WEST VIRGINIA CODE CHAPTER 56

§56-1-1. Venue generally.

(a) Any civil action or other proceeding, except where it is otherwise specially provided, may hereafter be brought in the circuit court of any county:

(1) Wherein any of the defendants may reside or the cause of action arose, except that an action of ejectment or unlawful detainer must be brought in the county wherein the land sought to be recovered, or some part thereof, is;

(2) If a corporation or other corporate entity is a defendant, wherein its principal office is or wherein its mayor, president or other chief officer resides; or if its principal office be not in this state, and its mayor, president or other chief officer do not reside therein, wherein it does business; or if it is a corporation or other corporate entity organized under the laws of this state which has its principal office located outside of this state and which has no office or place of business within the state, the circuit court of the county in which the plaintiff resides or the circuit court of the county in which the seat of state government is located has jurisdiction of all actions at law or suits in equity against the corporation or other corporate entity, where the cause of action arose in this state or grew out of the rights of stockholders with respect to corporate management;

(3) If it is to recover land or subject it to a debt, where the land or any part may be;

(4) If it is against one or more nonresidents of the state, where any one of them may be found and served with process or may have estate or debts due him, her, or them;

(5) If it is to recover a loss under any policy of insurance upon either property, life or health or against injury to a person, where the property insured was situated either at the date of the policy or at the time when the right of action accrued or the person insured had a legal residence at the date of his or her death or at the time when the right of action accrued;

(6) If it is on behalf of the state in the name of the Attorney General or otherwise, where the seat of government is; or

(7) If a judge of a circuit is interested in a case which, but for such interest, would be proper for the jurisdiction of his or her court, the action or suit may be brought in any county in an adjoining circuit.

(b) Whenever a civil action or proceeding is brought in the county where the cause of action arose under the provisions of subsection (a) of this section, if no defendant resides in the county, a defendant to the action or proceeding may move the court before which the action is pending for a change of venue to a county where one or more of the defendants resides and upon a showing by the moving defendant that the county to which the proposed change of venue would be made would better afford convenience to the parties litigant and the witnesses likely to be called, and if the ends of justice would be better served by the change of venue, the court may grant the motion.

(c) For all civil actions filed on or after July 1, 2018, a nonresident of the state may not bring an action in a court of this state unless all or a substantial part of the acts or omissions giving rise to the claim asserted occurred in this state: Provided, That unless barred by the statute of limitations or otherwise time barred in the state where the action arose, a nonresident of this state may file an action in state court in this state if the nonresident cannot obtain jurisdiction in either federal or state court against the defendant in the state where the action arose. A nonresident bringing such an action in this state shall be required to establish, by filing an affidavit with the complaint for consideration by the court, that the action cannot be maintained in the state where the action arose due to lack of any legal basis to obtain personal jurisdiction over the defendant: Provided, however, that the provisions of this subsection do not apply to civil actions filed against West Virginia citizens, residents, corporations, or other corporate entities.

In a civil action where more than one plaintiff is joined, each plaintiff must independently establish proper venue. A person may not intervene or join in a pending civil action as a plaintiff unless the person independently establishes proper venue. If venue is not proper as to any such nonresident plaintiff in any court of this state, the court shall dismiss the claims of such plaintiff without prejudice to refile in a court in any other state or jurisdiction. When venue is proper as to one defendant, it is also proper as to any other defendant with respect to all actions arising out of the same transaction or occurrence.

For purposes of this subsection, “nonresident” means any person, whether a citizen of this state or another state, who was domiciled outside the State of West Virginia at the time of the acts or omissions giving rise to the claim asserted: Provided, That a member of the armed forces of the United States who is stationed beyond the territorial limits of this state, but who was a resident of this state at the time of his or her entry into such service, and any full-time student of any college or university of this state, even though he or she is paying nonresident tuition, is considered a resident under this subsection.

§56-1-1a. Forum non conveniens.

(a) In any civil action if a court of this state, upon a timely written motion of a party, finds that in the interest of justice and for the convenience of the parties a claim or action would be more properly heard in a forum outside this state, the court shall decline to exercise jurisdiction under the doctrine of forum non conveniens and shall stay or dismiss the claim or action, or dismiss any plaintiff: Provided, That the plaintiff's choice of a forum is entitled to great deference, but this preference may be diminished when the plaintiff is a nonresident and the cause of action did not arise in this state. In determining whether to grant a motion to stay or dismiss an action, or dismiss any plaintiff under the doctrine of forum non conveniens, the court shall consider:

(1) Whether an alternate forum exists in which the claim or action may be tried;

(2) Whether maintenance of the claim or action in the courts of this state would work a substantial injustice to the moving party;

(3) Whether the alternate forum, as a result of the submission of the parties or otherwise, can exercise jurisdiction over all the defendants properly joined to the plaintiff's claim;

(4) The state in which the plaintiff(s) reside;

(5) The state in which the cause of action accrued;

(6) Whether the balance of the private interests of the parties and the public interest of the state predominate in favor of the claim or action being brought in an alternate forum, which shall include consideration of the extent to which an injury or death resulted from acts or omissions that occurred in this state. Factors relevant to the private interests of the parties include, but are not limited to, the relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling witnesses; the cost of obtaining attendance of willing witnesses; possibility of a view of the premises, if a view would be appropriate to the action; and all other practical problems that make trial of a case easy, expeditious and inexpensive. Factors relevant to the public interest of the state include, but are not limited to, the administrative difficulties flowing from court congestion; the interest in having localized controversies decided within the state; the avoidance of unnecessary problems in conflict of laws, or in the application of foreign law; and the unfairness of burdening citizens in an unrelated forum with jury duty;

(7) Whether not granting the stay or dismissal would result in unreasonable duplication or proliferation of litigation; and

(8) Whether the alternate forum provides a remedy.

(b) A motion pursuant to subsection (a) of this section is timely if it is filed either concurrently or prior to the filing of either a motion pursuant to Rule twelve of the West Virginia Rules of Civil Procedure or a responsive pleading to the first complaint that gives

rise to the grounds for such a motion: Provided, That a court may, for good cause shown, extend the period for the filing of such a motion.

(c) If the statute of limitations in the alternative forum expires while the claim is pending in a court of this state, the court shall grant a dismissal under this section only if each defendant waives the right to assert a statute of limitation defense in the alternative forum. The court may further condition a dismissal under this section to allow for the reinstatement of the same cause of action in the same forum in the event a suit on the same cause of action or on any cause of action arising out of the same transaction or occurrence is commenced in an appropriate alternative forum within sixty days after the dismissal under this section and such alternative forum declines jurisdiction.

(d) In actions filed pursuant to Rule twenty-three of the West Virginia Rules of Civil Procedure the provisions of this section shall apply only to the class representative(s).

(e) A court that grants a motion to stay or dismiss an action pursuant to this section shall set forth specific findings of fact and conclusions of law.

§56-1-1b. Venue for bringing civil action under a construction contract.

(a) As used in this chapter, "construction contract" means a contract, subcontract, or agreement entered into or made by an owner, architect, engineer, contractor, construction manager, subcontractor, supplier, or material or equipment lessor for the design, construction, alteration, demolition, renovation, remodeling, or repair of, or for the furnishing of material or equipment for a building, structure, appurtenance, or other improvement to or on public or private real property, including moving, demolition, and excavation connected with the real property. The term "construction contract" includes an agreement to which an architect, engineer, or contractor and an owner's lender are parties regarding an assignment of the construction contract or other modifications.

(b) Where a party whose principal place of business is in the state of West Virginia enters into a construction contract on or after July 1, 2021, to design, manage construction of, construct, alter, repair, maintain, move, demolish, or excavate, or supply goods, equipment, or materials for the construction, alteration, repair, maintenance, movement, demolition, or excavation of a building, structure, appurtenance, road, bridge, or tunnel which is physically located in the state of West Virginia, such construction contract must provide that any civil action or arbitration called for or permitted by the contract must be commenced and heard in the state of West Virginia, in the jurisdiction where the construction project is located, or such other jurisdiction where the venue is proper under the provisions of §56-1-1 *et seq*. of this code. Any provision in a construction contract entered into on or after July 1, 2021, mandating that such action be brought in a location outside the state of West Virginia is unenforceable.

§56-1-2.

Repealed.

Acts, 1986 Reg. Sess., Ch. 170.

§56-2-1. Service of notices; personal service; substituted service; return.

A notice, no particular mode of serving which is prescribed, may be served by delivering a copy thereof in writing to the party in person; or if he (or she) be not found, by delivering such copy at his (or her) usual place of abode, and giving information of its purport, to his wife (or her husband), or to any other person found there who is a member of his (or her) family and above the age of sixteen years; or if neither his wife (or her husband) nor any such other person be found there, and he (or she) be not found, by leaving such copy posted at the front door of such place of abode. Any sheriff or constable, thereto required, shall serve a notice within his county and make return of the manner and time of service; for a failure so to do he shall forfeit $20. Such return, or a similar return by any other person who verified it by affidavit, shall be evidence of the manner and time of service.

§56-2-2. Service by publication.

Any such notice to a person not residing in this state may be served by the publication thereof as a Class III 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 in which the suit or action is pending.

§56-2-3. Notice to take depositions.

Notice to any party to take a deposition may be served on the counsel of such party, or on any one of such counsel, if there be more than one, and such service shall have like effect as if the notice were served on the party, provided the time between the service of notice and taking the deposition be sufficient for conveying, by ordinary course of mail, a letter from the place of service to the place of residence of the party, and a reply from that place back to the place of service, and then for the counsel to attend at the place of taking the deposition. In all cases when notice is served on counsel as aforesaid, the court, upon exception being taken, may determine whether, under all the circumstances, the notice has been served in reasonable time, and admit or reject the deposition accordingly.

§56-2-4. Motion on certain bonds.

In the case of any bond taken by an officer, or given by a sheriff or constable, and returned to or filed in the office of the clerk of the county court of the county, or any bond or recognizance taken in a criminal case or proceeding, the circuit court of the county, or the court in which any such bond or recognizance is given, may, on motion of any person, or the state, as the case may be, give judgment for so much money as he or the state, is entitled, by virtue of such bond, to recover by action.

§56-2-5. Notice of motion for judgment.

In any case wherein there may be judgment or decree for money on motion, such motion shall be after ten days' notice, unless some other time be specified in the section or statute authorizing such motion.

§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.

§56-2-7. Trial by jury.

On a motion, when an issue of fact is joined, and either party desires it, or when in the opinion of the court it is proper, a jury shall be impaneled for the trial of the issue.

§56-2-8. Collection of forfeitures; prosecuting attorney's fees.

Unless otherwise expressly provided by law, any forfeiture payable to the state under any provision of law may be enforced in the circuit court or other court of record having jurisdiction thereof, upon notice of motion for judgment brought in the name of the state. If such judgment shall be for the state it shall include the costs of the proceeding, and a docket fee of $10 for the prosecuting attorney's services, payable into the county treasury, which docket fee shall be taxed as part of the costs.

§56-3-1. Ancient writs.

The right and benefit of all writs, remedial and judicial, given by any statute or act of parliament made in aid of the common law prior to the fourth year of the reign of James the First, of a general nature, not local to England, shall still be saved, so far as the same may be consistent with the Constitution of this state, the acts of the general assembly of Virginia passed before June 20, eighteen hundred and sixty-three, and the acts of the Legislature of this state.

§56-3-2. Writs abolished.

The writ of right, writ of entry, writ of formedon, writ de homine replegiando, writ of levari facias, writ of elegit, writ of distringas and writ of capias ad satisfaciendum are abolished and shall not hereafter be issued.

§56-3-2a. Actions for breach of promise to marry and for alienation of affections prohibited.

Notwithstanding any other provision of law to the contrary, no civil action shall lie or be maintained in this state for breach of promise to marry or for alienation of affections, unless such civil action was instituted prior to the effective date of this section.

§56-3-3. Forms of writs and other process.

The Supreme Court of Appeals may, from time to time, prescribe the forms of writs and other process, and until the court shall alter the forms, the same may be as heretofore used, except so far as is otherwise provided.

§56-3-4. Issuance of process; alteration.

The process to commence a suit shall be a writ commanding the officer to whom it is directed to summon the defendant to answer the bill or action. It shall be issued on the order of the plaintiff, his attorney or agent, and shall not, after it is issued, be altered, nor any blank therein filled up, except by the clerk.

§56-3-5. To whom process directed; return of process; return of summons for witness.

Process from any court, whether original, mesne or final, may be directed to the sheriff of any county. Any process shall be returnable, within ninety days after its date, except as provided in section six, article two of this chapter, to the court on any day of a term, or in the clerk's office to the first day of any rules, designated as the first or last Monday, as the case may be, in any month and year, except that a summons for a witness shall be returnable on whatever day his attendance is desired, and an order of attachment may be returnable to the next term of the court, although more than ninety days from the date of the order, and process awarded in court may be returnable as the court may direct.

§56-3-6. Delivery of process.

The clerk of every court from whose office may be issued any process, original, mesne or final, or any order or decree to be served on any person, shall, unless the party interested, or his attorney, direct otherwise, deliver the same to the sheriff or other proper officer of the county for which the court is held, if it is to be executed therein, and if it is to be executed in any other county, shall enclose the same in an envelope properly addressed to the sheriff or other proper officer thereof, pay the postage thereon and mail it in the post office. Documentation of service of process will be according to rules promulgated by the Supreme Court of Appeals.

§56-3-7. Officer's receipt of process.

Every officer who attends a court shall, within five days after the end of any rules, go to the clerk's office and receive all process, orders and decrees to be executed by him and give receipts therefor. For any failure so to do he shall forfeit $50.

§56-3-8. Proof of mailing process to officer.

Proof that any process or order was put into the post office in an envelope or cover properly addressed to any officer, and that the postage thereon was paid, shall be prima facie evidence of the receipt thereof in due course of mail by the officer to whom it was so addressed; and this evidence may be furnished by the receipt taken at the time the process or order was put into the post office, from the postmaster, his deputy or clerk, and the certificate of a justice of the acknowledgment of the receipt before him But such evidence may be rebutted by the oath of the officer to whom such process or order was so addressed, that he did not himself receive the same, and believes that it was not received by any of his deputies.

§56-3-9. Service in other county; return.

A sheriff or other officer may transmit by mail (the postage thereon being prepaid) any process or order which came to his hands from beyond his county, with his return thereon, in an envelope or cover properly addressed to the officer to whom or whose office such return ought to be made; and the receipt taken at the time from the postmaster, his deputy or clerk, certified as aforesaid, shall be evidence that the process or order, and return, were transmitted as aforesaid.

§56-3-10. Clerk's receipt of process sent by mail; postage due.

If there come directed to a clerk, by mail, a letter with an indorsement on the envelope of the parties' names, and the nature of the process enclosed, he shall take the same out of the post office, and pay such postage as may be due thereon.

§56-3-11. Execution and validity of service generally; execution when sheriff is disqualified; service when original is returned not executed.

Any process or notice may be executed on or before the return day thereof. If it appear to be duly served and good in other respects, it shall be deemed valid, although not directed to any officer, or although directed to an officer who is not qualified to execute it, provided it be executed by any other to whom it might lawfully have been directed. In any case in which it would be improper for the sheriff to execute any process, notice, writ or order, or summon a jury, because of interest or other disability, it shall be lawful for any deputy sheriff of such county not similarly disqualified to execute such process, notice, writ or order, or summon such jury, and make return thereof in his own name as deputy sheriff, and the execution and return thereof, if in other respects duly made, shall be valid, though it be directed to the sheriff. Process or notice to commence actions or suits, including writs of scire facias, mandamus, quo warranto, certiorari, prohibition, and alias or other process where the original is returned not executed, may also be served by any credible person; and the return of such person, verified by his affidavit, shall be evidence of the manner and time of service.

§56-3-12. Service of summons or scire facias; finality of judgment by default on scire facias or summons.

Any summons or scire facias against any person, including a summons for a witness, may be served as a notice is served under section one, article two of this chapter, except that when such process is against a corporation the mode of service shall be as prescribed by the two following sections. To this end the clerk issuing such process, unless otherwise directed, shall deliver or transmit therewith as many copies thereof as there are persons named therein on whom it is to be served. No judgment by default on a scire facias or summons shall become final within twenty days after the service of such process.

§56-3-13. Service of process or notice on domestic corporations.

Unless otherwise specially provided, process against, or notice to, a corporation created by virtue of the laws of this state may be served as follows:

(a) If a city, town or village, on its mayor, city manager, recorder, clerk, treasurer, or any member of its council or board of commissioners;

(b) If a county commission of any county, on any commissioner or the clerk thereof, or if they be absent, on the prosecuting attorney of the county;

(c) If a Board of Education of any district or independent school district, on the president or any commissioner thereof, or if they be absent, on the prosecuting attorney of the county;

(d) If any other corporation, on the Secretary of State as statutory attorney-in-fact of such corporation, as provided in section fifteen, article one, chapter thirty-one of this code, or on any person appointed by it to accept service of process in its behalf, or on its president or other chief officer, or its vice president, cashier, assistant cashier, treasurer, assistant treasurer, secretary, or any member of its board of directors, or, if no such officer or director be found, on any agent of such corporation, including in the case of a railroad company a depot or station agent in the actual employment of the company.

§56-3-13a. Service of process or notice on domestic and foreign limited partnerships; service by publication.

Process against, or notice to, a domestic limited partnership or a foreign limited partnership may be served on any general partner, or on the Secretary of State as statutory attorney-in-fact of such limited partnership as provided in section twenty-six-a of article nine, chapter forty-seven of this code, or on any other person appointed by it to accept service of process in its behalf, or on any agent of such limited partnership. Any foreign limited partnership for which no statutory attorney-in-fact, general partner or agent is found in this state upon whom service may be had, shall be subject to service by publication under this article in the same manner and upon the same conditions and requirements as are foreign corporations for which no statutory attorneys-in-fact, officers, directors or agents are found in this state upon whom service may be had.

§56-3-14. Service of process or notice on foreign corporations.

