; and

(C) Pay any refund or state payment in excess of the certified amount to the person less any fee pursuant to subsection (e);

(5) May certify to a federal official a person's delinquent debt owed to the state by providing the federal official:

(A) The name of the person;

(B) The social security number or tax identification number;

(C) The amount of the debt due the state; and

(D) Any other information required by the offset agreement; and

(6) May request that the federal official withhold any federal vendor or other federal payment pursuant to the offset agreement to which the person is entitled.

(e) The auditor may, by rule, establish a reasonable administrative fee to be charged to the person for the provision of state offset of federal debt. The fee is a separate debt and may be withheld from any refund, reimbursement or other moneys held for the person. The auditor may charge the person who is the subject of federal offset of a state debt, a fee equal to the fee authorized in subsection (c).

(f) Each state agency and institution shall take all appropriate and cost-effective actions to aggressively collect its accounts receivable. Each agency and institution may participate in the Treasury Offset program of the United States under 31 U.S.C. §3716.

(g) The auditor may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to administer and implement this section

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and the offset agreement.

(h) The auditor and the chief administrators of the various state agencies are authorized by this section to enter into interagency agreements for the purpose of protecting a person's return information as defined in section ten, article five-d, chapter eleven of this code and collecting debts, fees and penalties due the state, its departments, agencies or institutions.

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