

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1959



ENROLLED

HOUSE BILL No. 400

(By Mr. BACHMANN & Mr. GUSHORN)



PASSED March 17 1959

In Effect 90 days from Passage



Filed in Office of the Secretary of State
of West Virginia **MAR 20 1959**
JOE F. BURDETT
SECRETARY OF STATE

400

ENROLLED

House Bill No. 400

(By MR. BACHMANN and MR. GOSHORN)

[Passed March 12, 1959; in effect ninety days from passage.]

An ACT to amend and reenact section eight, article seven, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to further amend said article seven by adding thereto a new section, designated section eight-a, all relating to the survivability and revivability of causes of action for wrongful death, and for injuries to property and to the person not resulting in death, in addition to the causes of action which survive at common law, and prescribing procedures and limitations concerning the same.

Be it enacted by the Legislature of West Virginia:

That section eight, article seven, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, and that said article seven

be further amended by adding thereto a new section, designated section eight-a, all to read as follows:

Section 8. *When Action Not to Abate; Survival of Action for Personal Injury Against Wrongdoer.*—Where an action is brought by a person injured for damage caused by the wrongful act, neglect or default of any person or corporation, and the person injured dies as a result thereof pending the action, the action shall not abate by reason of his death but, his death being suggested, it may be revived in the name of his personal representative, and the declaration and other pleadings shall be amended so as to conform to an action under sections five and six of this article, and the case proceeded with as if the action had been brought under said sections. But in such case there shall be but one recovery for the same injury.

Sec. 8-a. *Which Actions Survive; Limitations; Which Law Governs.*—(a) In addition to the causes of action which survive at common law, causes of action for injuries to property, real or personal, or injuries to the person and not resulting in death, or for deceit or fraud,

6 also shall survive; and such actions may be brought not-
7 withstanding the death of the person entitled to recover
8 or the death of the person liable.

9 (b) If any such action is begun during the lifetime of
10 the injured party, and within the period of time per-
11 missible under the applicable statute of limitations as
12 provided by articles two and two-a of this chapter, (either
13 against the wrongdoer or his personal representative),
14 and such injured party dies pending the action it may be
15 revived in favor of the personal representative of such
16 injured party and prosecuted to judgment and execution
17 against the wrongdoer or his personal representative.

18 (c) If the injured party dies before having begun any
19 such action and it is not at the time of his death barred
20 by the applicable statute of limitations under the pro-
21 visions of articles two and two-a of this chapter, such
22 action may be begun by the personal representative of
23 the injured party against the wrongdoer or his personal
24 representative and prosecuted to judgment and execution
25 against the wrongdoer or his personal representative.
26 Any such action shall be instituted within the same period

27 of time that would have been applicable had the injured
28 party not died.

29 (d) If any such action mentioned in the preceding sub-
30 sections (a), (b) and/or (c) shall have been begun
31 against the wrongdoer and he or she dies during the pen-
32 dency thereof, it may be revived against the personal
33 representative of the wrongdoer and prosecuted to judg-
34 ment and execution.

35 (e) The applicable provisions of chapter fifty-six,
36 article eight of the code of West Virginia shall govern
37 the actions hereinabove mentioned, with reference to their
38 abatement, revival, discontinuance, reinstatement and
39 substitution of parties.

40 (f) Nothing contained in this section shall be construed
41 to extend the time within which an action for any other
42 tort shall be brought, nor to give the right to assign a
43 claim for a tort not otherwise assignable.

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

W. N. Jasper Jr
Chairman Senate Committee

Eudora Andrews
Chairman House Committee

Originated in the House of Delegates.

Takes effect *90 days from* passage.

J. Howard Thayer
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

Ralph Bean
President of the Senate

F. R. Faulstich
Speaker House of Delegates

The within *approved* this the *20th*
day of *March*, 1959.

Leslie B. Underwood
Governor