Process against, or notice to, a foreign corporation which has a usual place of business in this state, or, with or without such usual place of business, is doing business in this state, permanently or temporarily, and which has qualified to do such business under the laws of this state, may be served in accordance with the provisions of subdivision (d) of the next preceding section.

If such corporation has not qualified to do such business under the laws of this state, service may be made by delivering, within the state, a copy of the process or notice to any officer, director or agent of such corporation acting or transacting business for it in this state.

If there be no statutory attorney-in-fact, officer, director or agent found in this state upon whom service may be had as aforesaid, then on affidavit of that fact an order of publication may be awarded as provided by sections twenty-three and twenty-four of this article.

§56-3-15. Service of process or notice on common carriers other than corporations.

In a case against any common carrier, other than a corporation, for any liability as such, it shall be sufficient to serve any process against or notice to the carrier on any agent, or the driver, operator, captain or conductor of any vehicle of such carrier.

§56-3-16. Execution of process on Sunday.

No civil process or order shall be executed on Sunday, except in cases of persons escaping from custody, or where it may be specially provided by law.

§56-3-17. Where process may be executed.

Every officer by whom any process or order may be lawfully executed shall execute the same within his bailiwick, or upon any river or creek adjoining thereto.

§56-3-18. When officer may summon assistance; failure to assist.

Such officer may, in case resistance be made or apprehended to the execution of such process or order, summon to his assistance, either orally or by writing, so many of the male inhabitants of his county of the age of eighteen years or more, or require the commandant of any company, regiment or separate battalion of militia or volunteers to call out such portion, or the whole thereof, to assist him as shall be deemed sufficient for the occasion; and he and those assisting him may use such force as shall be necessary or proper to overcome any resistance made to the execution of such process or order, and to seize, arrest and confine the resisters, their aiders and abettors, to be dealt with according to law. If any male inhabitant of the county of the age of eighteen years or more fail to obey such summons, or if any commandant fail to comply with such requisition, the officer shall report the fact to the court from which such process or order issued, which court may, in a summary way, after notice to the person so reported, adjudge him to be fined or imprisoned, or both, as for contempt. Or if the process or order was not issued by a court, the person so failing to obey such summons or requisition shall be punished as for a misdemeanor and, to that end the officer shall report him to the prosecuting attorney for the county.

§56-3-19. Officer's service and return of process; failure to make proper return; false return.

Every officer to whom any process or order is lawfully delivered for execution shall, without avoidable delay, execute the same according to the command thereof and the provisions of law, and make true return thereon at the proper time and place, stating in such return the time and manner of executing the same, or why the same was not executed, and shall subscribe his name to such return. When the service is by deputy, such deputy shall subscribe to the return his own name as well as that of his principal. With the order or process there shall be returned any bond taken, and an account of any sale made under the same, specifying therein the several articles sold, the persons to whom sold, and the prices thereof. Such return shall be made to the court, justice, person or office from which such process or order issued, unless in such process or order it is directed to be otherwise returned, in which case return thereof shall be made according to such direction. Where a sale is made under any process or order, and no particular time for the return thereof is prescribed therein, or by law, the return shall be made within thirty days after the sale. But if no particular time be prescribed in the process or order, or by law, for the return thereof, and no sale is made under the same, the return shall be made immediately after such process or order is executed; or, if it be not executed, within two months after its date. Except when the process or order is issued by a justice, any officer failing to comply with the provisions of this section shall forfeit $20; and, if he make a false return, shall forfeit therefor $100.

§56-3-20. Further liability for failure to make proper return.

A judgment in a prosecution under the preceding section for failure to make proper return of any process or order, or to subscribe the return as aforesaid, shall be no bar to further proceedings if the failure be continued; but there shall be a further forfeiture by the officer, who ought to have made such return, of $20 for every month subsequent to the judgment that the failure shall continue, until it appear that the return cannot be made; or if it be the case of an execution or warrant of distress, until it appear that the amount thereof has been paid to the party entitled. Moreover, the court to which, or to the clerk's office of which, such return ought to be made, may, upon the motion of any party injured, and for his use, fine such officer and his sureties, or any one or more of them, or any deputy in default, a reasonable sum, and from time to time impose on him or them other reasonable fines, not exceeding altogether, in the case of an execution or warrant of distress, the rate of $5 for every $100 therein mentioned for each month that the failure to make such return shall have continued.

§56-3-21. Alias process.

If, at the return day of any process, it be not returned executed, an alias or other proper process may be issued without waiting (where the first process is returnable to a term) for the subsequent process to be awarded at rules. And where, for want of a return of the first process against a defendant, any subsequent process is issued, if the former was executed, the officer shall not execute the latter, but shall return the former if it be in his possession, and if he has it not, shall return the latter with an indorsement of the execution of the former, and the proceedings thereupon shall be as if the first had been duly returned.

§56-3-22. Judgment on return nihil.

No judgment shall be rendered on a scire facias, or in any other case, on returns of nihil.

§56-3-23. Service by publication generally.

On affidavit that a defendant is a foreign corporation for which no statutory attorney-in-fact, officer, director or agent is found in this state upon whom service may be had, or is not a resident of this state, or that diligence has been used by or on behalf of the plaintiff to ascertain in what county he is, without effect, or that process, directed to the officer of the county in which he resides or is, has twice been delivered to such officer more than ten days before the return day, and been returned without being executed, an order of publication may be entered against such defendant. And in any suit in equity, where the bill states that there are or may be persons interested in the subject to be divided or disposed of, whose names are unknown, and makes such persons defendants by the general description of parties unknown, on affidavit of the fact that such parties are unknown, an order of publication may be entered against such unknown parties. Any order of publication under this section may be entered either in court or by the clerk at any time. In a proceeding by petition, there may be an order of publication in like manner as in a suit in equity.

§56-3-24. Contents of order of publication; publishing.

Every order of publication shall give the style of the suit, state briefly its object, and require the defendants against whom it is entered, or the unknown parties, to appear within one month after the date of the first publication thereof and do what is necessary to protect their interests. It shall be published as a Class II 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 in which the order is made or directed. The newspaper shall be designated by the party directing such order or his attorney, but if no paper be so designated, then in such paper as the court may direct, or if the court make no direction, then as the clerk of the court may prescribe. It shall be deemed to have been published on the date of the second publication thereof.

§56-3-25. Failure to appear in response to publication; trial or hearing.

When such order shall have been so published, if the defendants against whom it is entered, or the known parties, shall not appear within the time specified in such order, the case may be tried or heard as to them at the next term of the court commencing not less than one month after the date of the first publication. Upon any trial or hearing under this section, such judgment, decree or order shall be entered as may appear just.

§56-3-26. Rehearing in case of nonpersonal service.

Any unknown party or other defendant who was not served with process in this state, and did not appear in the case before the date of such judgment, decree or order or the representative of such, may, within two years from that date, if he be not served with a copy of such judgment, decree or order more than eight months before the end of such two years, and if he was so served, then within eight months from the time of such service, file his petition to have the proceedings reheard in the manner and form provided by section forty-three, article seven, chapter thirty- eight of this code, and not otherwise; and all the provisions of that section are hereby made applicable to proceedings under this section: Provided, however, That nothing contained in that section or in this section shall be so construed as to authorize any court or judge to include, in the decree granted in a divorce suit, any prohibition against the remarriage of either party thereto, except such prohibition as may be authorized by the provisions of section twenty-two, article two, chapter forty-eight of this code.

§56-3-27. Order of publication in Supreme Court of Appeals.

When, by the return of any officer of process issued to answer any appeal, writ of error or supersedeas pending in the Supreme Court of Appeals of this state, or when, from affidavit filed with the clerk of said court, it shall appear that any appellee or defendant in error therein is a foreign corporation for which no statutory attorney-in-fact, officer, director or agent is found in this state upon whom service may be had, or is not a resident of this state, or that the name or place of residence of such party is unknown, so that process cannot be served upon him it shall be the duty of such clerk, upon application, to take and issue, on the first Monday in any month, an order of publication against such absent or unknown party or foreign corporation, requiring him or it to appear on a day to be designated in such order, to answer such appeal, writ of error or supersedeas and to have a rehearing of the whole matter therein contained.

§56-3-28. Requisites of publication in Supreme Court of Appeals.

Such order of publication shall be entered by the clerk in a suitable book kept by him for the purpose and signed by him and a certified copy of such order shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. Both the newspaper and the publication area shall be designated in the order of publication. When it shall appear that such order of publication has been duly published as aforesaid, the court may proceed to hear and decide such cause in the same manner as if such parties had been personally served with process: Provided, however, That the order of publication shall have been executed, as aforesaid, at least ten days before the day on which any such cause may be called for hearing.

§56-3-29. Rehearing in Supreme Court of Appeals.

Any unknown party or other defendant who was not served with process in this state, and did not appear in the cause, may have the same reheard and any injustice in the proceedings corrected within the time prescribed by section twenty-six of this article.

§56-3-30.

Repealed.

Acts, 1967 Reg. Sess., Ch. 105.

§56-3-31. Actions by or against nonresident operators of motor vehicles involved in highway accidents; appointment of Secretary of State, insurance company, as agents; service of process.

(a) Every nonresident, for the privilege of operating a motor vehicle on a public street, road or highway of this state, either personally or through an agent, appoints the Secretary of State, or his or her successor in office, to be his or her agent or attorney-in-fact upon whom may be served all lawful process in any action or proceeding against him or her in any court of record in this state arising out of any accident or collision occurring in the State of West Virginia in which the nonresident was involved: Provided, That in the event process against a nonresident defendant cannot be effected through the Secretary of State, as provided by this section, for the purpose only of service of process, the nonresident motorist shall be considered to have appointed as his or her agent or attorney-in-fact any insurance company which has a contract of automobile or liability insurance with the nonresident defendant.

(b) For purposes of service of process as provided in this section, every insurance company shall be considered the agent or attorney-in-fact of every nonresident motorist insured by that company if the insured nonresident motorist is involved in any accident or collision in this state and service of process cannot be effected upon the nonresident through the office of the Secretary of State. Upon receipt of process as provided in this section, the insurance company may, within thirty days, file an answer or other pleading or take any action allowed by law on behalf of the defendant.

(c) A nonresident operating a motor vehicle in this state, either personally or through an agent, is considered to acknowledge the appointment of the Secretary of State, or, as the case may be, his or her automobile insurance company, as his or her agent or attorney-in-fact, or the agent or attorney-in-fact of his or her administrator, administratrix, executor or executrix in the event the nonresident dies, and furthermore is considered to agree that any process against him or her or against his or her administrator, administratrix, executor or executrix, which is served in the manner provided in this section, shall be of the same legal force and validity as though the nonresident or his or her administrator, administratrix, executor or executrix were personally served with a summons and complaint within this state.

Any action or proceeding may be instituted, continued or maintained on behalf of or against the administrator, administratrix, executor or executrix of any nonresident who dies during or subsequent to an accident or collision resulting from the operation of a motor vehicle in this state by the nonresident or his or her duly authorized agent.

(d) Service of process upon a nonresident defendant shall be made by leaving the original and two copies of both the summons and complaint, together with the bond certificate of the clerk, and the fee required by section two, article one, chapter fifty-nine of this code with the Secretary of State, or in his or her office, and the service shall be sufficient upon the nonresident defendant or, if a natural person, his or her administrator, administratrix, executor or executrix: Provided, That notice of service and a copy of the summons and

complaint shall be sent by registered or certified mail, return receipt requested, by a means which may include electronic issuance and acceptance of electronic return receipts, by the Secretary of State to the nonresident defendant. After receiving verification from the United States Postal Service that acceptance of process, notice or demand has been signed, the Secretary of State shall notify the clerk's office of the court from which the process, notice or demand was issued by a means which may include electronic notification. If the process, notice or demand was refused or undeliverable by the United States Postal Service the Secretary of State shall create a preservation duplicate from which a reproduction of the stored record may be retrieved which truly and accurately depicts the image of the original record. The Secretary of State may destroy or otherwise dispose of the original returned or undeliverable mail. Written notice of the action by the Secretary of State must then be provided by certified mail, return receipt requested, facsimile, or by electronic mail, to the clerk's office of the court from which the process, notice or demand was issued. The court may order any reasonable continuances to afford the defendant opportunity to defend the action.

(e) The fee remitted to the Secretary of State at the time of service shall be taxed in the costs of the proceeding. The Secretary of State shall keep a record in his or her office of all service of process and the day and hour of service of process.

(f) In the event service of process upon a nonresident defendant cannot be effected through the Secretary of State as provided by this section, service may be made upon the defendant's insurance company. The plaintiff shall file with the clerk of the circuit court an affidavit alleging that the defendant is not a resident of this state; that process directed to the Secretary of State was sent by registered or certified mail, return receipt requested; that the registered or certified mail was returned to the office of the Secretary of State showing the stamp of the post office department that delivery was refused or that the notice was unclaimed or that the defendant addressee moved without any forwarding address; and that the Secretary of State has complied with the provisions of subsection (d) of this section. Upon receipt of process the insurance company may, within thirty days, file an answer or other pleading and take any action allowed by law in the name of the defendant.

(g) The following words and phrases, when used in this article, for the purpose of this article and unless a different intent on the part of the Legislature is apparent from the context, have the following meanings:

(1) "Duly authorized agent" means and includes, among others, a person who operates a motor vehicle in this state for a nonresident as defined in this section and chapter, in pursuit of business, pleasure or otherwise, or who comes into this state and operates a motor vehicle for, or with the knowledge or acquiescence of, a nonresident; and includes, among others, a member of the family of the nonresident or a person who, at the residence, place of business or post office of the nonresident, usually receives and acknowledges receipt for mail addressed to the nonresident.

(2) "Motor vehicle" means and includes any self-propelled vehicle, including a motorcycle,

tractor and trailer, not operated exclusively upon stationary tracks.

(3) “Nonresident” means any person who is not a resident of this state or a resident who has moved from the state subsequent to an accident or collision and among others includes a nonresident firm, partnership, corporation or voluntary association, or a firm, partnership, corporation or voluntary association that has moved from the state subsequent to an accident or collision.

(4) “Nonresident plaintiff or plaintiffs” means a nonresident who institutes an action in a court in this state having jurisdiction against a nonresident in pursuance of the provisions of this article.

(5) “Nonresident defendant or defendants” means a nonresident motorist who, either personally or through his or her agent, operated a motor vehicle on a public street, highway or road in this state and was involved in an accident or collision which has given rise to a civil action filed in any court in this state.

(6) “Street”, “road” or “highway” means the entire width between property lines of every way or place of whatever nature when any part of the street, road or highway is open to the use of the public, as a matter of right, for purposes of vehicular traffic.

(7) “Insurance company” means any firm, corporation, partnership or other organization which issues automobile insurance.

(h) The provision for service of process in this section is cumulative and nothing contained in this section shall be construed as a bar to the plaintiff in any action from having process in the action served in any other mode and manner provided by law.

§56-3-32. Process is part of record without oyer.

The writ or process commencing any action at law or suit in equity shall be a part of the record, without oyer thereof.

§56-3-33. Actions by or against nonresident persons having certain contacts with this state; authorizing Secretary of State to receive process; bond and fees; service of process; definitions; retroactive application.

(a) The engaging by a nonresident, or by his or her duly authorized agent, in any one or more of the acts specified in subdivisions (1) through (7), inclusive, of this subsection shall be considered equivalent to an appointment by a nonresident of the Secretary of State, or his or her successor in office, to be his or her true and lawful attorney upon whom may be served all lawful process in any action or proceeding against him or her, in any circuit court in this state, including an action or proceeding brought by a nonresident plaintiff or plaintiffs, for a cause of action arising from, or growing out of, such act or acts, and the engaging in such act or acts shall be a signification of such nonresident's agreement that any such process against him or her, which is served in the manner hereinafter provided, shall be of the same legal force and validity as though such nonresident were personally served with a summons and complaint within this state:

(1) Transacting any business in this state;

(2) Contracting to supply services or things in this state;

(3) Causing tortious injury by an act or omission in this state;

(4) Causing tortious injury in this state by an act or omission outside this state if he or she regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this state;

(5) Causing injury in this state to any person by breach of warranty expressly or impliedly made in the sale of goods outside this state when he or she might reasonably have expected the person to use, consume, or be affected by the goods in this state: *Provided,* That he or she also regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this state;

(6) Having an interest in, using, or possessing real property in this state; or

(7) Contracting to insure any person, property, or risk located within this state at the time of contracting.

(b) When jurisdiction over a nonresident is based solely upon the provisions of this section, only a cause of action arising from or growing out of one or more of the acts specified in subdivisions (1) through (7), inclusive, subsection (a) of this section may be asserted against him or her.

(c) Service shall be made:

By leaving the original and two copies of both the summons and the complaint, and the fee

required by §59-1-2 of this code with the Secretary of State, or in his or her office, and this service shall be sufficient upon the nonresident: *Provided,* That notice of the service and a copy of the summons and complaint shall forthwith be sent by registered or certified mail, return receipt requested, by a means which may include electronic issuance and acceptance of electronic return receipts, by the Secretary of State to the defendant at his or her nonresident address and the defendant's return receipt signed by himself or herself or his or her duly authorized agent or the registered or certified mail so sent by the Secretary of State which is refused by the addressee and which registered or certified mail is returned to the Secretary of State, or to his or her office, showing thereon the stamp of the post-office department that delivery has been refused. After receiving verification from the United States Postal Service that acceptance of process, notice, or demand has been signed, the Secretary of State shall notify the clerk's office of the court from which the process, notice, or demand was issued by a means which may include electronic notification. If the process, notice, or demand was refused or undeliverable by the United States Postal Service, the Secretary of State shall create a preservation duplicate from which a reproduction of the stored record may be retrieved which truly and accurately depicts the image of the original record. The Secretary of State may destroy or otherwise dispose of the original returned or undeliverable mail. Written notice of the action by the Secretary of State must then be provided by certified mail, return receipt requested, facsimile, or by electronic mail, to the clerk's office of the court from which the process, notice, or demand was issued. If any defendant served with summons and complaint fails to appear and defend within 30 days of service, judgment by default may be rendered against him or her at any time thereafter. The court may order such continuances as may be reasonable to afford the defendant opportunity to defend the action or proceeding. If the certified mail was returned by the United States Postal Service as unclaimed, unable to forward, or with any other notation other than "accepted" or "refused", notice may be served as follows:

(1) In any manner accepted as service within the domiciled state of the nonresident, or otherwise; or

(2) In any manner otherwise permitted by sections 4(d)(7) or (8) of the West Virginia Rules of Civil Procedure for corporations and any way permitted by section 4(c) of the West Virginia Rules of Civil Procedure for individuals or noncorporate entities.

