

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1967

ENROLLED

SENATE BILL NO. 103

(By Mr. Martin)

PASSED March 10, 1967

In Effect from Passage



FILED IN THE OFFICE
ROBERT D. BAILEY
SECRETARY OF STATE
THIS DATE 3-21-67

#103

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Senate Bill No. 103

(By MR. MARTIN)

[Passed March 10, 1967; in effect from passage.]

AN ACT to amend and reenact section two, article four, chapter fifty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to amend and reenact section two, article five of said chapter, relating to certification from a court of limited jurisdiction to the circuit court and certification from a circuit court to the supreme court of appeals, and adding questions and matters which may be certified.

Be it enacted by the Legislature of West Virginia:

That section two, article four, chapter fifty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and that section two, article five of said chapter be amended and reenacted to read as follows:

ARTICLE 4. APPEALS FROM COURTS OF RECORD OF LIMITED JURISDICTION.

§58-4-2. Certification to appellate courts as to sufficiency of summons, return of service, pleading, motion for summary judgment, etc.

Any question arising in such court of limited
2 jurisdiction upon the sufficiency of a summons or
3 return of service, upon a challenge of the suffi-
4 ciency of a pleading or the venue of such court of
5 limited jurisdiction, upon the sufficiency of a motion
6 for summary judgment where such motion is denied,
7 or a motion for judgment on the pleadings, upon
8 the jurisdiction of such court of limited jurisdiction
9 of a person or subject matter, or upon failure to
10 join an indispensable party, may, in the discretion
11 of the court, and shall, on the joint application of the
12 parties to the suit, in beneficial interest, be certified by it
13 to the circuit court of the county for its decision, and
14 further proceedings in the case stayed until such question
15 shall have been decided and the decision thereof certified
16 back: *Provided*, That no such question shall be so certified

17 except in a case in which, if it were in the circuit court,
18 it might be certified from the circuit court to the supreme
19 court of appeals under the provisions of section two of
20 article five of this chapter. The manner and form of such
21 certification, and the procedure thereupon, shall be gov-
22 erned by the provisions of said section two. After the
23 question shall have been decided by the circuit court, and
24 an order in pursuance thereof entered, it may, in the dis-
25 cretion of the circuit court, and shall, on the joint applica-
26 tion of the parties to the suit, in beneficial interest, be
27 certified by the circuit court to the supreme court of ap-
28 peals for its decision, in the manner and with the effect
29 provided in section two of article five of this chapter.

**ARTICLE 5. APPELLATE RELIEF IN SUPREME COURT
OF APPEALS.**

**§58-5-2. Certification to supreme court of appeals as to suffi-
ciency of summons, return of service, pleading, motion
for summary judgment, etc.**

Any question arising upon the sufficiency of a summons
2 or return of service, upon a challenge of the sufficiency
3 of a pleading or the venue of the circuit court, upon the

4 sufficiency of a motion for summary judgment where such
5 motion is denied, or a motion for judgment on the plead-
6 ings, upon the jurisdiction of the circuit court of a person
7 or subject matter, or upon failure to join an indispen-
8 sable party, in any case within the appellate jurisdiction
9 of the supreme court of appeals, may, in the discretion of
10 the circuit court in which it arises, and shall, on the joint
11 application of the parties to the suit, in beneficial interest,
12 be certified by it to the supreme court of appeals for its
13 decision, and further proceedings in the case stayed until
14 such question shall have been decided and the decision
15 thereof certified back. The forms of the certificates of such
16 questions, as well as the time and manner of the hearing
17 and notice thereof and the portion of the record to be sent
18 up, shall be as prescribed by the supreme court of appeals.
19 Entry of such certificate or the fact that it has been made,
20 upon the record of the case in the trial court, shall
21 be sufficient notice to the parties that the questions in-
22 volved are on application for hearing and determination
23 by the appellate court. Attested copies of the portions of
24 the record of the case or cause necessary to a determina-

25 tion of the questions so certified shall forthwith be pre-
26 sented to the supreme court of appeals together with the
27 question certified, and if the court be of the opinion that
28 the rulings of the lower court ought to be reviewed, the
29 case or cause shall be docketed for hearing without
30 further notice to the parties; but if the court be of the
31 opinion that there has been no error in the rulings, it shall
32 refuse to docket the case or cause, and the action of the
33 court in refusing to docket same shall then be certified
34 forthwith to the lower court.

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

William Tompa

Chairman Senate Committee

Clayton C. Davidson

Chairman House Committee

Originated in the Senate.

To take effect from passage.

J. Howard Meyer

Clerk of the Senate

C. B. Blankenship

Clerk of the House of Delegates

Howard E. Carson

President of the Senate

H. Laban White

Speaker House of Delegates

The within *approved* this the *21*

day of *March*, 1967.

Hebert C. Smith

Governor



PRESENTED TO THE
GOVERNOR

Date 3/21/67

Time 2:20pm