WEST VIRGINIA CODE CHAPTER 55 ARTICLE 8

WV Legislature

§55-8-1. Jurisdiction in proceedings on penal bonds.

Where the proceeding before a court is on a penal bond, with condition for the payment of money, or for the performance or forbearance of any other act or thing, the jurisdiction shall be determined as if the undertaking to pay such money, or to do or forbear the doing of such other act or thing, had been without a penalty.

WV Legislature

§55-8-2. Action of debt or assumpsit on note or writing; action of debt for any past-due installment.

An action of debt or assumpsit may be maintained on any note or writing, whether sealed or not, by which there is a promise, undertaking, or obligation to pay money, if the same be signed by the party who is to be charged thereby, or his agent. And an action of debt may also be maintained on any such note or writing for any past-due installment of a debt payable in installments, although other installments thereof be not due.

WV Legislature

§55-8-3. Action of assumpsit for breach of contract.

An action of assumpsit shall lie in all cases to recover damages for the breach of any contract, express or implied, and, if in writing, whether under seal or not.

WV Legislature

§55-8-4. General issue in debt or assumpsit on sealed instrument.

The general issue in an action of debt on a sealed instrument shall be nil debet, and in an action of assumpsit on such instrument it shall be non assumpsit. It shall not be necessary in either case to plead non est factum, but any evidence admissible under a plea of non est factum may be given under the general issue, provided there be filed with such plea of the general issue the affidavit required by section forty-six, article four, chapter fifty-six of this code.

WV Legislature

§55-8-5. Validity of writing payable to person dead at time of execution.

A bond, note or other writing to a person or persons who, or some of whom, are dead at the time of its execution, shall be as valid as if such person or persons were then alive, and may be proceeded on in the same manner as if it had been executed in the lifetime of such person or persons and such person or persons had died after its execution.

WV Legislature

§55-8-6. Liability of personal representative of deceased joint judgment debtor, obligor, promissor or partner.

The representative of one bound with another, either jointly or as a partner, by judgment, bond, note or otherwise, for the payment of a debt, or the performance or forbearance of an act, or for any other thing, and dying in the lifetime of the latter, may be charged in the same manner as such representative might have been charged, if those bound jointly or as partners had been bound severally as well as jointly, otherwise than as partners.

WV Legislature

§55-8-7. Action against makers, drawers, endorsers, acceptors, assignors or absolute guarantors.

(a) The holder of any note, check, draft, bill of exchange or other instrument of any character, whether negotiable or not or any person entitled to judgment for money on contract, in any action at law or proceeding by notice for judgment on motion thereon, may join all or any intermediate number of the persons liable by virtue thereof, whether makers, drawers, endorsers, acceptors, assignors, or absolute guarantors, or may proceed against each separately, although the promise of the makers, or the obligations of the persons otherwise liable, may be joint or several, or joint and several. If notice or other process is not served upon all persons proceeded against, judgment may nevertheless be given against those liable who have been served as provided by law with notice or other process. These actions or proceedings by notice may be had from time to time in the same or any other court until judgment is obtained against every person liable or his personal representative. However, plaintiff shall have satisfaction of but one of two or more judgments rendered on the same demand.

(b) In any action at law, whether in circuit court or magistrate court, on a note or contract, express or implied, for the payment of money, if: (1) The plaintiff files with the complaint an affidavit made by the plaintiff or an agent, stating therein to the best of the affiant's belief the amount of the plaintiff's claim, that the amount is justly due, and the time from which plaintiff claims interest; and (2) a copy of the affidavit together with a copy of any account filed with the complaint is served upon the defendant, the plaintiff is entitled to a judgment on the affidavit and statement of account without further evidence unless the defendant files an answer denying the claim or otherwise makes an appearance before the court denying that the plaintiff is entitled to recover from the defendant on the claim. The affidavit must show the calculation of the amount sought. The calculation is to also include an itemization of the principal and any interest, insurance or other charges of the original obligation. The calculation is also to include an itemization of all credits to the original obligation including credits to principal, interest, insurance, any other charges, rebates of unearned interest, rebates of insurance, rebates of other charges and proceeds of sale of all collateral. If the defendant's pleading or affidavit admits that the plaintiff is entitled to recover from the defendant a sum certain less than that stated in the affidavit filed by the plaintiff, judgment may be taken by the plaintiff for the sum so admitted to be due and the case will be tried as to the residue.