(d) The fee remitted to the Secretary of State at the time of service shall be taxed in the costs of the action or proceeding. The Secretary of State shall keep a record in his or her office of all such process and the day and hour of service thereof.

(e) The following words and phrases, when used in this section, shall for the purpose of this section and unless a different intent be apparent from the context, have the following meanings:

(1) "Duly authorized agent" means and includes among others a person who, at the direction of or with the knowledge or acquiescence of a nonresident, engages in such act or acts and includes among others a member of the family of the nonresident or a person who, at the

residence, place of business, or post office of the nonresident, usually receives and receipts for mail addressed to the nonresident.

(2) "Nonresident" means any person, other than voluntary unincorporated associations, who is not a resident of this state or a resident who has moved from this state subsequent to engaging in such act or acts, and among others includes a nonresident firm, partnership, or corporation or a firm, partnership, or corporation which has moved from this state subsequent to any of said such act or acts.

(3) "Nonresident plaintiff or plaintiffs" means a nonresident of this state who institutes an action or proceeding in a circuit court in this state having jurisdiction against a nonresident of this state pursuant to the provisions of this section.

(f) The provision for service of process herein is cumulative and nothing herein contained may be construed as a bar to the plaintiff in any action or proceeding from having process in such action served in any other mode or manner provided by the law of this state or by the law of the place in which the service is made for service in that place in an action in any of its courts of general jurisdiction.

(g) This section may not be retroactive and the provisions hereof may not be available to a plaintiff in a cause of action arising from or growing out of any of the acts occurring prior to the effective date of this section.

§56-3-33a. Actions against nonresident persons by petitioners seeking domestic violence or personal safety relief; service of process; authorizing Secretary of State to receive process against nonresidents.

(a) Any person who is:

(1) Not a resident of this state; or

(2) A resident of this state who has left this state; or

(3) A person whose residence is unknown shall be considered to have submitted to the jurisdiction of the courts of this state as to any action arising from the conduct specified in subsection (b) of this section, if such conduct was:

(A) Committed in this state; or

(B) If such conduct was not committed in this state if the conduct was purposely directed at a resident and has an effect within this state.

(b) Conduct compelling application of this section consists of:

(1) Any act constituting domestic violence or abuse as defined in section two hundred two, article twenty-seven, chapter forty-eight of this code; or

(2) Any act constituting a basis for seeking personal safety relief as defined in section four, article eight, chapter fifty-three of this code; or

(3) Any act or omission violating the provisions of a duly authorized protective or restraining order, whether issued by this state or another jurisdiction, for the protection of any person within this state.

(c) Any person subject to or considered to have submitted to the jurisdiction of the courts of this state who is made a respondent in an action may be served with the petition and order initiating such action either:

(1) By law-enforcement officers, wherever the respondent may be found, whether inside or outside the boundaries of this state; or

(2) If the respondent is alleged to have committed conduct specified in subsection (b) of this section, this shall be considered equivalent to an appointment by such nonresident of the Secretary of State, or his or her successor in office, to be his or her true and lawful attorney upon whom may be served all lawful process in any action or proceeding against him or her, in any court in this state, for a cause of action arising from or growing out of such conduct, and the engaging in such conduct is a signification of such nonresident’s agreement that any such process against him or her, which is served in the manner hereinafter provided, is of the same legal force and validity as though such nonresident were personally served within

this state.

(A) Such service shall be made by leaving two copies of both the petition and order, with the Secretary of State, or in his or her office, and such service shall be sufficient upon such nonresident: Provided, That notice of such service and a copy of the petition and order shall forthwith be sent by registered or certified mail, return receipt requested, by a means which may include electronic issuance and acceptance of electronic return receipts, by the Secretary of State to the respondent at his or her nonresident address and the respondent's return receipt signed by himself or herself or his or her duly authorized agent or the registered or certified mail so sent by the Secretary of State which is refused by the addressee and which registered or certified mail is returned to the Secretary of State, or to his or her office, showing thereon the stamp of the post-office department that delivery has been refused. After receiving verification from the United States Postal Service that acceptance of the notice, petition and order has been signed, the Secretary of State shall notify the clerk's office of the court from which the petition and order were issued by a means which may include electronic notification. If the notice, petition and order were refused or undeliverable by the United States Postal Service, the Secretary of State shall create a preservation duplicate from which a reproduction of the stored record may be retrieved which truly and accurately depicts the image of the original record. The Secretary of State may destroy or otherwise dispose of the original returned or undeliverable mail. Written notice of the action by the Secretary of State must then be provided by certified mail, return receipt requested, facsimile, or by electronic mail, to the clerk's office of the court from which the process, notice or demand was issued. If any respondent served with a petition and order fails to appear and defend at the time and place set forth in the order, judgment may be rendered against him or her at any time thereafter. The court may order such continuances as may be reasonable to afford the respondent an opportunity to defend the action or proceeding.

(B) As provided in section three hundred eight, article twenty-seven, chapter forty-eight of this code regarding domestic violence proceedings and in section thirteen, article eight, chapter fifty-three of this code regarding personal safety proceedings, no fees may be charged for service of petitions or orders until the matter is brought before the appropriate court for final resolution. Any fees ordinarily remitted to the Secretary of State or to a law-enforcement agency at the time of service shall be deferred and taxed in the costs of the action or proceeding.

(C) Data and records regarding service maintained by law-enforcement agencies and by the office of the Secretary of State for purposes of fulfilling the obligations of this section are not public records subject to disclosure under the provisions of article one, chapter twenty-nine-b of this code.

(d) The following words and phrases, when used in this section, shall for the purpose of this section and unless a different intent be apparent from the context, have the following meanings:

(1) “Duly authorized agent” means and includes among others a person who, at the direction of or with the knowledge or acquiescence of a nonresident, engages in such act or acts and includes among others a member of the family of such nonresident or a person who, at the residence, place of business or post office of such nonresident, usually receives and receipts for mail addressed to such nonresident.

(2) “Nonresident” means any person who is not a resident of this state or a resident who has moved from this state subsequent to engaging in such acts or acts covered by this section.

§56-3-34. Actions by or against nonresident bail bond enforcement agents or bail bondsmen; appointment of Secretary of State as agents; service of process.

(a) Every nonresident bail bond enforcer or bail bondsman, for the privilege of entering this state to act in the capacity of a bail bond enforcer, either personally or through an agent, appoints the Secretary of State, or his or her successor in office, to be his or her agent or attorney-in-fact upon whom may be served all lawful process in any action or proceeding against him or her in any court of record in this state for any act occurring within this state resulting in injury arising out of any breach of the applicable standard of care with respect to any person other than a defendant whose custody or appearance the bail bond enforcer secures or attempts to secure, or with respect to the property of any person other than a defendant whose custody or appearance the bail bond enforcer secures or attempts to secure; or for enforcement of any civil penalty for breach of a duty imposed by this code with respect to bail bondsmen employing or contracting with bail bond enforcers: Provided, That in the event process against a nonresident defendant cannot be effected through the Secretary of State, as provided by this section, for the purpose only of service of process, the nonresident bail bond enforcer or bondsman shall be deemed to have appointed as his or her agent or attorney-in-fact any insurance company which has a contract of liability insurance for his or her activities.

(b) For purposes of service of process as provided in this section, every insurance company shall be deemed the agent or attorney-in-fact of every nonresident bail bond enforcer or bondsman insured by the company if the insured nonresident bail bond enforcer or bondsman is involved in any bail bond enforcement activity occurring within this state resulting in injury arising out of any breach of the applicable standard of care with respect to any person other than a defendant whose custody or appearance the bail bond enforcer secures or attempts to secure, or with respect to the property of any person other than a defendant whose custody or appearance the bail bond enforcer secures or attempts to secure and service of process cannot be effected upon the nonresident through the office of the Secretary of State. Upon receipt of process as hereinafter provided, the insurance company may, within thirty days, file an answer or other pleading or take any action allowed by law on behalf of the defendant.

(c) A nonresident bail bond enforcer or bail bondsman entering this state, either personally or through an agent, is deemed to acknowledge the appointment of the Secretary of State, or, as the case may be, his or her liability insurance company, as his or her agent or attorney-in-fact, or the agent or attorney-in-fact of his or her administrator, administratrix, executor or executrix in the event the nonresident dies, and furthermore is deemed to agree that any process against him or her or against his or her administrator, administratrix, executor or executrix, which is served in the manner hereinafter provided, shall be of the same legal force and validity as though said nonresident or his or her administrator, administratrix, executor or executrix were personally served with a summons and complaint within this state.

Any action or proceeding may be instituted, continued or maintained on behalf of or against

the administrator, administratrix, executor or executrix of any nonresident who dies subsequent to bail bond enforcement activity in this state by the nonresident or his or her duly authorized agent.

(d) At the time of filing a complaint against a nonresident bail bond enforcer or bondsman who has been involved in bail bond enforcement activity in the State of West Virginia and before a summons is issued thereon, the plaintiff, or someone for him or her, shall execute a bond in the sum of $100 before the clerk of the court in which the action is filed, with surety to be approved by said clerk, conditioned that on failure of the plaintiff to prevail in the action he or she will reimburse the defendant, or cause the defendant to be reimbursed, the necessary expense incurred in the defense of the action in this state. Upon the issue of a summons the clerk will certify thereon that the bond has been given and approved.

(e) Service of process upon a nonresident defendant shall be made by leaving the original and two copies of both the summons and complaint, together with the bond certificate of the clerk, and the fee required by section two, article one, chapter fifty-nine of this code with the Secretary of State, or in his or her office, and said service shall be sufficient upon the nonresident defendant or, if a natural person, his or her administrator, administratrix, executor or executrix: Provided, That notice of service and a copy of the summons and complaint shall be sent by registered or certified mail, return receipt requested, by the Secretary of State to the nonresident defendant. The return receipt signed by the defendant or his or her duly authorized agent shall be attached to the original summons and complaint and filed in the office of the clerk of the court from which the process is issued. In the event the registered or certified mail sent by the Secretary of State is refused or unclaimed by the addressee or if the addressee has moved without any forwarding address, the registered or certified mail returned to the Secretary of State, or to his or her office, showing thereon the stamp of the post-office department that delivery has been refused or not claimed or that the addressee has moved without any forwarding address, the Secretary of State shall create a preservation duplicate from which a reproduction of the stored record may be retrieved which truly and accurately depicts the image of the original record. The Secretary of State may destroy or otherwise dispose of the original returned or undeliverable mail. Written notice of the action by the Secretary of State must then be provided by certified mail, return receipt requested, facsimile, or by electronic mail, to the clerk’s office of the court from which the process, notice or demand was issued. The court may order such continuances as may be reasonable to afford the defendant opportunity to defend the action.

(f) The fee remitted to the Secretary of State at the time of service, shall be taxed in the costs of the proceeding and the Secretary of State shall pay into the State Treasury all funds so coming into his or her hands from the service. The Secretary of State shall keep a record in his or her office of all service of process and the day and hour of service thereof.

(g) In the event service of process upon a nonresident defendant cannot be effected through the Secretary of State as provided by this section, service may be made upon the defendant’s insurance company. The plaintiff must file with the clerk of the circuit court an affidavit alleging that the defendant is not a resident of this state; that process directed to the

Secretary of State was sent by registered or certified mail, return receipt requested; that the registered or certified mail was returned to the office of the Secretary of State showing the stamp of the post-office department that delivery was refused or that the notice was unclaimed or that the defendant addressee moved without any forwarding address; and that the Secretary of State has complied with the provisions of subsection (e) of this section. Upon receipt of process the insurance company may, within thirty days, file an answer or other pleading and take any action allowed by law in the name of the defendant.

(h) The following words and phrases, when used in this article, shall, for the purpose of this article and unless a different intent on the part of the Legislature is apparent from the context, have the following meanings:

(1) "Agent" or "duly authorized agent" means and includes, among others, a bail bond enforcer who, on behalf of a bail bondsman, is involved in any bail bond enforcement activity occurring within this state resulting in injury arising out of any breach of the applicable standard of care with respect to any person other than a defendant whose custody or appearance the bail bond enforcer secures or attempts to secure, or with respect to the property of any person other than a defendant whose custody or appearance the bail bond enforcer secures or attempts to secure;

(2) "Nonresident" means any person who is not a resident of this state or a resident who has moved from the state subsequent to bail bond enforcement activity within this state, and among others includes a nonresident firm, partnership, corporation or voluntary association, or a firm, partnership, corporation or voluntary association that has moved from the state subsequent to bail bond enforcement activity;

(3) "Nonresident defendant or defendants" means a nonresident bail bond enforcer or bondsman who, either personally or through his or her agent, is involved in any bail bond enforcement activity occurring within this state resulting in injury arising out of any breach of the applicable standard of care with respect to any person other than a defendant whose custody or appearance the bail bond enforcer secures or attempts to secure, or with respect to the property of any person other than a defendant whose custody or appearance the bail bond enforcer secures or attempts to secure, which has given rise to a civil action filed in any court in this state;

(4) "Insurance company" means any firm, corporation, partnership or other organization which issues liability insurance.

(i) The provision for service of process herein is cumulative and nothing herein contained shall be construed as a bar to the plaintiff in any action from having process in the action served in any other mode and manner provided by law.

(j) This section is not retroactive and its provisions are not available to a plaintiff in a cause of action arising out of acts occurring prior to the effective date of this section.

§56-4-1. Rule days.

In the clerk's office of every circuit court, rules shall be held on the first Monday of every month, whether the court be in session or not, except that when a term of the circuit court commences on the first Monday in a month, or on either of the two following days, or on the preceding Tuesday, Wednesday, Thursday, Friday or Saturday, the rules which otherwise would have been held for such month on the first Monday shall be held on the last Monday in the next preceding month. The rules shall continue for three days, unless such continuance will interfere with the term of the court for which the rules are held, in which case they shall not continue beyond the day preceding the commencement of the term of such court. But if any Monday which is a rule day shall also be a holiday, then rules shall be held on the following Tuesday regardless of the fact that the latter day may be the first day of a term of court.

§56-4-2. Rule docket.

There shall be a docket of the cases at rules wherein the rules shall be entered; and the books in which rules and orders are entered in chancery cases shall be separate from those in which rules and orders are entered in other cases.

§56-4-3. Rule entries.

Where rules are held on the last Monday in a month, as provided in section one of this article, they shall be entered in the rule docket and indorsed on the declaration or bill as if taken on the first Monday in the month to which they relate.

§56-4-4. Continuance at rules in absence of clerk.

When there is no clerk to take a rule in a case, it shall stand continued until the next rule day after there is a clerk.

§56-4-5. What rules may require.

The rules may be to declare, plead, reply, rejoin, or for other proceedings; they shall be given from month to month.

§56-4-6. Time for appearance; rule to file declaration; nonsuit for nonprosecution; damages.

A defendant may appear at the rule day at which the process against him is returnable, or, if it be returnable in term, at the first rule day after the return day, and, if the declaration or bill be not then filed, may give a rule for the plaintiff to file the same. If the plaintiff fail to do this at the succeeding rule day, or shall, at any time after the defendant's appearance, fail to prosecute his suit, he shall be nonsuited and pay to the defendant, besides his costs, $5.

§56-4-7. Dismissal for failure to file declaration or bill.

If three rules elapse after the rules at which the process is returned executed as to any one or more of the defendants, without the declaration or bill being filed, the clerk shall enter the suit dismissed, although none of the defendants have appeared.

§56-4-8. Return to show defendant's nonresidence; abatement as to nonresident not served.

When a summons to a party to answer an action or bill is received by an officer who knows that such party is not a resident of his county, or not a resident of the state, he shall, unless he find him in his county on or before the return day, make a return that he is a nonresident of the county and/or state as the case may be; whereupon, if the court from which such process issued have jurisdiction of the case only on the ground of such defendant's residence in such county, the action or suit shall abate as to him and if he be returned a nonresident of the state, and the court have jurisdiction of the case only on the ground that the cause of action arose in the county, the action of suit shall abate as to him

§56-4-9. Minors may sue by next friend or guardian; substitution of plaintiffs.

Any minor entitled to sue may do so by his next friend or guardian. When the action or suit is brought by his next friend, the court may, for good cause, substitute the guardian in lieu of the next friend, or any other person as the next friend.

§56-4-10. Guardian ad litem.

The proceedings in a suit wherein an infant or insane person is a party shall not be stayed because of such infancy or insanity, but the court in which the suit is pending, or the judge thereof in vacation, or the clerk thereof at rules, shall appoint some discreet and competent attorney-at-law as guardian ad litem to such infant or insane defendant, whether such defendant shall have been served with process or not, and after such appointment no process need be served on such infant or insane person. If no such attorney be found willing to act, the court, or the judge thereof in vacation, may compel him to act, or appoint some other discreet and proper person in his stead; but the attorney or other person so appointed shall not be liable for costs. Every guardian ad litem shall faithfully represent the interest or estate of the infant or insane person for whom he is appointed, and it shall be the duty of the court to see that the estate of such defendant is so represented and protected. And the court, or the judge thereof in vacation, whenever of opinion that the interest of an infant or insane person requires it, shall remove any guardian ad litem and appoint another in his stead. When, in any case, the court or judge is satisfied that the guardian ad litem has rendered substantial service to the estate of an infant or insane defendant, it may allow him reasonable compensation therefor, and his actual expenses, if any, to be paid out of the estate of such defendant.

§56-4-11. Transfer of cases from law to equity and vice versa.

