

ENROLLED BILL

Regular Session

SENATE BILL NO. 117

By Mr. Bencke

PASSED February 28, 1933

IN EFFECT From PASSAGE

Originating in the Senate Takes effect. Passage.

Senate

James L. Smith

Clerk.

James L. Smith

James L. Smith

Clerk of the House of Delegates.

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James L. Smith

Chairman House Committee.

James L. Smith

Chairman Senate Committee.

ENROLLED BILL

(S. B. No. 117)

[Passed February 28, 1933; in effect from passage.]

AN ACT to amend and reenact chapter two, acts of the legislature of West Virginia, one thousand eight hundred seventy-nine, entitled "An Act to organize the circuit courts in the first judicial circuit".

Be it enacted by the Legislature of West Virginia:

That chapter two, acts of the legislature of West Virginia, one thousand eight hundred seventy-nine, be amended and reenacted so as to read as follows:

Section 1. In the first judicial circuit, circuit court judges 2 may hold court in the same county at the same time, or in different 3 counties at the same time, and a court in one county 4 may continue after the time provided by law for the commencement 5 of a court in any other county in the circuit.

Sec. 2. Either or both of the judges of the first judicial circuit 2 may hold any regular, special or adjourned term of any

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3 circuit court therein. When both judges shall be present at
4 a court in any county in which both judges hold court, they
5 may sit together for the purpose of making rules, making any
6 appointments authorized to be made by the circuit court, as-
7 signing the business of the court to the respective judges, or
8 transacting any business of the court for which it is proper in
9 their opinion that they should sit together, and they may hold
10 court separately or together, but no one may demand that any
11 cause shall be tried or heard by the judges sitting together. In
12 any county in which only one of the judges of the first judicial
13 circuit shall hold court, such judge shall make rules of court
14 and shall make any appointments authorized to be made by the
15 circuit court of such county. In a county in which the two
16 judges shall sit at the same time, or at different times, but sep-
17 arately, the courts held by the respective judges shall be desig-
18 nated as part one and part two of the circuit court of such
19 county, and each shall have and exercise the same power, au-
20 thority and jurisdiction as are or may be vested in circuit
21 courts. Either of said parts may be held by a judge of an-
22 other circuit or by another person in any case where the cir-
23 cuit court of the county might be held by such judge or person

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24 if there were but one judge of the first circuit. Either of said
25 parts may be held at such place other than the court house, but
26 in the same town, as may be appointed by the judge thereof.

Sec. 3. The clerk of the circuit court of a county in which
2 there are two parts of the circuit court, shall, when not present
3 in person, cause a suitable deputy to attend the court and each
4 part thereof, and shall cause proper record books to be pro-
5 vided and kept for each part of the court. Rules and all or-
6 ders and proceedings of the judges sitting or acting together
7 shall be entered on the order book of each part. The sheriff
8 shall, in person or by deputy, attend the said court and each
9 part thereof.

Sec. 4. Either part of a circuit court having two parts, may
2 order jurors and witnesses in attendance upon it to attend the
3 other part, and such order may be enforced and disobedience
4 thereof punished by either part of such court.

Sec. 5. As early as convenient in each year, the judges of
2 the first judicial circuit shall designate the courts to be held by
3 each judge during the year, and the courts at which both judges
4 are to attend. They shall also designate which judge shall sit
5 in part one of a court having two parts, and which judge shall

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6 sit in part two of such a court, during the year. Such designations shall be made in writing and a copy thereof signed by the judges, shall be sent to each clerk of a circuit court effected thereby, and by him be entered upon his law order book. Such designations may be changed during the year, both judges concurring, and a copy of the order or agreement making such change shall be sent to the clerk of each court affected thereby, and by him be entered upon his law order book.

Sec. 6. The judges may from time to time, classify, arrange and apportion the business of a court in which both judges are to sit at the same time, or at different times, and such apportionment may be rearranged by them during a term if such re-arrangement be convenient for dispatch of business. As soon as possible before the beginning of any term of court, the clerk shall cause a docket of the business thereof to be prepared, which shall be divided into two parts if the court be so divided. Cases may be set from one part of a court to the other as the individual judges may agree and direct.

Sec. 7. As soon as possible after this act takes effect, and thereafter as soon as possible after the beginning of each successive full term of office, the judges shall select by lot one of

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4 their number who shall be the presiding magistrate of the cir-
5 cuit, and of the circuit courts held therein, for the first year
6 of the then current term of office. The next year the other
7 judge shall be the presiding magistrate, and so for alternate
8 years throughout their term.

Sec. 8. If either judge ceases to be a judge of the circuit,
2 the other judge shall thereupon have and exercise the powers
3 and discharge the duties conferred upon and required of the
4 two judges acting jointly until the vacancy is filled. If the
5 presiding magistrate ceases to be a judge of the circuit, the
6 other judge shall thereupon become the presiding magistrate
7 until the vacancy is filled, when the new judge shall take the
8 place of his predecessor and be the presiding magistrate during
9 the years and parts of years for which such predecessor would
10 have been presiding magistrate had he remained a judge of the
11 circuit. At any time while one judge is presiding magistrate,
12 an order or appointment concurred in by both judges, may
13 make the other judge the presiding magistrate in his stead for a
14 specified time, or until further order or appointment of the two
15 judges made with like concurrence. Every selection, order or

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16 appointment made under this section, shall be entered on the
17 law order book of each circuit court in the circuit.

Sec. 9. In all cases of difference between the judges as to
2 any matter before them jointly for determination, whether in
3 court or not, the opinion of the presiding magistrate shall pre-
4 vail, unless the matter be one as to which the concurrence of
5 both the judges is expressly required.

Sec. 10. In addition to the ordinary power of making rules,
2 the court of any county in the first judicial circuit, may make
3 such other rules not inconsistent with law, as may be proper
4 and necessary in view of the peculiar organization of the court,
5 and may have been concurred in by both judges of the circuit.

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James L. Smith
Chairman Senate Committee.

O. M. Hiner
Speaker of the House of Delegates

James L. Smith
Clerk of the House of Delegates.

W. G. M. Gainew
President of the Senate.

James L. Smith
Clerk of the Senate.

The within is *approved*

this *8th* day of *March*, 1933.

Filed in the office of the Secretary of State
of West Virginia **MAR 8 1933**

Mr. O. W. Brien
Secretary of State.

W. G. M. Gainew
Governor.

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