WEST VIRGINIA CODE CHAPTER 45 ARTICLE 1

WV Legislature

§45-1-1. Demand that creditor sue.

The surety, guarantor or indorser (or his committee or personal representative) of any person bound by any contract may, if a right of action has accrued thereon, require the creditor (or his committee or personal representative), by notice in writing, forthwith to institute suit thereon; and if he be bound in a bond with collateral condition or for the performance of some collateral undertaking, he shall also specify in such notice the breach of the condition or undertaking for which he requires suit to be brought.

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§45-1-2. Discharge of surety, guarantor or indorser by failure of creditor to sue.

If such creditor or his committee or representative shall not, within a reasonable time after such notice, institute suit against every party to such contract who is a resident in this state, and not insolvent, and prosecute the same with due diligence to judgment and by execution, he shall forfeit his right to demand of such surety, guarantor or indorser or his estate, and all his cosureties and their estates, the money due by any such contract for the payment of money, or the damages sustained by any breach of the collateral condition or undertaking specified as aforesaid. But the conditions, rights, and remedies against the principal debtor shall remain unimpaired thereby.

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§45-1-3. Judgment, decree or recovery not binding on surety not party to proceeding.

Whether the surety, guarantor or indorser (or his committee or personal representative) shall have given notice as provided in the first section of this article or not, no judgment, decree or recovery rendered, entered, or had in any suit, action, prosecution or proceeding, to which the surety, guarantor or indorser (or his committee or personal representative) was not a party regularly served with process, shall be in any wise binding on such surety, guarantor or indorser (or his committee or personal representative), and, notwithstanding such decree, judgment or recovery, the surety, guarantor or indorser (or his committee or personal representative) shall be allowed to make any such defense in any action, suit or proceeding instituted against him as could have been made in the suit in which such decree, judgment or recovery was had.

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§45-1-4. Remedy of bail, surety, guarantor, etc., making payment.

If any person liable as bail, surety, guarantor or endorser, or any sheriff liable for not taking sufficient bail, or the committee, heir, or personal representative of any so liable, shall pay, in whole or in part, any judgment, decree or execution rendered or awarded on account of such liability, the person having right of action for the amount so paid, may, by motion in the court in which said judgment, decree, or execution was rendered or awarded, obtain judgment or decree against any person against whom such right of action exists for the amount so paid, with interest from the time of payment, and five percent damages on said amount; and said person so paying in whole or in part, any such judgment, decree or execution rendered or awarded on account of such liability, or any such note, bond or other demand, in whole or in part, shall by operation of law, in addition to the remedy above provided, be substituted to and become the owner of all of the rights and remedies of the creditor for the enforcement and collection of the amount or amounts so paid, and shall be deemed the assignee thereof; executions, or other legal process to which the principal creditor was entitled, may be issued on any such judgment or decree in the name of the original creditor against the person primarily liable for the benefit of the person secondarily liable to the extent to which he has satisfied the original creditor; but nothing in this section shall be construed to impair or affect in any way the security of the original creditor, or his rights and remedies as to any balance which may be due him The provisions of this section are cumulative, and are intended to protect the rights of any person secondarily liable to the extent to which he has satisfied the obligation of the person primarily liable. All assignments heretofore made of judgments and decrees to persons secondarily liable are hereby validated, and upon the same executions may be issued as hereinbefore provided.

WV Legislature

§45-1-5. Principal's right to same defense against surety as against creditor.

If any such surety (other than bail), or his committee, heir or personal representative, shall confess judgment or suffer judgment to go against him by default, without giving notice to his principal (if the principal be a resident of this state), or his committee or personal representative, to defend the suit, and after such principal, his committee or personal representative offers to defend the suit, and tenders counter security, approved by the court in which the suit is pending, such principal, or his committee, heirs or representative, may have the benefit of every defense against the motion or suit of such surety or his committee, representative or heirs, against him that he might have had against the creditor. And in all cases in which any principal debtor, or his committee, representative or heirs, knowing of the pendency of any suit against his surety or the committee, heir or personal representative of such surety shall not offer to defend such suit, he shall be precluded from making any defense to the claim of the surety which he might have made against the suit of the creditor.

WV Legislature

§45-1-6. Contribution among cosureties and coguarantors.

If the principal debtor be insolvent, any surety or guarantor (or his committee, personal representative or heir) against whom a judgment or decree has been rendered on the contract in which he was surety or guarantor, may obtain a judgment or decree by motion, in the court in which such judgment or decree was rendered, against any cosurety or coguarantor (or his committee, personal representative or heir) for his share, in law or equity, of the amount for which the first-mentioned judgment or decree may have been rendered; and if the same has been paid, for such share of the amount so paid, with interest thereon from the time of such payment.

WV Legislature

§45-1-7. Deposit on contract for use or rental of property.

Whenever money shall be deposited or advanced on a contract for the use or rental of personal property thereafter to be delivered, as security for performance of the contract or to be applied to payments upon such contract when due, and such contract is between a citizen of this state and a nonresident thereof, such money, with interest accruing thereon, if any, until repaid or so applied, shall continue to be the money of the person making such deposit or advance and shall be a trust fund in the possession of the person with whom such deposit or advance shall be made and shall be deposited in a bank or trust company located in this state and shall not be mingled with other funds or become an asset of such trustee until such property is delivered: Provided, however, That nothing herein contained shall apply to deposits or advance payment required by public service corporations under the authority of the Public Service Commission.

WV Legislature

§45-1-8. Penalty for violation of §45-1-7.

Any person violating any provision of the next preceding section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred nor more than $1,000, and, at the discretion of the court, may be confined in jail not more than one year. The officer or agent of any corporation who directly or indirectly participates in any transaction amounting to a violation of said section shall, upon conviction, be punished as aforesaid.

WV Legislature