

## WEST VIRGINIA CODE: §56-2-6

### **§56-2-6. Motion for judgment on contracts; affidavit of claim; plea and counter affidavit; judgment; discontinuance; defense.**

Any person entitled to recover money by action on any contract may, on motion before any court which would have jurisdiction in an action, obtain judgment for such money after not less than twenty days' notice, which notice shall be in writing, signed by the plaintiff or his attorney, and shall be returned to the clerk's office of such court at least five days before the return day of such notice, and when so returned shall be forthwith filed and the date of filing noted thereon, and shall be placed upon the docket for hearing. Such notice may be served, returned as aforesaid, filed and docketed at any time before or during the term of court at which the motion for judgment is to be made, and shall be heard at such term if the term continues for a period of twenty days after the service of such notice, unless good cause for a continuance thereof be shown. If the court be not in session on the return day as set out in the notice, and the term of court be not ended, motion shall be considered continued until the next court day of the term and if the term be ended, then the motion shall stand continued. The return day of a notice under this section shall not be more than ninety days from its date, unless the commencement of the next succeeding term of court be more than ninety days from such date, in which case the return day may be the first day of such term.

In any such motion, if the plaintiff shall file with his notice, and shall serve upon the defendant at the same time and in the same manner as the notice is served, an affidavit of himself or some other credible person, stating distinctly the several items of the plaintiff's claim, and that there is, as the affiant verily believes, due and unpaid from the defendant to the plaintiff upon the demand or demands stated in the notice, including principal and interest, after deducting all payments, credits and sets-off made by the defendant, or to which he is entitled, a sum certain to be named in the affidavit, no plea shall be filed in the case unless the defendant shall file with his plea the affidavit of himself or some other credible person, that there is not, as the affiant verily believes, any sum due by the defendant to the plaintiff upon the demand or demands stated in the plaintiff's notice, or stating a sum certain less than that stated in the affidavit filed by the plaintiff, which the affiant verily believes is all that is due from the defendant to the plaintiff upon the demand or demands stated in the plaintiff's notice. If such plea and affidavit be not filed, on motion of the plaintiff judgment shall, without further proof, be entered for the plaintiff by the court for the sum stated in his affidavit, with interest thereon from the date of the affidavit until paid: Provided, That before entering judgment on any negotiable instrument, the court shall require the plaintiff to file the same in such proceeding. If such plea and affidavit be filed by the defendant and it be admitted in such affidavit that any sum is due from the defendant to the plaintiff, judgment may be taken by the plaintiff for the sum so admitted to be due, with interest thereon from the date of the affidavit filed by the plaintiff until paid, and the case tried as to the residue.

A proceeding under this section shall not be discontinued by reason of the failure of the clerk to docket the same, or by reason of no order of continuance being entered in it from one day to another, or from term to term. Defense to any such motion may be made in the same manner and to the same extent as to an action at law.

WV Legislature