No case shall be dismissed simply because it was brought on the wrong side of the court, but whenever it shall appear that a plaintiff has proceeded at law when he should have proceeded in equity, or in equity when he should have proceeded at law, the court shall direct a transfer to the proper forum, and shall order such change in, or amendment of, the pleadings as may be necessary to conform them to the proper practice; and, without such direction, any party to the suit shall have the right, at any stage of the cause, to amend his pleadings so as to obviate the objection that his suit or action was not brought on the right side of the court. After such amendment has been made, the case shall be placed by the clerk on the proper docket of the court and proceed and be determined upon such amended pleadings. The defendant shall be allowed a reasonable time after such transfer in which to prepare the case for trial.

§56-4-12. Abatement for want of form in declaration.

No action shall abate for want of form, where the declaration sets forth sufficient matter of substance for the court to proceed upon the merits of the case.

§56-4-13. Unnecessary averments in trespass on the case.

In actions of trespass on the case, where the action of trespass would formerly have been proper, general averments that the defendant committed other wrongs, and that the acts charged were done with force and arms against the peace, may be omitted; and the plaintiff may prove all that he could have proved if such averments had been inserted in the declaration.

§56-4-14. Allegations of place where contract was made or act done.

It shall not be necessary in any declaration or other pleading to set forth the place in which any contract was made, or act done, unless when, from the nature of the case, the place is material or traversable, and then the allegation may be, as to a deed, note or other writing bearing date at any place, that it was made at such place, or as to any other act, according to the fact, without averring or suggesting that it was at or in the county in which the action is brought, unless it was in fact therein.

§56-4-15. Averments as to jurisdiction; profert; oyer.

It shall not be necessary in any action to aver that the cause of action arose, or that the matter is, within the jurisdiction of the court, or to make profert of any deed, letters testamentary, or commission of administration; but any party may have oyer in like manner as if profert were made.

§56-4-16. Allegations not traversable nor requiring proof.

All allegations which are not traversable, and which the party could not be required to prove, may be omitted, unless they are required for the right understanding of allegations that are material.

§56-4-17. Form of declaration or count on insurance policy.

A declaration or count on a policy of insurance, whether the policy be under seal or not, may be in effect as follows:

A ..... B .....complains of

C ..... D ....., who has been summoned to answer this: For that the defendant, by virtue of the policy of insurance herewith filed (or a copy of which is herewith filed), owes (here state the amount claimed under the policy) to the plaintiff for loss in respect to the property (or subject) insured by said policy, caused by (here insert the cause of loss in general terms, for example: By fire, by the damages of navigation, or otherwise, according to the fact) on or about the ..... day of ....., in the year ....., at (or near to) ....., (stating the place at or near to which the loss occurred).

If the declaration or count be on a life policy, then it shall be sufficient to follow the above form in effect down to and including the word, "plaintiff" and add thereto in effect as follows:

Because of the death of E.F., whose life was insured by said policy, and who died on or about the ..... day of ....., in the year ....., at (or near to, stating the place where his death occurred) .....; or, if the fact be so, the plaintiff may state in the declaration or count that the time or place where the loss or death occurred is unknown to him giving in general terms such information as may be in his power in respect thereto. Nothing contained in this section shall render insufficient in law any declaration or count which would be sufficient if this section had not been passed.

§56-4-18. Filing account in assumpsit.

In every action of assumpsit the plaintiff shall file with his declaration an account stating distinctly the several items of his claim, unless it be plainly described in the declaration, and if he fail to do so, he shall not be permitted on the trial of the case to prove any item not stated in such account.

§56-4-19. Statement of particulars of claim.

In any action or motion, if good cause therefor be shown or appear, the court or judge in vacation may order the plaintiff to file a more particular statement, in his respect, of the nature of his claim, or the facts expected to be proved at the trial, and may stay the action until a reasonable time after such order is complied with; and such statement must be made under the oath of the plaintiff, or some other credible person, to the effect that the affiant believes the same will be supported by evidence at the trial. But no such order shall be made if it appear that there has been unreasonable delay on the part of the defendant in applying therefor.

§56-4-20. Statement of particulars of defense.

In like manner, if good cause therefor appear, and there be no unreasonable delay on the part of the plaintiff in applying for such order, the court or judge in vacation may order the defendant to file a more particular statement, in any respect, of the nature of his defense, or the facts expected to be proved at the trial, which statement shall be under the oath of the defendant, or some other credible person, to the effect that the affiant believes the same will be supported by evidence at the trial.

§56-4-21. Plea in action on insurance policy; statement specifying particular defense.

To any declaration or county on a policy of insurance, whether the same be in the form prescribed by section seventeen of this article or not, and whether the action be covenant, debt or assumpsit, the defendant may plead that he is not liable to the plaintiff as in said declaration is alleged. But if in any action on a policy of insurance, the defense be that the action cannot be maintained because of the failure to perform or comply with, or violation of, any clause, condition or warranty in, upon or annexed to the policy or contained in or upon any paper which is made by reference a part of the policy, the defendant must file a statement in writing specifying by reference thereto, or otherwise, the particular clause, condition or warranty in respect to which such failure or violation is claimed to have occurred, and such statement must be verified by the oath of the defendant, or some other credible person, to the effect that the affiant believes the matter of defense therein stated will be supported by evidence at the trial.

§56-4-22. Same -- Joinder in issue; statement specifying matter in waiver, estoppel or confession and avoidance.

Upon the plea mentioned in the next preceding section, the plaintiff may join issue without other pleading. But if the plaintiff intends to rely upon any matter in waiver, estoppel, or in confession and avoidance of any matter which may have been stated by the defendant as aforesaid, the plaintiff must file a statement in writing, specifying in general terms the matter on which he intends so to rely; and such statement must be verified by the oath of the plaintiff, or some other credible person, to the effect that the affiant believes the matter of reply therein stated will be supported by evidence at the trial.

§56-4-23. Failure to file statement; insufficient statement; amendment; exclusion of evidence of party in default; sufficiency of statement.

If either party to such action or motion fail to file any statement required of him by the four preceding sections of this article, or by the other party pursuant to any of the provisions of the said sections, or if the statement be adjudged insufficient in whole or in part, the court, as justice may require, may grant further time for filing the same, or permit the statement filed to be amended, or may, at the trial, exclude the evidence offered by the party in default as to any matter which he has so failed to state or has insufficiently stated, and which is not described in the notice, declaration or other pleading of such party so plainly as to give the adverse party notice of its character. But no statement which, in the particulars required by or under the said sections to be stated or referred to therein, is sufficient to notify the adverse party, in effect, of the nature of the claim or defense intended to be set up against him shall be adjudged insufficient.

§56-4-24. Right to amend in general.

The plaintiff may of right amend his declaration or bill at any time before the appearance of the defendant; and, notwithstanding such appearance, in any action, suit, motion or other proceeding, the court, if in its opinion substantial justice will be promoted thereby, may, at any time before final judgment or decree, and upon such terms as it may deem just, permit any pleading to be amended, or material supplemental matter to be set forth in amended or supplemental pleadings, introducing a necessary party, discontinuing as to a party, eliminating from a multifarious bill all but one of the equitable causes of action alleged, or changing the form but not the cause of action, except that no proceeding by motion shall be converted by amendment into a formal action at law, or vice versa, and the court may allow any other amendment in matter of form or substance in any process which is not void, pleading or proceeding, which may enable the plaintiff to sustain the action, suit, motion or proceeding for the cause for which it was intended to be brought, or enable the defendant to make full and complete defense.

§56-4-25. Amended declaration or bill, supplemental bill or bill of revivor in vacation.

The plaintiff may also, at any time before or after the appearance of the defendant, in vacation of the court wherein the action or suit is pending, file in the clerk's office an amended declaration or bill, supplemental bill or bill of revivor in such suit; whereupon the clerk shall issue a summons against the defendant, requiring him to plead to or answer such amended declaration or bill. But if the court shall be of the opinion that the same was improperly filed, it shall dismiss such declaration or bill at the cost of the plaintiff.

§56-4-26. Amendment after demurrer is sustained.

If a demurrer be sustained to a declaration or bill, the plaintiff, upon giving notice to the defendant or defendants who have appeared or to their counsel, may file an amended declaration or bill at any time within the term at which the demurrer was sustained; and thereupon the cause shall proceed as if such amended pleading had been filed at the time when the original declaration or bill was filed; but the court shall allow the defendant a reasonable time to plead to or answer such amended declaration or bill. The plaintiff may, if he so elect, have the cause remanded to rules for amendment.

§56-4-27. Amendment to cure variance between pleading and proof.

If at the trial of any action or motion, there appears to be a variance between the evidence and allegations or recitals, the court, if in its opinion substantial justice will be promoted thereby, may allow the pleadings to be amended to conform to the proof.

§56-4-28. Continuance and costs after amendment.

If substantial amendment of any pleading is made, the court shall enter such order as to continuance as shall seem fair and just. But the trial of an action at law shall not be continued to another term because of the filing of an amended declaration, or because of an amendment made for the purpose of curing a variance between pleading and proof, unless the defendant shall satisfy the court by affidavit or otherwise that because of such amendment he cannot safely proceed with the trial without such continuance. Every continuance to a subsequent term granted because of an amendment of a pleading shall be at the costs of the party making the amendment.

§56-4-29. Plea in abatement -- Misnomer; amendment inserting correct name.

No plea in abatement for a misnomer shall be allowed in any action; but in a case wherein, but for this section, a misnomer would have been pleadable in abatement, the declaration and summons may, on the motion of either party, and on affidavit of the correct name, be amended by inserting the correct name.

§56-4-30. Same -- Plea in abatement for defects in writ or return; variance from declaration; void process.

In other cases, a defendant on whom process summoning him to answer in any suit or action appears to have been served shall not take advantage of any defect in the writ or return, or any variance in the writ from the declaration, unless such defect or such variance be pleaded in abatement. And in the case of every such defect or such variance, whether the same shall be pleaded in abatement or not, the court may at any time permit the plaintiff to amend the writ or the declaration so as to perfect the writ or correct the variance, and may permit the return to be amended, upon such terms as to it shall seem just. But nothing herein shall deprive a defendant of any right which he has by the common law to make a motion to quash process which is void; and if the process be a void process, the suit or action shall be dismissed upon motion of the defendant.

§56-4-31. Same -- Plea in abatement for want of jurisdiction.

Where the declaration or bill shows on its face proper matter for the jurisdiction of the court, no exception for want of such jurisdiction shall be allowed unless it be taken by plea in abatement.

§56-4-32. Same -- Verification of plea in abatement and of non est factum; may be pleaded and verified by attorney or agent of defendant.

No plea in abatement or plea of non est factum shall be received unless it be verified by affidavit. And in all cases, including those wherein the defendant is a corporation, the plea in abatement may be pleaded and verified by the attorney or agent of the defendant.

§56-4-33. Same -- Time for filing plea in abatement.

No plea in abatement shall be received after the defendant has demurred, pleaded in bar, or answered to the declaration or bill, or later than the next succeeding rules after the rules at which a rule to plead or a conditional judgment or decree nisi is entered.

§56-4-34. Misjoinder and nonjoinder of parties.

No action or suit shall abate or be defeated by the misjoinder or nonjoinder of parties, plaintiff or defendant. Whenever such misjoinder shall be made to appear by affidavit or otherwise, the parties misjoined shall be dropped by order of the court, entered of its own accord or upon motion, at any stage of the cause. Whenever in any case full justice cannot be done and a complete and final determination of the controversy cannot be had without the presence of other parties, and such nonjoinder shall be made to appear by affidavit or otherwise at any time before final judgment or decree, the court of its own accord, or upon motion, may cause such omitted persons to be made parties to the action or suit, as plaintiffs or defendants, by proper amendment and process, at any stage of the cause, as the ends of justice may require, and upon such terms as may appear to the court to be just; but no new party shall be added upon motion unless the place of his residence, if known, be stated with convenient certainty in the affidavit of the party questioning his nonjoinder, and, if his place of residence be not known, unless such fact be stated.

§56-4-35. Verdict and judgment as to particular defendants; costs.

If, in an action at law, to which one or more parties defendant have been added under the provisions of the preceding section, it shall appear by the subsequent pleadings, or at the trial thereof, that any of the defendants are liable, but that one or more of the persons so added are not liable, the plaintiff shall be entitled to judgment, or to verdict and judgment, as the case may be, against the defendants who are liable, and such as are not liable shall have judgment and recover costs as against the plaintiff, who shall be allowed that part of the costs pertaining to added defendants not liable, as costs against the defendants who caused them to be made parties.

§56-4-36. Scope of demurrer; objections to filing of pleadings for insufficiency abolished; form, grounds and argument.

The sufficiency of any pleading, in law or equity, may be tested by a demurrer. Objections to the filing of any pleading, because of insufficiency, are abolished. The form of a demurrer shall be: The defendant (or plaintiff) says that the declaration (or other pleading) is not sufficient in law, for the following reason (or reasons): All demurrers in civil cases shall be in writing and shall state specifically the grounds of demurrer relied on, and no grounds shall be considered other than those so stated, except by the court of its own accord, but the demurrant may, by leave of the court, amend his demurrer by stating additional grounds, or otherwise, at any time before the trial at law or final hearing in equity. When a party demurs to any pleading, the demurrer shall at once be set for argument.

§56-4-37. Defects disregarded on demurrer.

On a demurrer (unless it be to a plea in abatement), the court shall not regard any defect or imperfection in the declaration or other pleading, whether it has heretofore been deemed mispleading or insufficient pleading or not, unless there be omitted something so essential to the action or defense that judgment, according to law and the very right of the cause, cannot be given. No demurrer shall be sustained because of the omission in any pleading of the words, "this he is ready to verify," or "this he is ready to verify by the record," or "as appears by the record"; but the opposite party may be excused from replying, demurring or otherwise answering to any pleading, which ought to have, but has not, such words therein, until they be inserted.

§56-4-38. Pleading in abatement and in bar at same time; trial of issues.

The defendant may plead in abatement and in bar at the same time, but the issue on the plea in abatement shall be first tried, and if such issue be found against the defendant, he may, nevertheless, make any other defense he may have to the action.

§56-4-39. Pleading several defenses; demurrer and special replications to special plea.

The defendant in any action or suit may plead as many several matters, whether of law or fact, as he shall think necessary, except that if he plead the plea of non est factum he shall not, without leave of the court, be permitted to plead any other plea inconsistent therewith. To any special plea pleaded by a defendant, the plaintiff may demur and in addition plead as many special replications as he may deem necessary.

§56-4-40. Commencement of plea.

No formal defense shall be required in a plea. It may commence as follows:"The defendant says that."

§56-4-41. Unnecessary allegations in pleas, etc.

In a plea, replication or subsequent pleading, intended to be pleaded in bar or in maintenance of the action, it shall not be necessary to use any allegation of "actionem non" or "precludi non," or to the like effect, or any prayer of judgment.

§56-4-42. Omission of protestation.

No party shall be prejudiced by omitting a protestation in any pleading.

§56-4-43. Conclusion of traverse.

All special traverses or traverses with an inducement of affirmative matter shall conclude to the country. But this regulation shall not preclude the opposite party from pleading over to the inducement when the traverse is immaterial.

§56-4-44. When parties may proceed without similiter or joinder in demurrer.

When any party takes issue on another party's pleading, or traverses the same, or demurs, so that such other party is not let in to allege any new matter, no similiter or joinder in demurrer shall be necessary, but either party may proceed as if there were a similiter or joinder in demurrer.

§56-4-45. Unnecessary allegations in second or other plea.

It shall not be necessary to state in a second or other plea that it is pleaded by leave of the court, or according to the form of the statute, or to that effect.

§56-4-46. Pleading denying execution of writing or entry or genuineness of judgment or decree.

Where a declaration or other pleading alleges that any person made, indorsed, assigned or accepted any writing, it shall not be necessary to prove such fact unless the pleading which puts the matter in issue be verified, or there be an affidavit filed therewith denying such fact.

In any action, suit or proceeding upon, or to enforce, or in which is set off, a judgment or decree, foreign or domestic, wherein the recovery of such judgment or decree is alleged in any pleading, it shall not be necessary to prove the entry or genuineness of such judgment or decree, unless the pleading which puts the matter in issue be verified, or there be an affidavit filed therewith denying such entry or genuineness.

§56-4-47. Plea denying partnership; form of denial of corporate existence.

Where plaintiffs or defendants sue or are sued as partners, and their names are set forth in the declaration or bill, or where a plaintiff or defendant sues or is sued as a corporation, it shall not be necessary to prove the fact of such partnership or the existence of such corporation, unless the pleading which puts the matter in issue be verified, or there be an affidavit filed therewith denying such partnership or the existence of such corporation. A plea putting in issue the existence of a corporation shall be sufficient if it be in form or effect as follows:

"And the said defendant for plea says that the plaintiff (or defendant, as the case may be) is not a corporation, as in the plaintiff's declaration is alleged."

§56-4-48. Judgment or decree by confession.

In any action or suit instituted by process a defendant may, in the vacation of the court, and whether the action or suit be on the court docket or not, confess a judgment or decree in the clerk's office for so much principal and interest as the plaintiff may be willing to accept a judgment or decree for. The same shall be entered of record by the clerk in the order book, and be as final and as valid as if entered in court on the day of such confession, except merely that the court shall have such control over it as is given by section seventy of this article.

§56-4-49. Failure to plead, answer or demur; rule to plead; conditional judgment or decree nisi; judgment or decree by default; order for inquiry of damages.

If a defendant, who appears, fail to plead, answer or demur to the declaration or bill, a rule may be given him to plead. If he fail to appear at the rule day at which the process against him is returned executed, or when it is returnable to a term, at the first rule day after it is so returned, the plaintiff, if he has filed his declaration or bill, may have a conditional judgment or decree nisi as to such defendant. No service of such decree nisi or conditional judgment shall be necessary. But at the next rule day after the same is entered, if the defendant continue in default, or at the expiration of any rule upon him with which he fails to comply, if the case be in equity, the bill shall be entered as taken for confessed as to him and if it be at law, judgment shall be entered against him with an order for the damages to be inquired into, when such inquiry is proper.

§56-4-50. When inquiry of damages unnecessary.

There need be no such inquiry in any action upon a bond or other writing for the payment of money, which by its terms ascertains the amount to be paid thereunder, or against the drawer or indorsers of a bill of exchange or negotiable note, or in an action or scire facias upon a judgment or recognizance.

