

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1937



ENROLLED

SENATE BILL No. 103

(By Mr. Randolph)



PASSED March 17th 1937

In Effect 90 days from Passage

101

ENROLLED
Senate Bill No. 103

(BY MR. RANDOLPH)

[Passed March 12, 1937; in effect ninety days from passage.]

AN ACT to amend and reenact chapter thirty-six, acts of the
Legislature of West Virginia, regular session, one thousand
nine hundred thirty-five, relating to securing the attendance
of witnesses from this or other states in criminal proceedings.

Be it enacted by the Legislature of West Virginia:

That chapter thirty-six, acts of the Legislature, regular session,
one thousand nine hundred thirty-five, be amended and reenacted
to read as follows:

Section 1. "Witness" as used in this act shall include
2 a person whose testimony is desired in any proceeding or

3 investigation by a grand jury or in a criminal action, prose-
4 cution or proceeding.

5 The word "state" shall include any territory of the United
6 States, and the District of Columbia.

7 The word "summons" shall include a subpoena, order or
8 other notice requiring the appearance of a witness.

Sec. 2. If a judge of a court of record in any state
2 which by its laws has made provision for commanding persons
3 within that state to attend and testify in this state certifies
4 under the seal of such court that there is a criminal prose-
5 cution pending in such court, or that a grand jury investi-
6 gation has commenced or is about to commence, that a person
7 being within this state is a material witness in such prose-
8 cution, or grand jury investigation, and that his presence
9 will be required for a specified number of days, upon pre-
10 sentation of such certificate to any judge of a court of
11 record in the county in which such person is, such judge
12 shall fix a time and place for a hearing, and shall make an
13 order directing the witness to appear at a time and place
14 certain for the hearing.

15 If at a hearing the judge determines that the witness is
16 material and necessary, that it will not cause undue hard-
17 ship to the witness to be compelled to attend and testify
18 in the prosecution or a grand jury investigation in the
19 other state, and that the laws of the state in which the
20 prosecution is pending, or grand jury investigation has com-
21 menced or is about to commence [and of any other state
22 through which the witness may be required to pass by
23 ordinary course of travel], will give to him protection from
24 arrest and the service of civil and criminal process, he
25 shall issue a summons, with a copy of the certificate attached,
26 directing the witness to attend and testify in the court
27 where the prosecution is pending, or where a grand jury
28 investigation has commenced or is about to commence at
29 a time and place specified in the summons. In any such
30 hearing the certificate shall be prima facie evidence of all
31 the facts stated therein.

32 If said certificate recommends that the witness be taken
33 into immediate custody and delivered to any officer of the
34 requesting state to assure his attendance in the requesting
35 state, such judge may, in lieu of notification of the hearing,

36 direct that such witness be forthwith brought before him
37 for said hearing; and the judge at the hearing being satis-
38 fied of the desirability of such custody and delivery, for
39 which determination the certificate shall be prima facie proof
40 of such desirability may, in lieu of issuing subpoena or sum-
41 mons, order that said witness be forthwith taken into custody
42 and delivered to an officer of the requesting state.

43 If the witness, who is summoned as above provided, after
44 being paid or tendered by some properly authorized person
45 the sum of ten cents a mile for each mile by the ordinary
46 traveled route to and from the court where the prosecution
47 is pending and five dollars for each day, that he is required
48 to travel and attend as a witness, fails without good cause
49 to attend and testify as directed in the summons, he shall
50 be punished in the manner provided for the punishment
51 of any witness who disobeys a summons issued from a court
52 of record in this state.

Sec. 3. If a person in any state, which by its laws has
2 made provision for commanding persons within its borders
3 to attend and testify in criminal prosecutions, or grand
4 jury investigations commenced or about to commence, in

5 this state, is a material witness in a prosecution pending
6 in a court of record in this state, or in a grand jury investi-
7 gation which has commenced or is about to commence, a
8 judge of such court may issue a certificate under the seal
9 of the court stating the facts and specifying the number
10 of days the witness will be required. Said certificate may
11 include a recommendation that the witness be taken into
12 immediate custody and delivered to an officer of this state
13 to assure his attendance in this state. This certificate shall
14 be presented to a judge of a court of record in the county
15 in which the witness is found.

16 If the witness is summoned to attend and testify in this
17 state he shall be tendered the sum of ten cents a mile for
18 each mile by the ordinary travel route to and from the court
19 where the prosecution is pending, and five dollars for each
20 day that he is required to travel and attend as a witness.
21 A witness who has appeared in accordance with the pro-
22 visions of the summons shall not be required to remain
23 within this state a longer period of time than the period
24 mentioned in the certificate, unless otherwise ordered by the
25 court. If such witness, after coming into this state, fails

26 without good cause to attend and testify as directed in the
27 summons, he shall be punished in the manner provided for
28 in the punishment of any witness who disobeys a summons
29 issued from a court of record in this state.

Sec. 4. If a person comes into this state in obedience to
2 a summons directing him to attend and testify in this state
3 he shall not while in this state pursuant to such summons
4 be subject to arrest or the service of process, civil or
5 criminal, in connection with matters which arose before his
6 entrance into this state under the summons.

7 If a person passes through this state while going to an-
8 other state in obedience to a summons to attend and testify
9 in that state or while returning therefrom, he shall not while
10 so passing through this state be subject to arrest or the
11 service of process, civil or criminal, in connection with
12 matters which arose before his entrance into this state under
13 the summons.

Sec. 5. This act shall be so interpreted and construed
2 as to effectuate its general purpose to make uniform the
3 law of the states which enact it.

Sec. 6. This act may be cited as "Uniform Act to Secure

2 the Attendance of Witnesses from without a State in Crimi-
3 nal Proceedings.”

Sec. 7. All acts or parts of acts inconsistent with this
2 act are hereby repealed.

Sec. 8. If any provision of this act or the application
2 thereof to any person or circumstances is held invalid, such
3 invalidity shall not affect other provisions or applications
4 of the act which can be given effect without the invalid pro-
5 vision or application, and to this end the provisions of this
6 act are declared to be severable.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Carl B. Galbreath

Chairman Senate Committee

Spencer Backer

Chairman House Committee

Originated in the.....

Takes effect.....passage.

Charles H. Smith

Clerk of the Senate

Wm. S. Hance

Clerk of the House of Delegates

Chas. E. Hoyle

President of the Senate

Wm. K. Thomas

Speaker House of Delegates

The within *Approved* this the *19th*

day of *March*, 1937.

James E. Holt

Governor

JARRETT PRINTING COMPANY, CHARLESTON, W. VA.



Filed in the office of the Secretary of State of West Virginia. **MAR 19 1937**

Wm. S. O'BRIEN,
Secretary of State