

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1945



ENROLLED

HOUSE BILL No. 156

(By Mr. Davis and Mr. Moore, by Request)



PASSED February 23 1945

In Effect 90-days from Passage

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Feb
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House Bill No. 156

(By MR. DAVIS and MR. MOORE, by request)

[Passed February 23, 1945; in effect ninety days from passage.]

AN ACT to amend article four, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding a new section thereto to be designated section thirty-one, pertaining to the ascertainment and designation of boundary lines between coterminous landowners.

Be it enacted by the Legislature of West Virginia:

That article four, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding a new section thereto to be designated section thirty-one, to read as follows:

Section 31. *How Boundary Line or Lines of Real Estate May Be Ascertained and Established; Petition May Be Filed for That Purpose.*—Any person having a subsisting interest in real estate and a right to its possession, or to

5 the possession of some share, interest or portion thereof,
6 upon petition filed in the court which would have juris-
7 diction in an action of ejectment concerning such real
8 estate, shall have the right to have ascertained and
9 designated by the said court, the true boundary line or
10 lines to such real estate, as to one or more of the co-
11 terminous landowners. Petitioner in his petition shall
12 state whether his interest is in fee, for life, for a term
13 or otherwise, and shall describe with reasonable cer-
14 tainty said real estate and the boundary line or lines
15 thereof which he seeks to establish. A plat showing
16 such real estate and boundary line or lines, filed with
17 the petition, may serve the purposes of such descrip-
18 tion.

19 The petitioner shall make defendants to said petition all
20 persons having a present interest in the boundary line or
21 lines sought to be ascertained and designated, and the
22 case shall be commenced by serving a copy of the petition
23 upon the defendant or defendants. If the petition shall
24 have been served on the defendant or defendants and
25 filed in the clerk's office not less than thirty days pre-

26 ceding the first day of a term of court the case shall be
27 matured for trial at said term. The defendant or defend-
28 ants may file an answer to said petition which shall state
29 the grounds of defense, if any, and the parties shall be
30 deemed to be at issue, which issue shall be the true
31 boundary line or lines of such real estate. The trial
32 shall be conducted as other trials at law, and the same
33 rules of evidence shall apply and the same defenses may
34 be made as in other actions at law. A trial by jury may
35 be waived by consent of the parties, and the case be
36 tried by the court. Counsel for the petitioner shall have
37 the right to open and conclude the argument. The judg-
38 ment of the court shall be recorded in the law order book,
39 and in the current deed book in the office of the clerk of
40 the county court, and indexed in the names of the parties.
41 The judge of the court in term time or vacation may
42 direct such surveys to be made as he may deem necessary.
43 The judgment of the court, unless reversed, shall for-
44 ever settle, determine, and designate the true boundary
45 line or lines in question, and be binding upon the parties,
46 their heirs, devisees, and assigns. The judgment may be

47 enforced in the same manner as a judgment in an action
48 of ejectment. A writ of error from the supreme court
49 of appeals shall lie to such judgment in like manner as
50 in a common law action.

51 In a proceeding under this section, no claim for rents,
52 profits or damages shall be considered.

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

Charles C. Morris
Chairman Senate Committee

J. Ad. Goyette
Chairman House Committee

Originated in the House

Takes effect 90-days from passage.

Storran Hayes
Clerk of the Senate

Steph
Clerk of the House of Delegates

Donald M. Tucker
President of the Senate

John E. Amos
Speaker House of Delegates

The within Approved this the 2nd

day of March, 1945.

Casimir Medsker
Governor.



Filed in the office of the Secretary of State
of West Virginia **MAR 2 1945**

Wm. S. O'BRIEN,
Secretary of State