§56-4-51. Office judgment; affidavits by plaintiff and defendant; judgment.

Every judgment entered in the clerk's office in a case wherein there is no order for an inquiry of damages, and every nonsuit or dismission entered therein, shall, if not previously set aside, become a final judgment on the last day of the next succeeding term of the court wherein the action is pending. If the action in which such judgment is entered be one for the recovery of money arising out of contract, and the plaintiff has filed with his declaration (which in all such cases he may do) an affidavit of himself or some other credible person stating that there is, as affiant verily believes, due and unpaid from the defendant to the plaintiff upon the demand or demands stated in the declaration, 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 either at rules or in court, unless the defendant shall file with the plea an affidavit of himself or some other credible person that there is not, as affiant verily believes, any sum due from the defendant to the plaintiff upon the demand or demands stated in plaintiff's declaration; or stating a sum certain, less than that stated in the affidavit filed by the plaintiff, which affiant verily believes is all that is due from the defendant to the plaintiff upon the demand or demands stated in the plaintiff's declaration. If such plea and affidavit be not filed, judgment shall 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. If such plea and affidavit be filed by the defendant and it be admitted in such affidavit that any such 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. If the plaintiff has not filed such affidavit with his declaration, and the office judgment in the case be not set aside, the judgment shall not be entered by the court until the plaintiff files such affidavit or proves his case in open court, and the judgment in either case shall be entered as heretofore provided for. If the case be one arising out of contract in which there is an order for an inquiry of damages, and the plaintiff has filed with his declaration the affidavit hereinbefore mentioned, no plea shall be filed in the case, either at rules or in court, unless the defendant shall file therewith the affidavit hereinbefore required to set aside an office judgment in which no order for an inquiry of damages had been made. When a jury is impaneled to execute an order for an inquiry of damages, their oath shall be that they will well and truly find the amount, if any, which the plaintiff is entitled to recover in the action, and a true verdict render according to the evidence. And the affidavit of the the plaintiff hereinbefore mentioned shall be legal evidence on such inquiry.

§56-4-52. Setting aside office judgment; trial.

If a defendant against whom a judgment is entered in the office, whether an order for an inquiry of damages has been made therein or not, shall, before the end of the term at which it becomes final, appear and plead to issue, and shall, in the cases mentioned in the next preceding section in which an affidavit is required, file such affidavit with his plea, the judgment shall be set aside; but if the judgment has been entered up in court or the order for an inquiry of damages has been executed, it shall not be set aside without good cause be shown therefor. Any such issue may be tried at the same term, unless the defendant show by affidavit, filed with the papers, good cause for a continuance. But the plaintiff shall have the right to cross-examine the defendant upon the matters contained in such affidavit.

§56-4-53. Hearing as to defendants served; discontinuance.

Where, in any action against two or more defendants, the process is served on part of them, the plaintiff may proceed to judgment as to any so served, and either discontinue it as to the others or from time to time, as the process is served as to such others, proceed to judgment as to them until judgment be obtained against all. Such discontinuance of the action as to any defendant not served with process shall not operate as a bar of any subsequent action which may be brought against him for the same cause.

§56-4-54. Form of bill of complaint.

The plaintiff's bill may be in form or in substance as follows:

The bill of complaint of A ..... B .....

(state the names of all the plaintiffs) against C .....

D ..... State the names of all the defendants, if known, and if not, designate them as the "unknown parties," or "unknown heirs," etc., as the case may be,) filed in the circuit court of ..... county. The plaintiff complains and says that (here state all the facts constituting a claim to relief). The said plaintiff therefore prays that (here state the particular relief desired). He also asks such other and general relief as the court may see fit to grant.

A ..... B ....., Plaintiff.

Every person designated in the caption of such bill as the defendant shall be a defendant therein, without a prayer that he be made such, and shall be required to answer the bill in the same manner and to the same extent as if he were therein called upon to do so.

§56-4-55. Jury trial of issue upon plea in equity.

A plaintiff in equity may take issue upon a plea, and either party may have such issue tried by a jury.

§56-4-56. Argument of plea or demurrer in equity; time to answer after demurrer overruled; proceeding on default; status of answer filed in vacation.

A plaintiff in equity may have any plea or demurrer set down to be argued. If the same be overruled, no other plea or demurrer shall afterwards be received, but the defendant shall file his answer, in court, if in session, or, if not in session, in the clerk's office of the court in which the suit is pending, within fifteen days after the overruling of his plea or demurrer, unless, for good cause shown, the time is enlarged by the court, or the judge thereof in vacation; and if he fail to appear and answer the bill within such fifteen days, or additional time, if any such be granted, the plaintiff shall be entitled to a decree against him for the relief prayed for therein, or the plaintiff may proceed against such defendant in the manner prescribed by section sixty-six of this article. Any answer filed in the clerk's office in vacation pursuant to the provisions of this section shall have the same status and effect as if filed in term.

§56-4-57. Time to answer in general.

A defendant may file his answer at any time before final decree, unless required to file it sooner under section fifty-six of this article, or by a proper rule of court under section four, article one, chapter fifty-one of this code, but a cause shall not be sent to rules or continued, because an answer is filed in it, unless good cause therefor be shown by affidavit filed with the papers.

§56-4-58. Claim in answer for affirmative relief; special reply.

A defendant in a suit in equity may, in his answer, allege any new matter constituting a claim for affirmative relief in such suit against the plaintiff or any defendant therein, in the same manner and with like effect as if the same had been alleged in a crossbill filed by him therein; and in such case, if the plaintiff or defendant against whom such relief is claimed desire to controvert the relief prayed for in the answer, he shall file a special reply in writing, denying such allegations of such answer as he does not admit to be true, and stating any facts constituting a defense thereto. But in case a defendant allege new matter in his answer upon which he relies for and prays affirmative relief, such defendant shall not file a crossbill in the same cause except upon condition of striking from his answer all such matter and prayer for affirmative relief as are contained in such crossbill.

§56-4-59. Answer asking affirmative relief equivalent to crossbill.

When a defendant in equity in his answer alleges new matter constituting a claim to affirmative relief, the case shall be decided upon the same principles, and the same relief shall be decreed in the case, as if a crossbill had been filed to obtain such relief.

§56-4-60. Admissions in equity by failure to deny.

Every material allegation of the bill not controverted by an answer, and every material allegation of new matter in the answer constituting a claim for affirmative relief not controverted by a special reply in writing, shall, for the purposes of the suit, be taken as true, and no proof thereof shall be required.

§56-4-61. Proof of allegations denied by answer.

When a defendant in equity shall, in his answer, deny any material allegation of the bill, the effect of such denial shall only be to put the plaintiff on satisfactory proof of the truth of such allegation, and any evidence which satisfies the court or jury of the truth thereof shall be sufficient to establish the same.

§56-4-62. Verification of pleadings in equity.

If the plaintiff desire the defendant to answer the bill on oath, he must verify his bill by affidavit, and if the bill be so verified, the defendant must in like manner verify his answer. But if the bill be not verified, the defendant need not verify his answer, and if he does so it shall not be entitled to any more weight in the cause than if it had not been verified. In case the defendant verify his answer, alleging new matter constituting a claim for affirmative relief, the plaintiff must verify his special reply thereto. A general replication to an answer claiming affirmative relief shall not apply to so much of such answer as states facts constituting a claim to such relief.

§56-4-63. Appearance of corporation by attorney; verification of pleading of corporation.

Any corporation may appear, plead or answer by attorney in any action, suit or proceeding for the same purposes, in the same manner and form and to the same extent and effect as if it were a natural person. Any answer or pleading of a corporation shall be verified in any case in which it would be required to be verified if it were the answer or pleading of a natural person.

§56-4-64. Form of verification of pleading.

The verification of any pleading may be by the pleader or some other credible person. The verification, when by the plaintiff or defendant, may be in form or effect as follows:

State of West Virginia, ... county, to wit:
A..... B....., the plaintiff (or defendant, as the case may be,) named in the foregoing bill (or answer, replication, or plea, as the case may be,) being duly sworn, says that the facts and allegations therein contained are true, except so far as they are therein stated to be on information, and that, so far as they are therein stated to be on information, he believes them to be true.

A ..... B .....,

Plaintiff or defendant.

Taken, sworn to and subscribed before me this ..... day of .....

C ..... D .....,

Clerk (or other officer swearing him)

If the party required to verify a pleading be an administrator or other fiduciary, it shall be sufficient if he swear that he believes the plea or other pleading to be true. A bill of injunction to be sworn to by any person other than the plaintiff, or answer to a bill of injunction to be sworn to by a person other than the defendant making the answer, must be so drawn as to show which of the allegations therein contained are made on information and belief.

The verification, when by a person other than the plaintiff or defendant, shall be in form or effect as follows:

State of West Virginia, ... county, to wit:

A ..... B ..... (a credible person), being duly sworn, says that he has read the foregoing bill (or answer, replication, or plea, as the case may be,) and that he knows the contents thereof; that the facts and allegations therein contained are true, except such as are therein stated upon information and belief, and that as to such allegations he believes them to be true.

A ..... B ..... .

§56-4-65. Exceptions to answers for insufficiency abolished; test by demurrer; amended answer; procedure if amended answer is insufficient.

Exceptions to answers for insufficiency are abolished. The test of sufficiency shall be made by a demurrer; if found insufficient, but amendable, the court may allow amendment on terms. If the amended or second answer is adjudged insufficient, the defendant may be examined upon interrogatories and committed until he answers them, or on motion of the plaintiff the court may strike out the answer and enter a decree for the plaintiff.

§56-4-66. Attachment or order to answer interrogatories.

Although a bill be taken for confessed as to any defendant, the plaintiff may have an attachment against him or an order for him to be brought in to answer interrogatories. No plea or demurrer shall be received after such attachment, unless by order of court, upon motion.

§56-4-67. Insufficient answer after rule.

If a defendant, after process of contempt, put in an answer which is adjudged insufficient, the plaintiff may proceed with the process of contempt, as if no answer had been filed, or, at the option of the plaintiff, if the bill be verified, the court may thereupon render such decree in the case as may be just.

§56-4-68. Setting cause in equity for hearing.

Whenever a suit in equity is matured at rules as to all of the defendants, it shall be the ex officio duty of the clerk, as soon as the same is matured, to set the case for hearing as to them. If the suit be matured as to only a part of the defendants, the plaintiff may appear at rules and have it set for hearing as to such part. If one month elapse after the answer of a defendant is filed, without the case being so set and without a demurrer being filed to his answer, such defendant may appear at rules and have the case set for hearing as to himself

§56-4-69. Hearing as to one defendant; rule to mature cause.

If a suit in equity be set for hearing as to any defendant, it shall be heard as to him unless his interests be so connected with those of other defendants in the suit that it would be improper to decide upon their interests separately. And though there be such connection, a defendant as to whom the case has been set for hearing may have an order upon the plaintiff to use due diligence to mature the cause for hearing as to the other defendants, and, unless it be so matured within such time as the court may deem reasonable, shall be entitled to a hearing or dismission of it as to him

§56-4-70. Control by court over proceedings in office during vacation.

The court shall have control over all proceedings in the office during any preceding vacation. It may reinstate any cause discontinued during such vacation, set aside any of the proceedings or correct any mistake therein, and make such order concerning the same as may be just.

§56-4-71. Pleadings and proof in actions on bonds, notes or other evidences of debt subject to taxation.

In every action at law, proceeding or suit in equity, instituted on and after July 2, 1934, in a court of record in this state, for the collection of any bonds, notes, or other evidences of debt, the plaintiff or claimant shall be required to allege in his pleadings, or to prove by affidavit or otherwise at any time before final judgment or decree is entered:

(1) That such bonds, notes or other evidence of debt have been assessed for taxation for each and every tax year on the first day of which he was the owner of same, not exceeding five years prior to that in which the action, suit or proceeding was instituted and not in any event, for any period beginning earlier than January 1, 1933, or

(2) That such bonds, notes, or other evidence of debt constituted a part of the capital employed in the business of such plaintiff or claimant and were assessed or taxed as such, or otherwise assessed or taxed as prescribed by law, or

(3) That the plaintiff or claimant has not paid, or is unable to pay, the taxes and interest and penalties, if any, on such bonds, notes or other evidences of debt, but is willing for the same to be paid out of his first recovery thereon, or

(4) That such bonds, notes or other evidence of debt sued upon are not taxable under the law in the hands of the plaintiff or claimant, or are otherwise exempt from taxation; and no judgment or decree of a court of record rendered in an action, suit or proceeding instituted on and after the date aforesaid, shall be valid unless the allegation herein required was made, or unless the proof herein required was reduced before final judgment or decree was entered.

When in any such action at law, suit in equity or proceeding, it is ascertained that there are unpaid taxes, including interest and penalties, if any, on the evidence or evidences of debt sought to be enforced, and the plaintiff or claimant makes it appear to the court that he has not paid, or is unable to pay, said taxes, including interest and penalties, if any, but is willing for the same to be paid out of his first recovery thereon, the court may order, as a part of any judgment or decree in said action, suit or proceeding, that the taxes, including interest and penalties, if any, that are due and owing, shall be paid to the proper officer out of the first collection on said judgment or decree.

But the title to real estate heretofore or hereafter sold by virtue of a deed of trust, mortgage or vendor's lien, shall not be drawn in question upon the ground that the holder of the notes or bonds or evidences of debt secured by such deed of trust, mortgage or vendor's lien, did not list the same for taxation; and this section shall not affect in any manner any action, suit or proceeding pending or instituted in any court of this state prior to July 2, 1934.

If any paragraph, sentence, clause or phrase of this section shall for any reason be held invalid, the validity of the remaining phrases, clauses, sentences and paragraphs of this

section shall not be affected thereby.

§56-5-1. Payment before action is brought may be pleaded.

In any action for the recovery of a debt, the defendant may plead payment of the debt (or of so much as is due by the condition) before action brought.

§56-5-2. Payment into court after action is brought.

In any personal action, the defendant may pay into court, to the clerk, a sum of money on account of what is claimed, or by way of compensation or amends, and plead that he is not indebted to the plaintiff (or that the plaintiff has not sustained damages) to a greater amount than such sum.

§56-5-3. Acceptance of payment into court; trial of issue as to residue.

The plaintiff may accept such sum, either in full satisfaction and then have judgment for his costs, or in part satisfaction and reply to the plea generally and if issue thereon be found for the defendant judgment shall be given for the defendant and he shall recover his costs.

§56-5-4. Setoff generally; plea or account of setoff; counter setoff; trial.

In a suit for any debt, the defendant may at the trial prove and have allowed against such debt any payment or setoff which is so described in his plea, or in an account filed therewith, as to give the plaintiff notice of its nature, but not otherwise. Although the claim of the plaintiff be jointly against several persons, and the setoff be of a debt, not to all, but only to a part of them, this section shall extend to such setoff, if it appear that the persons against whom such claim is, stand in the relation of principal and surety, and that the person entitled to the setoff is the principal. And when the defendant is allowed to file and prove an account of setoff to the plaintiff's demand, the plaintiff shall be allowed to file and prove an account of counter setoff, and make such other defense as he might have made had an original action been brought upon such setoff, and, in the issue, the jury or judge shall ascertain the true state of indebtedness between the parties, and judgment shall be rendered accordingly.

§56-5-5. Special pleas in the nature of pleas of setoff; verification.

In any action on a contract, the defendant may file a plea alleging any such failure in the consideration of the contract, or fraud in its procurement, or any such breach of any warranty to him of the title to real property or of the title or the soundness of personal property, for the price or value whereof he entered into the contract, or any other matter, as would entitle him either to recover damages at law from the plaintiff, or the person under whom the plaintiff claims, or to relief in equity, in whole or in part, against the obligation of the contract; or, if the contract be by deed, alleging any such matter existing before its execution, or any such mistake therein, or in the execution thereof, or any such other matter, as would entitle him to such relief in equity; and in either case alleging the amount to which he is entitled by reason of the matters contained in the plea. Every such plea shall be verified by affidavit.

§56-5-6. When special plea bar to relief in equity; nature of replication.

If a defendant entitled to such plea as is mentioned in the preceding section shall not tender it, or though he tender it, if it be rejected for not being offered in due time, he shall not be precluded from such relief in equity as he would have been entitled to if the preceding section had not been enacted. If an issue in fact is joined on such plea and the same be found against the defendant, he shall be barred of relief in equity upon the matters alleged in the plea, unless upon such ground as would entitle a party to relief against a judgment in other cases. Every such issue in fact shall be upon a general replication that the plea is not true; and the plaintiff may give in evidence on such issue, any matter, which could be given in evidence under a special replication, if such replication were allowed.

§56-5-7. Application of article to voluntary bonds or deeds.

Nothing in this article shall impair or affect the obligation of any bond or other deed deemed voluntary in law, upon any party thereto, or his representatives.

§56-5-8. Setoff as to part of demand; continuance.

If the defendant file a plea or account of setoff which covers or applies to part of the plaintiff's demand, judgment may forthwith be rendered for the part not controverted and the costs accrued until the filing of the plea or account, and the case shall be proceeded with for the residue as if the part for which judgment was rendered had not been included therein. And if, in addition to such plea or account, the defendant plead some other plea, going to the whole or residue of the demand, the case shall not be continued as to the part not controverted by plea or account of setoff, unless good cause be shown for such continuance. A failure to take such judgment, however, at the term the plea or account is filed, shall not effect a discontinuance of the cause.

§56-5-9. Status of defendant with reference to setoff; verdict and judgment.

A defendant who files a plea or account under this article shall be deemed to have brought an action against the plaintiff (at the time of filing the same) for the matters mentioned in such plea or account, and the plaintiff shall not, after the plea or account is filed, dismiss his case without the defendant's consent, but shall be entitled to every ground of defense against the defendant's demand of which he might have availed himself by special plea or otherwise in any action brought against him upon the same demand. On the trial of the issue in such case, the jury shall ascertain the amount to which the defendant is entitled and apply it as a setoff against the plaintiff's demand, and, if such amount be more than the plaintiff is entitled to, shall ascertain the amount of the excess, including principal and interest. Judgment in such case shall be for the defendant against the plaintiff for such excess, with interest from the date of the judgment till payment.

