WEST VIRGINIA CODE CHAPTER 53 ARTICLE 2

WV Legislature

§53-2-1. In what cases quo warranto awarded.

A writ of quo warranto may be awarded and prosecuted in the name of the State of West Virginia, at the instance of the Attorney General, or prosecuting attorney of any county, in any of the following cases: (a) Against a corporation for a misuse or nonuse of its corporate privileges and franchises, or for the exercise of a privilege or franchise not conferred upon it by law, or where a certificate of incorporation has been obtained by it for a fraudulent purpose, or for a purpose not authorized by law; (b) against a person for the misuse or nonuse of a privilege and franchise conferred upon him by or in pursuance of law; (c) against any person or persons acting as a corporation without authority of law; (d) against any person who shall intrude into or usurp any public office.

WV Legislature

§53-2-2. Application for writ.

Whenever the Attorney General or prosecuting attorney of any county is satisfied that a cause exists therefor he may, at his own instance, or at the relation of any person interested, apply by petition to the circuit court, or the judge thereof in vacation, of the county wherein the seat of government is, or of the county wherein the cause, or any part thereof, for the issuing of such writ arose, to have such writ issued, and shall state therein the reason therefor. Whenever such writ is issued at the relation of any person, the petition shall be to the circuit court, or the judge thereof in vacation, of the county wherein the seat of government is, or of the county wherein the cause, or any part thereof, for the issuing of such writ arose, as the relator may elect. Any such writ may be awarded either by the circuit court or by the judge thereof in vacation.

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§53-2-3. Award of writ; signing and attestation; bond.

If, in the opinion of the court, or the judge thereof in vacation, the reasons so stated in the petition are sufficient in law, the court, or judge thereof in vacation, shall award such writ and the same shall be signed by the judge of such court and attested by the clerk thereof. But if such writ be awarded at the relation of any person, it shall not be issued until the relator shall give bond with good security, to be approved by the court or judge, in such penalty as the court or judge shall prescribe, with condition that the relator will pay all such costs and expenses as may be incurred by the state in the prosecution of such writ, in case the same shall not be recovered from and paid by the defendant therein.

WV Legislature

§53-2-4. Information in the nature of writ of quo warranto.

In any case in which a writ of quo warranto would lie, the Attorney General or prosecuting attorney of any county, at his own instance or at the relation of any person interested, or any person interested, may, in the name of the State of West Virginia, apply to any such court or judge thereof in vacation as is mentioned in the second section of this article for leave to file an information in the nature of a writ of quo warranto for any of the causes and against any of the corporations, officers, or persons mentioned in the first section of this article, and he shall, at the time of his application, present to the court or judge the information he proposes to file. If, in the opinion of such court or judge, the matters stated in such information are sufficient in law to authorize the same to be filed, an order shall be made filing the same and awarding a summons against the defendant named therein to answer such information. But if the leave to file such information be asked on the relation of any person, or by any person at his own instance, the summons thereon shall not be issued by the clerk until such relator or person shall give the bond and security required by the next preceding section. A copy of every such information, if not made out and filed therewith, shall be made out by the clerk, and such copy shall be delivered to the officer to whom the summons is delivered to be served, and shall be served on the defendant or one of the defendants named in the summons.

WV Legislature

§53-2-5. Service of writ or summons.

Every such writ or summons shall be served as provided in article two, chapter fifty-six of this code, and if it be against a corporation, it shall be served on some of the persons mentioned in sections thirteen and fourteen of article three, chapter fifty-six of this code; and if service thereof cannot otherwise be made upon any defendant named in such writ or summons, it may be made by publication as prescribed in said last-named article.

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§53-2-6. Judgment when defendant fails to appear; defendant may have judgment set aside and make defenses where service by publication; pleading where defendant appears.

If the defendant named in such writ or information fail to appear after the service thereof as aforesaid, the court may hear proof of the allegations of the petition or information, and if such allegations be sustained, the court shall give judgment accordingly. But if the service be made by publication, the defendant against whom such judgment is rendered, upon giving bond and security as provided in section three of this article, may, at the next term of the court or within such additional time as the court may allow, on petition filed for the purpose, have the judgment against him set aside, and make such defense as he or it may have thereto. If the defendant appear before the end of the term next after the service of the writ or summons, or thereafter before judgment is rendered against him he may demur or plead not guilty, or both, to such writ, or demur or answer in writing, or both, to such information, and every allegation contained in such information which is not denied by such answer shall be taken as true and no proof thereof shall be required.

WV Legislature

§53-2-7. Verdict; judgment; costs; attorney's fee.

If upon the trial of such writ or information the defendant be found guilty, or not guilty, of any of the charges therein, the verdict shall be "guilty," or "not guilty," as the case may be; but if he be found guilty as to a part of such charges only, the verdict shall be guilty as to such charges and shall particularly specify the same, and as to the residue of such charges the verdict shall be "not guilty." Against a defendant so found guilty, the court shall give such judgment as is appropriate and authorized by law, and for the costs incurred in the prosecution of such writ or information, including an attorney's fee of not less than $10 nor more than $50, to be fixed by the court.

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§53-2-8. Receivership for property of dissolved corporation.

If, by the judgment of the court rendered as aforesaid, a corporation, or pretended corporation, be dissolved, the court may appoint a receiver of the property of such corporation or pretended corporation, as provided in sections one and two, article six of this chapter, and may make all such other orders in relation thereto as may be necessary for the preservation and safekeeping of such property.

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