

**WEST VIRGINIA LEGISLATURE**  
**REGULAR SESSION, 1973**

**ENROLLED**

**SENATE BILL NO. 130**

(By Mr. Cawthon and Mr. Deem)

PASSED MARCH 24, 0 1973

In Effect From Passage



FILED IN THE OFFICE  
EDGAR F. HEICKELL III  
SECRETARY OF STATE  
THIS DATE 3-31-73

130

**ENROLLED**

**Senate Bill No. 130**

(By Mr. Gainer and Mr. Deem)

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[Passed March 24, 1973; in effect from passage.]

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AN ACT to amend and reenact section three, article five, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to appointment of a nonresident individual, nonresident banking institution, or corporation without principal office or place of business in this state, as executor, administrator, curator, guardian or committee; broadening said section so as to authorize certain nonresidents to qualify and serve as executors under wills of resident decedents upon furnishing of bond; relating to the penalty of any such bond; relating to the removal of personal estate of a resident decedent from this state; specifying that the liability of a nonresident executor and his surety shall be joint and several; relating to service of notice or process on nonresident executors; providing for appointment of the clerk of county court as statutory attorney in fact upon whom notice or process in any action or proceeding against a nonresident executor or with respect to estate may be served; specifying manner of, and records with respect to, service upon such clerk; requiring the forwarding of a copy of notice or process to nonresident executor and his receipt or refusal thereof, providing limitation on time of service; providing that manner of service is cumulative; providing for fees; relating to criminal offenses; and providing criminal penalties.

*Be it enacted by the Legislature of West Virginia:*

That section three, article five, chapter forty-four of the code

of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 5. GENERAL PROVISIONS AS TO FIDUCIARIES.**

**§44-5-3. Appointment of nonresident; bond; service of notice and process; fees; penalty.**

1 Notwithstanding any other provision of law, no person  
2 not a resident of this state nor any nonresident banking  
3 institution nor any corporation having its principal office  
4 or place of business outside this state shall be appointed  
5 or act as executor, administrator, curator, guardian or com-  
6 mittee, except that a testator who is a nonresident of this  
7 state at the time of his death may name, and there may  
8 be appointed and act, a nonresident as his executor, and  
9 except that for the guardian of an infant who is a non-  
10 resident of this state there may be appointed and act the  
11 same person who is appointed guardian at the domicile of  
12 the infant: *Provided*, That whenever the will of a decedent  
13 who was a resident of this state at the time of his death,  
14 hereinafter in this section referred to as "resident dece-  
15 dent," designates an individual, who is the husband, wife,  
16 father, mother, brother, sister, child, grandchild or sole  
17 beneficiary of such resident decedent, as executor, then such  
18 designated individual may qualify and act as such executor  
19 notwithstanding the fact that he is a nonresident. Nonresi-  
20 dent executors of resident decedents shall give bond with  
21 corporate surety thereon, qualified to do business in this  
22 state, in such penalty as may be fixed pursuant to the pro-  
23 visions of section seven, article one of this chapter except  
24 that such penalty shall not be less than (1) double the value  
25 of the personal estate and (2) double the value of any real  
26 property authorized to be sold under the will or the value  
27 any rents and profits from any real property which the will  
28 authorizes such nonresident executor to receive. The per-  
29 sonal estate of a resident decedent may not be removed  
30 from this state until the inventory or appraisal of the  
31 resident decedent's estate has been filed and any new or  
32 additional bond required to satisfy the penalty specified  
33 above in this section has been furnished. The liability of  
34 such nonresident executor and such surety shall be joint  
35 and several and a civil action on any such bond may be  
36 instituted and maintained against the surety, notwithstand-  
37 ing any other provision of this code to the contrary, even

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38 though no civil action has been instituted against the  
39 nonresident executor.

40 When a nonresident qualifies as an executor pursuant  
41 to the provisions of this section, he thereby constitutes  
42 the clerk of the county court wherein the will was ad-  
43 mitted to probate, or his successor in office, his true and  
44 lawful attorney in fact upon whom may be served all  
45 notices and process in any action or proceeding against  
46 him as executor or with respect to such estate, and such  
47 qualification shall be a signification of such executor's  
48 agreement that any such notice or process, which is  
49 served in the manner hereinafter in this section provided,  
50 shall be of the same legal force and validity as though  
51 said executor were personally served with notice and pro-  
52 cess within this state. Service shall be made by leaving  
53 the original and two copies of any notice or process,  
54 together with a fee of five dollars, with the clerk of such  
55 county court, whereupon such clerk shall endorse upon  
56 one copy thereof the day and hour of service and shall  
57 file such copy in his office and said service shall con-  
58 stitute personal service upon such nonresident executor:  
59 *Provided, however,* That the other copy of such notice  
60 or process shall be forthwith sent by registered or certi-  
61 fied mail, return receipt requested, deliver to addressee  
62 only, by said clerk to the nonresident executor at the  
63 address last furnished by him to said clerk and either  
64 (a) such nonresident executor's return receipt signed by  
65 him or (b) the registered or certified mail bearing there-  
66 on the stamp of the post-office department showing that  
67 delivery thereof was refused by such nonresident executor  
68 is appended to the original notice or process and filed  
69 therewith in the office of the clerk of the court from  
70 which such notice or process was issued. No notice or  
71 process shall be served on such clerk of the county court  
72 or accepted by him less than twenty days before the re-  
73 turn day thereof. The clerk of such county court shall  
74 keep a record in his office of all such notices and process  
75 and the day and hour of service thereof. The provision  
76 for service of notice or process herein provided is cumula-  
77 tive and nothing herein contained shall be construed as  
78 a bar to service by publication where proper or to the  
79 service of notice or process in any other lawful mode or  
80 manner. The fee of five dollars shall be deposited in the  
81 county treasury.

82 Any nonresident executor who removes from this state  
83 the personal estate of a resident decedent without com-  
84 plying with the provisions of this section shall be guilty  
85 of a misdemeanor, and, upon conviction thereof, shall be  
86 punished by a fine of not more than one thousand dollars  
87 or by confinement in the county jail for not more than  
88 one year, or, in the discretion of the court, by both such  
89 fine and imprisonment.

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

*H. Warren Darby*  
Chairman Senate Committee

*Doreen C. Chestnut Jr*  
Chairman House Committee

Originated in the Senate.

To take effect from passage.

*Howard E. Carson*  
Clerk of the Senate

*C. Blankenship*  
Clerk of the House of Delegates

*H. B. Brotherton Jr.*  
President of the Senate

*Lewis F. McManis*  
Speaker House of Delegates

The within *approved* this the *30th*  
*March*  
day of \_\_\_\_\_, 1973.

*Hubert H. Hanes Jr.*  
Governor

PRESENTED TO THE  
GOVERNOR

Date 3/28/73

Time 2:07 p.m.