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§55-8-8. Joinder of personal representative of decedent as defendant in action under §55-8-7; judgment to affect only estate of decedent.

In every action or motion in which a decedent, if living, could be joined as defendant with another or others under section seven of this article, his personal representative may be joined with him or them, or with the personal representative of any one or more of them. In every such case in which a judgment is rendered against a personal representative, alone or jointly with another or others, such judgment, as to such representative, shall affect only the estate of his decedent, and shall, as to such estate, have the same force and effect as if rendered in an action in which such representative is sued alone. But nothing in this section shall prevent a plaintiff, at his election, from proceeding separately against the representative of any decedent.

WV Legislature

§55-8-9. Action by assignee in own name; defenses and setoff; joinder of claims.

The assignee of any bond, note, account, or writing, not negotiable, or other chose in action arising out of contract or injury to personal or real property, may maintain thereupon any action in his own name, without the addition of "assignee," which the original obligee, promisee, payee, contracting party, or owner of such chose in action might have brought; but shall allow all just defenses and sets-off, not only against himself but against the assignor, before the defendant had notice of the assignment. In every such action the plaintiff may unite claims payable to him individually with those payable to him as such assignee, provided it be otherwise proper to join them. But nothing in this section shall be construed to make assignable any right of action not otherwise assignable.

WV Legislature

§55-8-10. Assignee entitled to recover from assignor; defenses allowed.

Any assignee mentioned in section nine of this article may recover from any assignor of such writing, whether joined as defendants under section seven of this article, or proceeded against separately, but a remote assignor shall have the benefit of the same defenses as if the suit had been instituted by his immediate assignee.

WV Legislature

§55-8-11. Limitation on jurisdiction of equity as to suit by assignee.

A court of equity shall not have jurisdiction of a suit upon a bond, note, or writing, by an assignee or holder thereof, unless it appear that the plaintiff had not an adequate remedy thereon at law.

WV Legislature

§55-8-12. Third party may sue on covenant or promise made for his sole benefit.

If a covenant or promise be made for the sole benefit of a person with whom it is not made, or with whom it is made jointly with others, such person may maintain, in his own name, any action thereon which he might maintain in case it had been made with him only, and the consideration had moved from him to the party making such covenant or promise.

WV Legislature

§55-8-13. Action of account.

An action of account may be maintained against the personal representative of any guardian or receiver; and also by one joint tenant, tenant in common, or coparcener or his personal representative against the other, or against the personal representative of the other, for receiving more than his just share or proportion.

WV Legislature

§55-8-14. Agreements to indemnify against sole negligence of the indemnitee, his agents or employees against public policy; no action maintainable thereon; exceptions.

A covenant, promise, agreement or understanding in or in connection with or collateral to a contract or agreement entered into on or after the effective date of this section, relative to the construction, alteration, repair, addition to, subtraction from, improvement to or maintenance of any building, highway, road, railroad, water, sewer, electrical or gas distribution system, excavation or other structure, project, development or improvement attached to real estate, including moving and demolition in connection therewith, purporting to indemnify against liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the indemnitee, his agents or employees is against public policy and is void and unenforceable and no action shall be maintained thereon.

This section does not apply to construction bonds or insurance contracts or agreements.

WV Legislature

§55-8-15. Choice of law for computer information agreements.

A choice of law provision in a computer information agreement which provides that the contract is to be interpreted pursuant to the laws of a state that has enacted uniform computer information transactions act, as proposed by the national conference of commissioners on uniform state laws, or any substantially similar law, is voidable and the agreement shall be interpreted pursuant to the laws of this state if the party against whom enforcement of the choice of law provision is sought is a resident of this state or has its principal place of business located in this state. For purposes of this section, a "computer information agreement" means an agreement that would be governed by the uniform computer transactions act or substantially similar law as enacted in the state specified in the choice of law provision if that state's laws were applied to the agreement.

WV Legislature

§55-8-16. Choice of law in product liability actions.

(a) It is public policy of this state that, in determining the law applicable to a product liability claim brought by a nonresident of this state against the manufacturer or distributor of a prescription drug or other product, all liability claims at issue shall be governed solely by the product liability law of the place of injury ("lex loci delicti").

(b) The amendments to this section enacted in 2015 shall be applicable prospectively to all civil actions commenced on or after July 1, 2015.

WV Legislature