§56-6-1. Law docket.

Before every term of a circuit court, or any other court of record exercising jurisdiction in the trial or hearing of actions at law, the clerk shall make out a docket of the following cases pending, to wit: First, cases of the state; secondly, motions and actions, in the order in which the notices of the motions were filed, or in which the proceedings at rules in the actions were terminated, docketing together as new cases those not on the docket at the previous term. He shall, under control of the court, set the cases to certain days; and the docket shall be called and the cases on it tried or disposed of for the term in that order, except that the court may for good cause take up any case out of turn.

§56-6-2. Chancery docket.

Before every term of a circuit court, or any other court exercising jurisdiction in the hearing of suits in chancery, the clerk shall make out a separate docket of chancery cases in which there are motions, and of other chancery cases which have been set for hearing as to any party, or which the court is to hear upon a plea or demurrer; and during such term every cause on such docket shall be called and disposed of.

§56-6-3. Application for hearing.

Any party asking the court to hear a case may, if the court refuses to hear it, have his application spread upon the record, with a statement of the facts in relation thereto.

§56-6-4. Direction and trial of issues out of chancery.

Any court, wherein is pending a chancery case in which there is such a conflict in the evidence as, in the opinion of such court, to render it proper, may direct an issue thereon to be tried in such court. And the court shall have the discretion to direct such an issue to be tried before any proof has been taken by either the plaintiff or the defendant, if it shall be shown by affidavit or affidavits, after reasonable notice, that the case will be rendered doubtful by the conflicting evidence of the respective parties. Although the verdict on such issue may be set aside, there shall be no new trial thereof, but the court may proceed to decree as if no issue had been directed. No issue out of chancery shall be directed in any other case unless specially authorized by statute. Nothing in this section shall be construed to conflict with any of the provisions of chapter forty- one of this code.

§56-6-5. Trial of action at law; separate verdicts on different issues; interrogatories to jury.

Any court of record having jurisdiction of the trial of common-law actions may, in any case before it other than a chancery case, have an issue tried, or an inquiry of damages made, by a jury, and determine all questions concerning the legality of evidence and other matters of law which may arise. Upon the trial of any issue or issues by a jury, whether under this section or not, the court may, on motion of any party, direct the jury, in addition to rendering a general verdict, to render separate verdicts upon any one or more of the issues, or to find in writing upon particular questions of fact to be stated in writing. The action of the court upon such motions shall be subject to review as in other cases. Where any such separate verdict or special findings shall be inconsistent with the general verdict, the former shall control the latter, and the court shall give judgment accordingly.

§56-6-6. Time for trial, execution of order and rendering of final judgment.

At the next term after an order at the rules for an inquiry of damages, such order may be executed and a final judgment rendered thereupon, unless good cause be shown for a continuance.

§56-6-7. Continuance upon affidavit because of absence of witness.

If in any case a continuance be asked because of the absence of a witness, an affidavit must be filed, if required by any party opposing, setting forth, in addition to other matters required in order to obtain a continuance, the name of the witness and the testimony he is expected to give, and the affiant must, if required by any opposing party, submit to cross-examination in open court upon the matters set forth in such affidavit.

§56-6-8. Continuance of causes at end of term.

All causes on the docket of any court, and all other matters ready for its decision which shall not have been determined before the end of a term, whether regular, adjourned or special, shall, without any order of continuance, stand continued until the next term.

§56-6-9. Case not to be discontinued by failure to sign judgment.

When a defendant has demurred to, filed a plea to, or otherwise put in issue, a part of the plaintiff's claim and has left the residue of such claim unanswered, the case shall in no event be discontinued merely because the plaintiff has failed to sign judgment as to the unanswered residue; but the plaintiff may, at any term of court at or after which such demurrer or plea is filed or such part of the plaintiff's claim is otherwise put in issue, before or after trial of the issue as to the part answered, provided the case shall not have been discontinued under some other provision of law, take judgment by nil dicit as to such unanswered residue.

§56-6-10. Stay of proceedings until other action, suit or proceeding decided.

Whenever it shall be made to appear to any court, or to the judge thereof in vacation, that a stay of proceedings in a case therein pending should be had until the decision of some other action, suit or proceeding in the same or another court, such court or judge shall make an order staying proceedings therein, upon such terms as may be prescribed in the order. But no application for such stay shall be entertained in vacation until reasonable notice thereof has been served upon the opposite party.

§56-6-11. Execution of order of inquiry and trial of case by court; six-member jury in civil trials; twelve-member jury in eminent domain and criminal trials.

(a) The court, in an action at law, if neither party requires a jury, or if the defendant has failed to appear and the plaintiff does not require a jury, shall ascertain the amount the plaintiff is entitled to recover in the action, if any, and render judgment accordingly. In any case, in which a trial by jury would be otherwise proper, the parties or their counsel, by consent entered of record, may waive the right to have a jury, and thereupon the whole matter of law and fact shall be heard and determined, and judgment given by the court. Absent such waiver, in any civil trial a jury shall consist of six members and in any criminal trial a jury shall consist of twelve members.

(b) The provisions of this section do not apply to any proceeding had pursuant to article two, chapter fifty-four of this code, the provisions of which apply to all cases involving the taking of property for a public use.

§56-6-12. Qualifications of jurors; examination on voir dire; peremptory challenges.

Either party in any action or suit may, and the court shall on motion of such party, examine on oath any person who is called as a juror therein, to know whether he is a qualified juror, or is related to either party, or has any interest in the cause, or is sensible of any bias or prejudice therein; and the party objecting to the juror may introduce any other competent evidence in support of the objection; and if it shall appear to the court that such person is not a qualified juror or does not stand indifferent in the cause, another shall be called and placed in his stead for the trial of that cause. And in every case, unless it be otherwise specially provided by law, the plaintiff and defendant may each challenge four jurors peremptorily.

§56-6-12a. Alternate jurors for protracted civil cases; qualifications and challenges.

In any civil case, whenever in the opinion of the court the trial is likely to be a protracted one, the court may direct that not more than four jurors, in addition to the regular jury, be called and impaneled to sit as alternate jurors. Said alternate jurors shall be chosen from a separate panel of six after the regular jury of six or twelve, as the case may be, has been selected. Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury retires to consider its verdict, become unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath and shall have the same functions, powers, facilities and privileges as the regular jurors. An alternate juror who does not replace a regular juror shall be discharged after the jury retires to consider its verdict. Each side is entitled to one peremptory challenge in addition to those otherwise allowed by law if one or two alternate jurors are to be impaneled, and two peremptory challenges if three or four alternate jurors are to be impaneled. The additional peremptory challenges may be used against an alternate juror only, and the other peremptory challenges allowed by this section may not be used against an alternate juror.

§56-6-13. Special jury in civil cases.

(a) Except as provided in subsection (b) of this section, any court may allow a special jury in any civil case, to be formed in the following manner: The court shall direct a panel of ten jurors to be drawn by the clerk, in the presence of the court, from the box mentioned in section seven, article one, chapter fifty-two of this code, who shall be summoned by the sheriff to attend on the day named in the order, from which number eight shall be chosen by lot; and the parties thereupon, the plaintiff's attorney beginning, shall alternately strike off one until the number be reduced to six, which number shall complete the jury for the trial of the case. The court may also allow a special jury in any civil case when the panel of drawn jurors is exhausted, upon the motion of either of the parties, to be summoned by the sheriff so far as may be required from the body of the county; but no such special jury shall be allowed in any case unless the court certifies of record that the interest of the parties so asking such jury will be promoted by the allowance of such special jury.

(b) In any case held pursuant to article two, chapter fifty-four of this code, for the taking of property for a public use, any court may allow a special jury to be formed in the following manner: The court shall direct a panel of twenty jurors, who are qualified freeholders of the county wherein the property to be taken is situate, to be drawn by the clerk, in the presence of the court, from the box mentioned in section seven, article one, chapter fifty-two of this code, who shall be summoned by the sheriff to attend on the day named in the order, from which number sixteen shall be chosen by lot; and the parties thereupon, the plaintiff's attorney beginning, shall alternately strike off one until the number be reduced to twelve, which number shall complete the jury for the trial of the case, but no such special jury shall be allowed in any case unless the court certifies of record that the interest of the parties so asking such jury will be promoted by the allowance of such special jury.

§56-6-14. Juror having matter of fact to be tried disqualified.

No person shall serve as a juror at any term of a court during which he has any matter of fact to be tried by a jury, which shall have been, or is expected to be, tried during the same term.

§56-6-15. Exceptions against jurors after being sworn.

No exception shall be allowed against a juror, after he is sworn upon the jury, on account of his age or other legal disability, unless by leave of court.

§56-6-16. Irregularities affecting the jury; time for objection.

No irregularity in any writ of venire facias, or in the drawing, summoning, or impaneling of jurors, shall be sufficient to set aside a verdict, unless objection specifically pointing out such irregularity was made before the swearing of the jury, or unless the party making the objection was injured by the irregularity.

§56-6-17. View by jury.

The jury may, in any case, at the request of either party, be taken to view the premises or place in question, or any property, matter or thing relating to the controversy between the parties, when it shall appear to the court that such view is necessary to a just decision, and in such case the judge presiding at the trial may go with the jury and control the proceedings; and in a felony case the judge and the clerk shall go with the jury and the judge shall control the proceedings, and the accused shall likewise be taken with the jury or, if under recognizance, shall attend the view and his recognizance shall be construed to require such attendance. The party making the motion, in a civil case, shall advance a sum sufficient to defray the expenses of the jury and the officers who attend them in taking the view, which expenses shall be afterwards taxed like other legal costs.

§56-6-18. Disclosure by juror of knowledge of facts in issue.

A juror knowing anything relative to a fact in issue shall disclose the same in open court, but not to the jury out of court; and the court shall inform the jury of this provision.

§56-6-19. Instructions to jury generally; form and manner of giving.

Upon the trial of any case, civil or criminal, before a jury, either party may pray the court to give to the jury any instruction which has been reduced to writing and submitted to the other party. Such other party may object to the giving of such instruction. Every such instruction which shall propound correctly law applicable to the case not covered by other instructions shall be given by the court to the jury as a part of a written charge by the court to the jury, as hereinafter provided, in case such charge be given, and otherwise shall be given as an independent instruction. The court may, on its own motion, whether requested or not, in writing define to the jury the issues involved and instruct them on the law governing the case, but all such instructions shall first be submitted to counsel on each side with opportunity to object thereto. In lieu of the giving of separate instructions as herein provided, the court may in writing instruct upon the law governing the case, putting such instructions in the form of an orderly and connected charge, incorporating therein the substance and, as far as may be, the language of the instructions prayed upon either side or prepared by the court on its own motion, with correctly propounded law applicable to the case, which written charge shall first be submitted to counsel on each side with opportunity to specify and object to any part thereof. No objections shall lie to the action of the court upon any instruction of the law to which it relates shall have been correctly stated by the court in such charge. The action of the court upon every instruction prayed, whether such instruction be given as asked or as modified, independently or as part of the court's charge, or be refused, shall be noted upon the margin thereof by the judge over his signature. Either party may except to any and every ruling by the court adverse to the prayer or objection by him with respect to any such instruction.

§56-6-20. Reading instructions to jury; instructions part of record.

All instructions given shall be read by the court to the jury as the action and ruling of the court, without reference to or disclosing the party by whom they may have been prayed. Every instruction or charge in writing read to the jury and every instruction or charge in writing prayed by any party and refused by the court, provided, in either case, that such instruction or charge have a notation thereon showing the action of the court with reference thereto over the signature of the judge, as provided in the preceding section, shall, together with the objections and exceptions thereto, indorsed thereon, be a part of the record in the case and shall be included and copied in any transcript of the record without the formality of a bill of exceptions or any formal certification provided for in subsequent sections of this article.

§56-6-21. Time for examining instructions, objecting thereto and settlement thereof.

The court shall, in the absence of any rule for such purpose prescribed by the Supreme Court of Appeals, under the provisions of section four, article one, chapter fifty-one of this code by suitable general rules, prescribe the stages of the trial, at which instructions must be presented to the opposing counsel and to the court, at which objections may be made to charges and instructions prepared by the court, and at which the instructions and charge shall be settled by the court and read by it to the jury; all of which being subject to the power of the court in a particular case to make exceptions to such rules when good cause therefor shall appear and justice may so require.

§56-6-22. Oral instructions by court; written instructions during trial.

Nothing in the three next preceding sections contained shall affect the power of the court during the trial of the case to instruct the jury orally concerning matters not proper for their consideration or concerning the conduct of any person in connection with the trial; or, otherwise, on its own motion to instruct the jury in writing on the law of the case at any stage during the trial, subject to the right of exception by either party.

§56-6-23. Papers taken by jury.

Depositions or other papers read in evidence may, by leave of the court, be carried from the bar by the jury.

§56-6-24. Argument of counsel.

Not more than two counsel shall argue in a civil case on the same side, unless by leave of court, and the argument of each counsel shall not occupy more than two hours, unless by like leave. The court may, in its reasonable discretion, still further limit the time of argument on each side.

§56-6-25. Time limitation as to nonsuit.

A party shall not be allowed to suffer a nonsuit, unless he do so before the jury retire from the bar.

§56-6-26. How verdict may be affected by faulty count.

When there are several counts in a declaration, one or more of which are faulty, the defendant may demur to the faulty count or counts, or move the court to instruct the jury to disregard them. If he does neither, and entire damages be found, judgment shall be entered against the defendant for the damages found, if any count be good, although others be faulty, unless the court can plainly see that the verdict could not have been found on the good count. If he demurs to the faulty count, or moves the court to instruct the jury to disregard it, and his demurrer or motion is overruled, and entire damages be found, and it cannot be seen on which count the verdict was founded, if the jury has been discharged the verdict shall be set aside, but if it is manifest that the verdict could not have been found on the bad count, the verdict shall be allowed to stand. If the jury has not been discharged, the court shall send it back with instructions to designate on which count of the declaration its verdict is found.

§56-6-27. Interest on claim and verdict.

The jury, in any action founded on contract, may allow interest on the principal due, or any part thereof, and in all cases they shall find the aggregate of principal and interest due at the time of the trial, after allowing all proper credits, payments and sets-off; and judgment shall be entered for such aggregate with interest from the date of the verdict.

§56-6-28. New trial.

In any civil case or proceeding, the court before which a trial by jury is had may grant a new trial, unless it be otherwise specially provided. A new trial may be granted as well where the damages are too small as where they are excessive. Not more than two new trials shall be granted to the same party in the same cause on the ground that the verdict is contrary to the evidence, either by the trial court or the appellate court, or both.

§56-6-29. Judgment or decree to be for aggregate of principal and interest to date of verdict.

When there is a recovery on a bond conditioned for the payment of money, as well as in all cases where a judgment or decree is rendered or made for the payment of money, it shall be for the aggregate of principal and interest due at the date of the verdict, if there be one, otherwise at the date of the judgment or decree, with interest thereon from the date of such verdict, if there be one, otherwise from the date of such judgment or decree, except in cases where it is otherwise provided. In any action founded on a tort, if the verdict be for the plaintiff, the judgment shall be for the amount of the verdict with interest thereon from the date of the verdict.

§56-6-30. Action on contract for payments in installments or on bond with collateral condition.

In an action on an annuity bond, or a bond for money payable by installments, where there are further payments of the annuity, or further installments to become due after the commencement of the action, or in any other action for a penalty for the nonperformance of any condition, covenant or agreement, the plaintiff may assign as many breaches as he thinks fit. If there be judgment for the plaintiff on a demurrer, or by confession, or by default, or nil dicit, he may so assign after such judgment. The jury impaneled in any such action shall ascertain the damages sustained, or the sum due by reason of the breaches assigned, including interest thereon to the date of the verdict, and judgment shall be entered for what is so ascertained: Provided, That if the action be on such annuity bond, or a bond for money payable by installments, such judgment shall also be for such further sums as may afterward be assessed or be found due upon a scire facias assigning a further breach. Such scire facias may be sued out from time to time by any person injured, against the defendant or his personal representative, and, for what may be assessed or found due upon the new breach or breaches assigned, execution may be awarded.

§56-6-31. Interest on judgment or decree.

(a) Except where it is otherwise provided by law, every judgment or decree for the payment of money, whether in an action sounding in tort, contract, or otherwise, entered by any court of this state shall bear simple, not compounding, interest, whether it is stated in the judgment decree or not.

(b) Prejudgment – In any judgment or decree that contains special damages, as defined below, or for liquidated damages, the court may award prejudgment interest on all or some of the amount of the special or liquidated damages, as calculated after the amount of any settlements. Any such amounts of special or liquidated damages shall bear simple, not compounding, interest. Special damages include lost wages and income, medical expenses, damages to tangible personal property and similar out-of-pocket expenditures, as determined by the court. If an obligation is based upon a written agreement, the obligation bears prejudgment interest at the rate and terms set forth in the written agreement until the date the judgment or decree is entered and, after that, the judgment interest is the same rate as provided for below in subsection (c) of this section.

(1) Notwithstanding the provisions of section five, article six, chapter forty-seven of this code, the rate of prejudgment interest is two percentage points above the Fifth Federal Reserve District secondary discount rate in effect on January 2, of the year in which the right to bring the action has accrued, as determined by the court and that established rate shall remain constant from that date until the date of the judgment or decree, notwithstanding changes in the federal reserve district discount rate in effect in subsequent years prior to the date of the judgment or decree: Provided, That the rate of the prejudgment interest may not exceed nine percent per annum or be less than four percent per annum. The administrative office of the Supreme Court of Appeals shall annually determine the prejudgment interest rate to be paid upon judgment or decrees for the payment of money and shall take appropriate measures to notify the courts and members of the West Virginia State Bar of the rate of interest in effect for the calendar year in question. Once the rate of prejudgment interest is established as provided in this section, that established rate shall remain constant for the prejudgment interest for that particular judgment or decree, notwithstanding changes in the Federal Reserve District discount rate in effect in subsequent years.

