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# ENROLLED BILL

House Bill No. 4.

(By Mr. Barnhart)

Passed March 11, 1931

In Effect Ninety days from Passage

Originated in the House  
.....  
Clerk.

Takes effect thirty days from passage.  
.....  
Clerk of the House of Delegates.

CORRECTLY ENROLLED

.....  
Chairman House Committee.

.....  
Chairman Senate Committee.

# ENROLLED BILL

(H. B. No. 4)

[Passed March 11, 1931; in effect ninety days from passage.]

AN ACT to amend and re-enact section six, article two, chapter fifty-six, official code of West Virginia, one thousand nine hundred thirty-one.

*Be it enacted by the Legislature of West Virginia:*

That section six, article two, chapter fifty-six, official code of West Virginia, one thousand nine hundred thirty-one, be amended and re-enacted so as to read as follows:

Section 6. Any person entitled to recover money by action on  
2 any contract may, on motion before any court which would have  
3 jurisdiction in an action, obtain judgment for such money after  
4 not less than twenty days' notice, which notice shall be in writ-  
5 ing, signed by the plaintiff or his attorney, and shall be returned  
6 to the clerk's office of such court at least five days before the re-  
7 turn day of such notice, and when so returned shall be forth-  
8 with filed and the date of filing noted thereon, and shall be  
9 placed upon the docket for hearing. Such notice may be served,  
10 returned as aforesaid, filed and docketed at any time before or

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*Joseph D. Smith*

*Chairman Senate Committee.*

*Samuel M. Jones*

*Chairman House Committee.*

11 during the term of court at which the motion for judgment is to  
12 be made, and shall be heard at such term if the term continues  
13 for a period of twenty days after the service of such notice, unless  
14 good cause for a continuance thereof be shown. If the court be  
15 not in session on the return day as set out in the notice, and the  
16 term of court be not ended, the motion shall be considered con-  
17 tinued until the next court day of the term and if the term be  
18 ended, then the motion shall stand continued. The return day  
19 of a notice under this section shall not be more than ninety days  
20 from its date, unless the commencement of the next succeeding  
21 term of court be more than ninety days from such date, in which  
22 case the return day may be the first day of such term.

23 In any such motion, if the plaintiff shall file with his notice,  
24 and shall serve upon the defendant at the same time and in the  
25-26 same manner as the notice is served, an affidavit of himself, or  
27 some other credible person, stating distinctly the several items  
28 of the plaintiff's claim, and that there is, as the affiant verily  
29 believes, due and unpaid from the defendant to the plaintiff up-  
30 on the demand or demands stated in the notice, including prin-  
31 cipal and interest, after deducting all payments, credits and  
32 sets-off made by the defendant, or to which he is entitled, a sum

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*Joseph D. Smith*

Chairman Senate Committee.

*Bruce W. Madsen*

Chairman House Committee.

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33 certain to be named in the affidavit, no plea shall be filed in the  
34 case unless the defendant shall file with his plea the affidavit of  
35 himself, or some other credible person, that there is not, as the  
36 affiant verily believes, any sum due by the defendant to the  
37 plaintiff upon the demand or demands stated in the plaintiff's  
38 notice, or stating a sum certain less than that stated in the af-  
39 fidavit filed by the plaintiff, which the affiant verily believes is all  
40 that is due from the defendant to the plaintiff upon the demand  
41 or demands stated in the plaintiff's notice. If such plea and  
42 affidavit be not filed, on motion of the plaintiff judgment shall,  
43 without further proof, be entered for the plaintiff by the court  
44 for the sum stated in his affidavit, with interest thereon from the  
45 date of the affidavit until paid. *Provided*, That before entering  
46 judgment on any negotiable instrument, the court shall require  
47 the plaintiff to file the same in such proceeding. If such plea  
48 and affidavit be filed by the defendant and it be admitted in such  
49 affidavit that any sum is due from the defendant to the plaintiff,  
50 judgment may be taken by the plaintiff for the sum so admitted  
51 to be due, with interest thereon from the date of the affidavit  
52 filed by the plaintiff until paid, and the case tried as to the  
53 residue.

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

Chairman Senate Committee  
 Jacob D. Smith  
 Chairman House Committee  
 Clarence Meadows

*J. Alfred Taylor*  
 Speaker of the House of Delegates.

*R. H. Hild*  
 Clerk of the House of Delegates.

*M. S. Hodges*  
 President of the Senate.

*M. S. Hodges*  
 Clerk of the Senate

The within is *approved*  
 this *16<sup>th</sup>* day of *March* 1931.

*W. E. Conley*  
 Governor.

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Filed in the office of the Secretary of State  
 of West Virginia **MAR 16 1931**  
 GEORGE W. SHARP,  
 Secretary of State.