(2) Notwithstanding subsection (b)(1) of this section and section five, article six, chapter forty-seven of this code, for all cases in which the right to bring the action accrued prior to 2009, the court may award prejudgment interest on all or some of the amount of the special or liquidated damages, as calculated after the amount of any settlement, at the interest rate that was in effect as of January 2, of the year in which the right to bring the action accrued.

(c) Post-judgment - Notwithstanding the provisions of section five, article six, chapter forty-seven of this code, the rate of post-judgment interest on judgments and decrees for the payment of money is two percentage points above the Fifth Federal Reserve District secondary discount rate in effect on January 2, of the year in which the judgment or decree is entered: Provided, That the rate of post-judgment interest may not exceed nine percent

per annum or be less than four percent per annum. The administrative office of the Supreme Court of Appeals shall annually determine the post-judgment interest rate to be paid upon judgments or decrees for the payment of money and shall take appropriate measures to promptly notify the courts and members of the West Virginia State Bar of the rate of interest in effect for the calendar year in question. Once the rate of interest is established by a judgment or decree as provided in this section that established rate shall after that remain constant for that particular judgment or decree, notwithstanding changes in the Federal Reserve District discount rate in effect in subsequent years.

(d) Amendments to this section enacted by the Legislature during the 2017 regular session become effective January 1, 2018.

§56-6-32. Recovery against one or more contract defendants.

In an action or motion, founded on contract, against two or more defendants, the fact that one or more of the defendants, at any stage of the cause or for any reason, is found not liable on the contract shall not prevent the plaintiff from having, as if the motion or action were an action founded on tort, verdict and judgment, or judgment alone, as the case may be, against any other defendant or defendants who are liable; nor shall the fact that a verdict is set aside as to one or more of the defendants in such action or motion as contrary to the evidence prevent the plaintiff from having judgment on such verdict as to any other defendant or defendants found liable thereby.

§56-6-33. Judgment or decree against personal representative or committee; costs.

A judgment or decree against any person as the personal representative of a decedent or committee of a convict or insane person, for a debt due from such decedent, convict or insane person, may, without taking an account of the transactions of such representative or committee, be ordered to be paid out of the personal estate of such decedent, convict or insane person, in, or which shall come to, the hands of the representative or committee to be administered. When the court enters of record that, if he had prudently discharged his duty, the suit or motion would not have been brought or made, the judgment or decree, so far as it is for costs, shall be ordered to be paid out of his own estate.

§56-6-34. Issuance of executions during term.

Any circuit court or other court of record, after the fifteenth day of its term, may make a general order allowing executions to issue on judgments or decrees after ten days from their date, although the term at which they are rendered be not ended. For special cause it may, in any particular case, except the same from such order, or allow an execution thereon at an earlier period.

§56-6-35. Bills of exceptions generally.

In the trial of a case at law in which a writ of error or supersedeas lies to the court of appeals, a party may except to any action or opinion of the court and tender a bill of exceptions; and if the action or opinion of the court be upon any question involving the evidence or any part thereof, either upon a motion for a new trial or otherwise, the court shall certify all the evidence touching such question, and the judge shall sign any such bill of exceptions (if the truth of the case be fairly stated therein), and it shall be made a part of the record in the case, and the whole of the evidence so certified shall be considered by the court of appeals, both upon application for and hearing of the writ of error or supersedeas. If any judge refuse to sign such bill of exceptions, he may be compelled to do so by the court of appeals by mandamus; in which case the bill of exceptions shall be a part of the record to the same extent as if it had been signed by the judge at the proper time. Any party may avail himself of any error appearing on the record, by which he is prejudiced, without obtaining a formal bill of exceptions, provided he objects or excepts on the record to the action of the court complained of, and provided it is such a matter as can be considered without a formal bill of exceptions. In all cases an objection noted on the record shall have the same effect as if followed by a formal exception to the ruling of the court thereon, and no exception shall be necessary in order to permit the party so objecting to avail himself thereof. Any bill of exceptions may be tendered to the judge and signed by him in term or in vacation, at any time before final judgment is entered, or within sixty days after the adjournment of the term at which such judgment is entered; or if such judgment shall be entered in vacation, then within sixty days, from the time when such judgment is entered; and the court or judge may, by order entered of record, extend the time within which such bill may be tendered, signed and certified beyond such period of sixty days. If such bill of exceptions be signed by the judge in vacation, he shall certify the same to the clerk of the court, who shall enter the certification upon the order book of such court, and any such bill of exceptions so made in vacation shall be a part of the record and have the same effect as if made in term.

§56-6-36. Certificate in lieu of bill of exceptions.

In lieu of the bill of exceptions provided by the preceding section, it shall be sufficient that any matter intended to become a part of the record in any case shall be certified as provided in the following provisions of this section:

(a) Certificate of all the evidence and proceedings reported. -- Whenever, for any purposes of a review by any appellate court of any action, ruling, order, judgment, or matter arising in the course of the trial or hearing of a cause, a consideration of the evidence or any part thereof, or of any other matter properly appearing in the transcript of the stenographic notes prepared by the stenographic reporter who took notes of the evidence and proceedings, may be necessary for a decision upon an appeal or writ of error of any question involved in such review, and any party seeking to bring matters into the record shall desire that all the evidence and proceedings so noted by such reporter shall become a part of the record, the trial judge shall, if in his opinion such transcript be a true report of the evidence and proceedings, certify, over his signature, such transcript or a copy thereof. Such certificate shall be inserted or appended at the end of such transcript and may be substantially as follows:

The foregoing transcript contains all the evidence and testimony introduced or reported, and all the proceedings reported, on the trial of this cause. Teste: This ..... day of ....., 19 ....., ..., Judge;

(b) Certificate of part of the evidence or proceedings reported. -- If the party seeking to bring matters into the record shall desire, in lieu of making the entire transcript a part of the record as provided in the preceding subdivision, to make some specific part or parts of the evidence or proceedings properly recorded in the stenographic notes a part of the record, the reporter shall transcribe such part or parts, and the trial judge shall, if in his opinion such transcript state the truth, certify over his signature, such transcript thereof. If the part or parts of the evidence or proceedings so transcribed shall day of ....., 19 ....., ..., Judge;

(b) Certificate of part of the evidence or proceedings reported. -- If the party seeking to bring matters into the record shall desire, in lieu of making the entire transcript a part of the record as provided in the preceding subdivision, to make some specific part or parts of the evidence or proceedings properly recorded in the stenographic notes a part of the record, the reporter shall transcribe such part or parts, and the trial judge shall, if in his opinion such transcript state the truth, certify over his signature, such transcript thereof. If the part or parts of the evidence or proceedings so transcribed shall not, as so detached from the residue of the evidence or

(c) Certificate of exceptions as to miscellaneous matters. -- In the case of an exception by any party to any action, ruling, order or judgment of any trial court, or of any other matter arising in the course of the trial or hearing of a cause, and not reported in the official transcript of the evidence and proceedings, or otherwise made a part of the record, it shall

be sufficient, instead of a bill of exceptions, that the trial judge shall certify that any party excepted to such action, ruling, order, judgment or matter. In any such case, the body of such certificate shall set out the subject matter of such action, ruling, order, judgment or matter, in such manner as to make intelligible any question of error arising upon such exception, and shall note the fact that the party excepted, but no particular formality in the statement thereof shall be necessary. Such certificate may conclude substantially as follows:

Approved this .... day of ....., 19.., ..., Judge;

(d) Effect of certification in accordance with this section. -- In all cases, in order to preserve of record to all intents and purposes any exception to any action, ruling, order or judgment of the trial court, or any matter arising in the course of the trial or hearing of a cause, it shall be sufficient that the trial judge, on the application of any party, shall certify the same simply and substantially in accordance with the provisions of this section;

(e) When certificate may be signed. -- Any certificate to the intents and purposes of this section may be signed by the trial judge, in term or in vacation, at any time before final judgment is entered, or within sixty days after the adjournment of the term at which such judgment is entered; or if such judgment be entered in vacation, then within sixty days from the time when such judgment is entered; and the court or judge may, by order entered of record, extend the time within which such certificate may be signed beyond such period of sixty days.

§56-6-36a. Settling, signing and certifying bill of exceptions or certificate in lieu thereof by judge other than judge before whom case was tried.

In the event of the death or resignation of, or the expiration of the term of office or a vacancy in the office for any other cause of, the judge before whom a case was tried, or in the event the trial judge becomes physically or mentally incapable of discharging the duties of his office, a bill of exceptions as provided for by section thirty-five of this article or a certificate in lieu of a bill of exceptions as provided for by section thirty-six of this article may be settled, signed and certified by the successor in the office of such judge or by any other judge authorized in such case to perform the duties of the judge of such court, and any bill of exceptions or certificate in lieu of a bill of exceptions signed and certified as aforesaid shall have the same effect as if signed and certified by the judge before whom such was tried.

§56-6-37. How certificate of trial judge or bills of exceptions to be considered; instructions in transcript all presumed to be given by court.

The appellate court in reviewing, upon a writ of error or supersedeas to a final judgment, or upon an appeal from a final decree, of an inferior court in a cause, any question arising upon the record in such cause, shall in every instance, wherever necessary to a decision of such question, consider any exception, the evidence or any part thereof introduced on the trial or hearing of the cause, or any other matter preserved of record in such cause by the certificate of the trial judge or by bill of exceptions as provided by the two preceding sections, or by the signature of the trial judge as provided by section twenty of this article; nor in the determination of any such question shall it be necessary to enable the appellate court to consider any other exception, or the evidence or any part thereof introduced at the trial or hearing of the cause, or any other matter preserved of record in the cause by the certificate of the trial judge or by bill of exceptions as provided by the two preceding sections or by the signature of the trial judge as provided in section twenty of this article, that there shall be any express reference in the certificate or bill of exceptions or noted on any instruction under which such question may arise to the certificate or bill of any other exception, or of the evidence or any part thereof introduced at the trial or hearing, or of any other matter preserved of record in the cause as provided in the two preceding sections of this article, or to any instruction or notation thereon made a part of the record pursuant to section twenty of this article; but all such separate matters, however made a part of the record, shall be read and considered together as component parts of one entire record. Any instruction or instructions appearing in the transcript of the record certified by the clerk of the trial court as given shall be presumed to be the only instruction or instructions given; or if it shall not appear from such transcript that any instruction was given, it shall be presumed that none was given, unless, in either case, it shall affirmatively appear otherwise from such transcript, or upon a suggestion by any party, either to the trial court or to the appellate court, that an instruction or instructions given have been omitted from such transcript. But nothing in this or the previous section shall be construed as compelling the appellate court to notice or review any matter arising upon a specific exception noted in the transcript of the evidence and proceedings reported unless such exception be specifically pointed out in assignments of error, brief of counsel, or otherwise specifically brought to the attention of the court.

§56-6-38. Hearing of chancery causes in open court; oral testimony; rules of evidence; transcript for appeal.

Chancery causes may, by leave of the court, and by agreement of counsel for the parties, be heard and determined in open court; but in cases so heard the witnesses shall personally appear before the judge to testify orally, unless their depositions shall be taken out of court, under rules obtaining, by agreement of counsel, or by order of the judge made for good cause. And the rules of evidence, procedure and practice now in force, and as hereafter changed, shall apply in taking such evidence, except that bills of exception shall not be necessary in any cases wherein the same are not now required. The evidence so taken in such chancery causes shall be taken down in shorthand by the official reporter or other reporter agreed to by the parties in interest as part of his duties, and transcribed by him as provided for in respect to other matters; and like reporting charges for chancery causes and law causes shall be made, collected and accounted for. In case either party desire to appeal such chancery cause he shall, within ninety days after final or appealable decree, file the transcript of evidence which shall have the force and effect now accorded to depositions in chancery causes.

§56-6-39. Hearing of motion; action or chancery cause in vacation; certification, entry and effect of order or decree.

Any motion, civil action at law, or chancery cause, pending in a circuit court, or any other court, or before the judge thereof, having jurisdiction of the subject matter, or any matter of law, or fact, arising in such motion, action at law, or chancery cause, may, by consent of parties, either in person or by counsel, next friend or guardian ad litem, in term time entered of record, or by like consent in vacation, be submitted to the judge of such court for such decision and decree, judgment, or order, therein in vacation as might be made in term; but such court may, either in term or vacation, without such consent, when it desires time to consider its judgment as to any motion, action at law, chancery cause, or matter of law, or fact arising therein, which has been fully argued and submitted, direct such motion, action at law, chancery cause, or matter of law or fact, to be submitted for decision, and decree, judgment or order in vacation: Provided, however, That no such consent shall be necessary as to any defendant against whom the cause, action or motion has been matured by order of publication, and who has not appeared by motion, demurrer, plea, or answer. When such consent is in vacation, the judge shall certify the fact to the clerk of the court in which the motion, action at law, or chancery cause is pending, to be entered in the law or chancery order book, as the case may be. The judge acting in vacation under this section, in addition to the other powers herein given to him shall have authority to do any and all things, and to enter all judgments, decrees or orders in behalf of or at the request of a party desiring to take an appeal or to apply for a writ of error, that the court might do or enter in term time. The judge shall certify the judgments, orders and decrees made by him in vacation to the clerk aforesaid, to be entered in like manner as the vacation consent. All judgments, orders and decrees, so made and entered, shall have the same force and effect as if made and entered in term, except that in case of a judgment, order or decree for money the same shall be effective only from the time of day at which it is received in the clerk's office to be entered of record.

§56-6-40. Contempt proceedings in vacation.

The judge of every circuit court or other court of record having jurisdiction to try or hear actions at law or suits in equity shall have the same power in vacation that he has in term to punish disobedience of and enforce obedience to any decree or order made in his court and for such purpose may issue all necessary process. The orders and proceedings in such case shall be certified and entered of record as provided in the preceding section and shall be as valid as if made or had and entered in term.

§56-6-41. Certification and entry of vacation orders.

All orders and decrees made by a judge out of court in a cause pending in court shall be certified by him to the clerk of the court in which the same is pending, and be entered by such clerk in the proper order book.

§56-7-1. To what commissioner or person accounts to be referred; territorial jurisdiction; recommittal.

Accounts to be taken in any case shall be referred to a commissioner appointed under the provisions of sections one and two, article five, chapter fifty-one of this code, to be named in the decree or order unless the parties interested agree, or the court shall deem it proper, that they be referred to some other person especially appointed a commissioner. Every commissioner shall examine and report upon such accounts and matters as may be referred to him by the court and such report may be recommitted to such commissioner, or to some other commissioner, for other and final report.

The court in any decree or order of reference may authorize and empower the commissioner, to whom such cause or action is referred, to take proof and hear testimony touching the matters referred to him in any county within this state; and, for such purpose when so authorized, the jurisdiction and authority of such commissioner shall extend throughout the state.

Whenever the commissioner to whom any such cause or action was referred has made up and filed his report, and there appears therefrom or from the evidence filed therewith, or from the pleadings and evidence of the whole case, sufficient facts upon which the court can decree or enter judgment, the same shall not be recommitted for further report, but a decree or judgment shall be entered therein, according to the law and the very right of the case as disclosed from the whole record.

§56-7-2. Order of reference before case on docket.

The judge of any court having jurisdiction to try or hear chancery causes may, in vacation or in term time, though the cause be not upon the court docket, make an order in any cause pending in his court at any time after process has been duly served on the defendants or such of them as may appear to be interested in the subject matter upon which the commissioner is to report, or at any time after such defendants have entered their appearance in such cause, referring the same to a commissioner for the purpose of stating any proper account or reporting upon any matter as to which it is proper there should be a commissioner's report in such cause. But no such order of reference shall be made in any cause until reasonable notice in writing has been served upon the opposite party, or his attorney, of the time and place of making application therefor.

§56-7-3. Notice by commissioner.

The court ordering an account to be taken may direct that the time and place of taking the same be published as a Class II 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 newspaper shall be designated by the party at whose instance such publication is made or his attorney, and if no newspaper be so designated, then the court shall designate the newspaper. Such publication shall be equivalent to personal service on the parties or any of them. In any case where all persons whose interest may be affected by the proceedings before a commissioner are known, it shall be sufficient that, in lieu of such publication of the notice as aforesaid, such persons, or their counsel (or one of their counsel, if there be more than one), be served with such notice in the manner provided by section one, article two of this chapter.

§56-7-4. Instruction of commissioner by judge.

A commissioner who doubts as to any point which arises before him in taking an account to be returned to any court, may, in writing, submit the point to such court, or the judge thereof in vacation, who may instruct him thereon.

§56-7-5. When account to be taken.

Every commissioner to whom a cause is referred shall, immediately after the adjournment of each term of the court, proceed to take all accounts referred to him by any order or decree of the court, and all adjournments and postponements of the taking of any account shall be for good cause to be shown by the affidavit of the party making the application, which shall be filed with the papers in the cause; and if the commissioner unreasonably delays his report, he shall receive no compensation for the same.

§56-7-6. Proof of debt before commissioner by affidavit; counter affidavit.

Every creditor in any chancery cause pending in any court before a commissioner in chancery under a decree of reference in such cause may establish his debt or demand against the debtor, if it be for the recovery of money due on contract, by filing before the commissioner with such debt or demand, completely itemized where it is upon an account, the affidavit or affidavits of any person or persons competent and not disqualified by law (which competency the affidavit or affidavits shall affirmatively show in every case where the creditor is seeking to prove a debt or demand against a deceased debtor or his estate) to testify as a witness or as witnesses before the commissioner about or concerning the debt or demand in question, such affidavit or affidavits stating every essential element necessary to constitute proof of such debt or demand, the same as though affiant or affiants had testified before the commissioner as a witness or as witnesses in person, unless the debtor, his personal representative, or any party, or creditor, or other person interested shall file before the commissioner a counter affidavit denying the correctness of the debt or demand, as a whole or in part, or the validity of any lien by which it is secured, in which case the creditor presenting such debt or demand shall be required to produce his witness or witnesses before the commissioner, reasonable notice of which shall be given in writing to the creditor or his attorney, and the taking of the testimony relative to such debt or demand, or the validity of such lien, as the case may be, shall be proceeded with before the commissioner in like manner as if no affidavit or affidavits had been filed. In every case, however, where such debt or demand is evidenced by a contract in writing, or by a judgment or decree, or is secured by a lien, such affidavit or affidavits alone shall not be sufficient to establish such debt or demand; but such creditor shall also produce before such commissioner as additional proof the written evidence of such debt and shall file the same or a copy thereof certified by the commissioner, or a certified copy of such judgment or decree, and, if such judgment or decree be recorded in the judgment lien docket, a certified transcript of such recordation; and, if the debt or demand be secured by any other lien than that of a judgment or decree, he shall file the original or a certified copy of the writing by which such lien is evidenced.

Any transcript of a judgment or decree of a court or justice of this state, introduced in evidence in any court or before such commissioner, shall prima facie be presumed unpaid unless such judgment or decree appear to have been rendered more than ten years prior to the time of such proof.

§56-7-7. Adjournment of hearing; notice of completion of report; exceptions.

A commissioner in chancery may adjourn his proceedings from time to time after the day to which notice was given, without any new notice, until his report is completed; and when it is completed, he shall give notice of the fact to all attorneys who appear of record in the cause; and thereafter, unless otherwise ordered by the court or agreed by the parties, he shall retain the report and the evidence ten days for the examination of parties interested. Such notice may be given either verbally or in writing, and may be given by depositing the same in due course of mail, properly addressed; and the commissioner shall certify in his report the time and manner of giving such notice. Any party may inspect the report and evidence and file exceptions thereto before such commissioner, or at the term of the court to which it is returned, or, by leave of the court, after such term. In an exception it shall be sufficient to state the item or part of the report to which objection is made, but the court may, if good cause therefor appear, require the exception to be made more specific, or the grounds therefor to be stated therein, and may overrule such exception if the requirement be not complied with.

§56-7-8. Contents of commissioner's report.

The commissioner, or any other person executing an order of reference, in all cases, shall return with his report all the evidence taken upon the execution of the reference, and the exceptions, if any, taken to his report, and shall submit such remarks upon exceptions as he may deem pertinent; and he shall also return with his report the decrees, orders and notices under which he acted. He shall not copy in his account or report any papers; and, if there has been a previous account or report, he shall not copy it into his report except so far as may be necessary to make such report a complete account and report in accordance with the decree of reference entered in the cause. Everything improperly copied into a commissioner's account shall be expunged at his cost on the application of either party; and if on account of his negligence or misconduct a report be recommitted, he shall bear the cost occasioned thereby.

§56-7-9. When cause may be heard on report.

A cause may be heard upon a commissioner's report at any time after it is returned, and the court may, for good cause shown by any party interested, hear a cause on a commissioner's report returned after the commencement of the term of court at which such hearing is desired to be had, but the court in this latter case may require the party desiring the hearing to give reasonable notice to the opposite party or to his attorney.

§56-7-10. Taking accounts in actions at law.

At law, in any case in which it may be deemed necessary, the court may direct any such commissioner or other competent person, either before or at the time of trial, to take and state an account between the parties, which account, when thus stated, shall be deemed prima facie correct, and may be given in evidence to the court or jury trying the case; and the commissioner or other person shall be allowed for such services the same fees that would be allowed a commissioner for similar services in the execution of an order of reference in chancery, to be taxed in the bills of costs.

§56-8-1. Judgment upon death, conviction or insanity of party; termination of powers of guardian, etc.

Where a party dies, or becomes convict of felony, or insane, or the powers of a party who is a personal representative, committee, or guardian cease, if such fact occur after verdict, judgment may be entered as if it had not occurred.

§56-8-2. Death of joint party; revival of pending suit or action.

Where such fact occurs in any stage of a cause, whether it be in a court of original or appellate jurisdiction, if it occur as to any of several plaintiffs or defendants, the suit or action may proceed for or against the others, if the cause of suit or action survive to or against them. If a plaintiff or defendant die pending any suit or action, whether the cause of action would survive at common law or not the same may be revived and prosecuted to judgment or decree and execution in the same manner as if it were for a cause of action arising out of contract.

§56-8-3. Marriage of female party.

The marriage of a female plaintiff or defendant shall not cause a suit or action to abate, but, upon affidavit or other proof of the fact the suit or action shall proceed in the new name, but if the marriage be not suggested before judgment, the judgment shall be as valid, and may be enforced in like manner, as if no such marriage had taken place.

§56-8-4. Cases on review.

If, in any case of appeal, writ of error, or supersedeas, which is now or may hereafter be pending, there be at any time in an appellate court suggested, or relied on in abatement, the death of a party, or any other fact which, if it had occurred after verdict in an action, would not have prevented judgment being entered, as if it had not occurred, the appellate court may, in its discretion, enter judgment or decree in such case as if such death or such fact had not occurred.

§56-8-5. Scire facias or motion for revival; continuance.

In any stage of any case, a scire facias may be sued out for or against the committee of any party who is insane or a convict; or for or against a party before insane, a convict or an infant, the powers of whose committee or guardian have ceased; or for or against the personal representative of the decedent who, or whose committee, guardian or personal representative, was a party; or for or against the succeeding or substituted committee or guardian of a convict, insane person or infant whose committee or guardian was a party and has died or been removed; or for or against the heirs or devisees of a decedent who was a party; or for the assignee or beneficiary party; to show cause why the suit or action should not proceed in the name of him or them. Or where the party dying, or whose powers cease, or such insane person or convict, is plaintiff or appellant, the person or persons for whom such scire facias might be sued out may, without notice or scire facias, move that the suit proceed in his or their name. Likewise, the person or persons against whom a scire facias might be sued out by the plaintiff may also, without notice or scire facias, move that the suit or action proceed in his or their name. If the proceeding be by scire facias, after service of the scire facias, or if the proceeding be by motion then on such motion, if no sufficient cause be shown against it, an order shall be entered that the suit or action proceed according to such scire facias or motion. Any such new party, except in an appellate court, may have a continuance of the case at the term at which such order is entered; and the court may allow him to plead anew or amend the pleadings as far as it deems reasonable; but in other respects the case shall proceed to final judgment or decree for or against him in like manner as if the case had been pending for or against him before such scire facias or motion.

§56-8-6. Time for issuance of scire facias; entering order at rules.

The clerk of the court in which the case is may issue such scire facias at any time, and an order may be entered at rules for the case to proceed in the name of the proper party, although the case be on the court docket.

§56-8-7. Proceedings after revival against defendant whose powers cease.

Where the party whose powers cease is defendant, the plaintiff may continue his suit against him to final judgment or decree; but he shall not at law proceed in the same action against such defendant and his successor, nor shall he in equity proceed against both upon his previous bill, unless an order that the suit proceed against the former party be entered at the first term after service of a scire facias for or against such successor, or at the same term at which a motion to revive is made under the provisions of section five of this article in lieu of a scire facias.

§56-8-8. When suit discontinued unless revived.

If the committee, personal representative, heirs, or devisees of the plaintiff or appellant who was a party, or of the decedent whose committee, guardian, or personal representative was plaintiff or appellant, or other person now or hereafter entitled to be substituted under the provisions of this article for a party plaintiff or appellant, shall not make such motion or apply for such scire facias at or before the second term of the court next after that at which there may have been a suggestion on the record of the fact making such scire facias or motion proper, the suit of such plaintiff or appellant shall be discontinued, unless good cause be shown to the contrary.

§56-8-9. Discontinuance for failure to prosecute or pay court costs.

Any court in which is pending any case wherein for more than one year there has been no order or proceeding but to continue it, or wherein the plaintiff is delinquent in the payment of accrued court costs, may, in its discretion, order such case to be struck from its docket; and it shall thereby be discontinued. A court making such order may direct it to be published in such newspaper as it may name.

§56-8-10. Death of one of numerous parties in equity.

When in any suit in equity the number of parties exceeds thirty, and any one of such parties jointly interested with others in any question arising therein shall die, the court may nevertheless proceed, if in its opinion all classes of interest in the case are represented and the interest of no one will be prejudiced by the trial of the cause, to render a decree in such suit as if such person were alive, decreeing to the heirs at law, distributees, or representatives of such person, as the case may require, such interest as such person would have been entitled to had such person been alive at the date of the decree. The provisions of section twenty-six, article three of this chapter shall apply to decrees entered under this section.

§56-8-11. Death of trustee and appointment of substitute in pending suit.

In a suit in equity in which it appears that a trustee has died, although the heirs of such trustee be not parties to the suit, yet if his personal representative and the other persons interested be parties, the court may appoint another trustee in the place of him who has died, to act either alone or in conjunction with any surviving trustee, as the case may require.

§56-8-12. Reinstatement of dismissed case or nonsuit.

Any court may, on motion, reinstate on the trial docket of the court any case dismissed, and set aside any nonsuit that may be entered by reason of the nonappearance of the plaintiff, within three terms after the order of dismissal shall have been made, or order of nonsuit entered; but any such order of reinstatement shall not be entered until the accrued costs in such case shall have been paid.

§56-8-13. Further proceedings after reinstatement of case.

All causes in which orders of dismissal have been made, or orders of nonsuit entered, which orders have been set aside and causes reinstated, shall remain upon the docket and be proceeded with in the same manner as if the order had never been made. But no such cause shall be brought to trial, or proceeded in, until the defendant therein shall have had at least twenty days' personal notice in writing, or, if he be a nonresident, by publication that such cause has been reinstated on the docket as a Class II 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 in which the action is pending.

§56-9-1. Removal of causes generally; notice; motion.

A circuit court, or any court of limited jurisdiction established pursuant to the provisions of section 1, article VIII of the Constitution of this state, wherein an action, suit, motion or other civil proceeding is pending, or the judge thereof in vacation, may on the motion of any party, after ten days' notice to the adverse party or his attorney, and for good cause shown, order such action, suit, motion or other civil proceeding to be removed, if pending in a circuit court, to any other circuit court, and if pending in any court of limited jurisdiction hereinbefore mentioned to the circuit court of that county: Provided, That the judge of such other circuit court in a case of removal from one circuit to another may decline to hear said cause, if, in his opinion, the demands and requirements of his office render it improper or inconvenient for him to do so.

§56-9-2. Removal where it is improper for judge to hear case.

If the judge of any circuit or other court mentioned in the next preceding section, wherein an action, suit, motion or other civil proceeding is pending, is so situated as to render it improper, in his opinion, for him to decide such case or preside at the trial thereof, such court or the judge thereof in vacation may, without motion or notice, order the case to be removed to any court to which it might be removed, on motion and notice, under the preceding section: Provided, That the judge of such other circuit court may decline to hear said cause, if in his opinion, the demands and requirements of his office render it improper or inconvenient for him to do so.

§56-9-3. Transfer of papers; proceedings after removal; costs.

When any case is ordered to be removed under this article, the clerk of the court, from which, shall transmit to the clerk of the court, to which, it is removed, the original papers therein, with copies of all rules and orders made, and a statement of the costs incurred by each party therein; whereupon, the case shall be proceeded in, heard and determined by the court to which it is removed, as if it had been brought, and the previous proceedings had, in such court. The costs attending such removal shall be charged as may be thought just by the court, from which, or, if it make no order on the subject, by the court to which, the case is removed.

§56-10-1. Interpleader.

A defendant in an action brought against him for the recovery of money which he does not wish to defend, but which money is claimed by some third person, or for the recovery of the possession of personal property to which he makes no claim, but which is claimed by a third person, may file his affidavit stating the facts in relation thereto, and that he does not collude with such third person but is ready to pay the money claimed, or deliver the property, to the owner thereof, as the court may direct, and the court may thereupon make an order requiring such third person to appear and state the nature of his claim, and maintain or relinquish the same, and may in the meantime stay the proceedings in such action. If such third person, on being served with a copy of such order, shall not appear, the court may, on proof of the plaintiff's right, render judgment for him and declare such third person to be forever barred of any claim in respect of the subject matter, either against the plaintiff or the original defendant, or his personal representative. If such third person, on being so served, shall appear, the court shall allow him to make himself defendant in the action and, either in such action or otherwise, cause such issue or issues to be tried as it may prescribe, and may direct which party shall be considered the plaintiff in the issues; and shall give judgment upon the verdict rendered or, if a jury be waived by the parties interested, shall determine their claims in a summary way. The court may also make such order for the disposition of the money or property which is the subject matter of the action, pending the same, as to it may seem proper, and may enter judgment as to costs as may be just and proper.

§56-10-2. Who may execute bonds required in suits.

A bond for obtaining any writ or order, in term or vacation, may be executed by any person with sufficient surety, though neither of the obligors be a party to the case.

§56-10-3. Recovery of damages for detention of property after verdict.

When a judgment for specific personal property is affirmed by an appellate court, or an injunction to such judgment is dissolved, the person who is entitled to execution of such judgment, or who would be entitled if execution had not been had, may, on motion to the court from which such execution has issued, or might issue, after twenty days' notice to the defendant or his personal representative, have a jury impaneled to ascertain the damages sustained by reason of the detention of such property subsequent to such judgment; or if it was on a verdict, subsequent to such verdict; and judgment shall be rendered for the damages so ascertained, if any.

§56-10-4.

Repealed.

Acts, 2002 Reg. Sess., Ch. 80.

§56-10-5. Partition of goods or chattels.

When an equal division of goods or chattels cannot be made in kind among those entitled, a court of equity may direct the sale of the same and the distribution of the proceeds according to the rights of the parties.

§56-10-6. Affidavits by corporations and agents.

An affidavit by or for a corporation may be made by its president, vice president, general manager, cashier, treasurer, or a director, without any special authorization therefor, or by any person authorized by a majority of its stockholders or directors to make the same; and when an affidavit is made by any person other than the principal authorized by law to make it, such person shall be deemed to have been the agent of the person so authorized until the contrary is made to appear.

§56-10-7. Right of circuit judge to hold hearings and enter orders in any county of circuit unless objection filed; jury cases excepted.

In any (a) appeal from or to review the judgment, order or ruling of any court of record or administrative agency, (b) appeal from a justice of the peace court, (c) ex parte proceeding, (d) adoption proceeding, (e) change of name proceeding, (f) summary procedure or proceeding, (g) eminent domain proceeding, (h) juvenile proceeding, (i) action wherein an extraordinary remedy is sought, such as mandamus, prohibition, certiorari, habeas corpus, quo warranto, or information in the nature of quo warranto, and (j) civil action instituted under the Rules of Civil Procedure for Trial Courts of Record, the judge of a judicial circuit may hold hearings, including but not limited to pretrial conferences, and enter orders in any county of his circuit although he is not physically present in the county in which such action, appeal or proceeding was instituted or is pending, unless there is objection thereto in writing, filed by one of the parties prior to such hearing or the entry of such order: Provided, That in any appeal, action or proceeding in which a jury trial has been demanded or exists as a matter of right, trial by jury shall be held only in the county wherein such appeal, action or proceeding is pending.

§56-10-8. Priority of cases involving placement of children.

Any action or motion which involves a contested issue regarding the permanent or temporary placement of a minor child shall be given priority over any civil action before the court except actions in which trial is in progress and actions brought under article twenty-seven, chapter forty-eight of this code and shall be docketed immediately upon filing.

§56-11-1.

Repealed.

Acts, 1986 Reg. Sess., Ch. 153.

§56-11-2.

Repealed.

Acts, 1986 Reg. Sess., Ch. 153.

§56-11-3.

Repealed.

Acts, 1986 Reg. Sess., Ch. 153.

§56-11-4.

Repealed.

Acts, 1986 Reg. Sess., Ch. 153.

§56-11-5.

Repealed.

Acts, 1986 Reg. Sess., Ch. 153.

§56-11-6.

Repealed.

Acts, 1986 Reg. Sess., Ch. 153.

§56-11-7.

Repealed.

Acts, 1986 Reg. Sess., Ch. 153.

§56-11-8.

Repealed.

Acts, 1986 Reg. Sess., Ch. 153.

§56-11-9.

Repealed.

Acts, 1986 Reg. Sess., Ch. 153.

§56-11-10.

Repealed.

Acts, 1986 Reg. Sess., Ch. 153.

§56-11-11.

Repealed.

Acts, 1986 Reg. Sess., Ch. 153.

§56-12-1. Short title.

This article may be cited as the Uniform Interstate Depositions and Discovery Act.

§56-12-2. Definitions.

In this article:

“Foreign jurisdiction” means a state other than this state.

“Foreign subpoena” means a subpoena issued under authority of a court of record of a foreign jurisdiction.

“Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency or instrumentality, or any other legal or commercial entity.

“State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

“Subpoena” means a document, however denominated, issued under authority of a court of record requiring a person to:

(1) Attend and give testimony at a deposition;

(2) Produce and permit inspection and copying of designated books, documents, records, electronically stored information or tangible things in the possession, custody or control of the person; or

(3) Permit inspection of premises under the control of the person.

§56-12-3. Issuance of subpoena.

(a) To request issuance of a subpoena under this section, a party must submit a foreign subpoena to a clerk of court in the county in which discovery is sought to be conducted in this state. A request for the issuance of a subpoena under this act does not constitute an appearance in the courts of this state.

(b) When a party submits a foreign subpoena to a clerk of court in this state, the clerk, in accordance with that court's procedure, shall promptly issue a subpoena for service upon the person to which the foreign subpoena is directed.

(c) A subpoena under subsection (b) of this section must:

(1) Incorporate the terms used in the foreign subpoena; and

(2) Contain or be accompanied by the names, addresses and telephone numbers of all counsel of record in the proceeding to which the subpoena relates and of any party not represented by counsel.

§56-12-4. Service of subpoena.

A subpoena issued by a clerk of court under section three of this article must be served in compliance with West Virginia Rules of Civil Procedure.

§56-12-5. Deposition, production and inspection.

The West Virginia Rules of Civil Procedure apply to subpoenas issued under section three of this article.

§56-12-6. Application to court.

An application to the court for a protective order or to enforce, quash, or modify a subpoena issued by a clerk of court under section three of this article must comply with the rules or statutes of this state and be submitted to the court in the county in which discovery is to be conducted.

§56-12-7. Uniformity of application and construction.

In applying and construing this article, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact the uniform act.

§56-12-8. Application to pending actions.

This article applies to requests for discovery in cases pending on the effective date of this article.