

RECEIVED

APR 11 1973
STATE OF WEST VIRGINIA

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1973

•

ENROLLED

Com. Sub.

SENATE BILL NO. 1

(By Mr. *Palumbo*)

•

PASSED April 14 1973

In Effect July 1, 1973 Passage

Veto - 1

FILED IN THE OFFICE
EDGAR F. WEISKELL III
SECRETARY OF STATE
THIS DATE 5/3/73

ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 1
(Mr. Palumbo, *original sponsor*)

[Passed April 14, 1973; in effect July 1, 1973.]

AN ACT establishing a court of limited jurisdiction within and for the county of Kanawha, to be known as "The Small Claims Court of Kanawha County"; and providing for the judge, clerk, jurisdiction, venue, practice, procedure, appeals and maintenance thereof.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GENERAL PROVISIONS.

§1. Statement of policy.

1 The purpose of this act is to provide for the creation and
2 establishment of a minor civil court of limited jurisdiction in
3 Kanawha county, in which the people may obtain a speedy,
4 inexpensive and fair adjudication of claims and controversies.

§2. Creation.

1 A court of limited jurisdiction is hereby established within
2 and for Kanawha county, to be held and presided over by a
3 judge to be selected as hereinafter provided, which court shall
4 be designated a small claims court.

§3. Definitions.

1 Whenever used in this act, unless the context clearly indi-

2 cates otherwise:

3 (a) "Court" shall mean the small claims court created by
4 this act;

5 (b) "Judge" shall mean the judge of such small claims
6 court;

7 (c) "Circuit court" shall mean and include any court with-
8 in Kanawha county as well as the circuit court of Kanawha
9 county, having appellate civil jurisdiction from justice of the
10 peace courts within said county;

11 (d) "Clerk" shall mean the clerk of the circuit court of
12 Kanawha county;

13 (e) "Justice" shall mean justice of the peace;

14 (f) All other words and phrases shall have the meaning
15 ascribed to them by the general laws of this state.

ARTICLE 2. MAINTENANCE OF COURT.

§1. Maintenance and financing.

1 The county court of Kanawha county shall annually pro-
2 vide by levy, if necessary, an appropriation for the compen-
3 sation of the judge and for all other expenses incidental to the
4 operation of the court, including, but not limited to, traveling
5 and other reasonably necessary expenses of the judge for trials
6 conducted outside the county seat. The county court shall
7 provide suitable premises for the court within the county seat
8 and shall provide necessary books, stationery, supplies and
9 secretarial help for the court. Insofar as feasible, the special
10 fund of fees to be charged by the clerk of the court, hereinafter
11 provided for, shall be applied to the maintenance of the court.

ARTICLE 3. JUDGE OF SMALL CLAIMS COURT.

§1. Qualifications.

1 The judge shall be a resident of Kanawha county, shall be a
2 member of the West Virginia state bar and shall have been
3 actively engaged in the practice of law or shall have held judi-
4 cial office other than that of justice of the peace for at least the
5 next preceding three years prior to his selection or election and
6 shall be further qualified as is required by law for the office of
7 judge of the circuit court.

§2. Original appointment; filling vacancies.

1 Immediately following the effective date of this act, the

2 governor of the state shall appoint a judge of the court who
3 shall serve until a successor is elected as hereinafter provided,
4 or a vacancy in the office occurs, whichever event happens
5 first. Prior to such appointment, the bar association of
6 Kanawha county shall submit to the governor a list of two or
7 more qualified persons, who, insofar as possible, shall consist of
8 an equal number of members of each political party, for the
9 office of judge. The governor may then appoint the judge from
10 such list of nominees. A vacancy in the office shall be filled in
11 the same manner.

§3. Election of judge; contest; terms; removal.

1 At the primary and general elections held in the year one
2 thousand nine hundred seventy-four, and every sixth year
3 thereafter, the qualified voters of Kanawha county shall
4 nominate and elect a judge of the court to serve for a term of
5 six years. If the election be contested, the contest shall be
6 determined in the same manner provided by law for the office
7 of circuit judge. The term of the judge, except when appointed
8 to fill a vacancy, shall begin on the first day of January follow-
9 ing his election. The judge may be removed from office for the
10 same reasons and in the same manner as the judge of the cir-
11 cuit court.

§4. Salary of judge.

1 The annual compensation of the judge shall be twenty-one
2 thousand five hundred dollars, payable by the Kanawha county
3 court in equal monthly installments.

§5. Judge not to practice law.

1 The judge of the court shall not, during his term of office,
2 be engaged, either directly or indirectly, in the practice of law.

§6. Special judge.

1 In the absence or disability of the duly elected or appointed
2 judge, or if he is unable properly to preside at the trial of any
3 action, a special judge may be selected as provided by law for
4 such situation in the office of judge of the circuit court.

ARTICLE 4. CLERK; DUTIES; FEES.

§1. Circuit clerk to serve ex officio; duties; salary.

1 The clerk of the circuit court of Kanawha county shall be ex
2 officio clerk of the court and shall perform the duties of clerk
3 of the court. In the discharge of his duties as clerk of the court,
4 he shall be subject to all applicable law relating to the clerk of
5 the circuit court. All processes of the court in the exercise of
6 its jurisdiction shall be signed by the clerk thereof, and be di-
7 rected to the sheriffs of the proper counties wherein the same
8 are to be executed, and they shall be executed in like manner
9 and with the same effect as processes or orders issuing from
10 the circuit court.

§2. Fees; waiver; disposition; special fund.

1 The clerk, prior to issuing any process instituting an action
2 in the court, shall demand and receive from the party seeking
3 the same the sum of five dollars if the amount in controversy is
4 three hundred dollars or less and if the amount in controversy
5 exceeds three hundred dollars, but not more than two thou-
6 sand dollars, the fee charged by the clerk shall be ten dollars.
7 The payment of such fee shall cover the issuance of summonses
8 and subpoenae as is provided by law for actions brought in the
9 circuit court. All other fees charged by the clerk shall conform
10 with fees charged by him in actions in the circuit court: *Pro-*
11 *vided*, That no appearance fee shall be charged any defendant:
12 *Provided, however*, That the clerk may waive the payment of
13 costs upon the filing by the party liable therefor of a sworn
14 statement that he is unable to pay or upon the filing of a
15 statement by the attorney in charge of a legal aid society
16 that such party is unable to pay said costs. All fees collected
17 shall be placed in a special fund by the county court to help
18 defray the costs of the small claims court.

§3. Books and records.

1 The clerk shall keep a record in which he shall make accu-
2 rate entries of actions brought and minutes of all proceedings,
3 including service and return of process, appearance of parties,
4 the verdict of the jury, if any, the judgment, issuance and re-
5 turn of execution and supplementary process, if any, and a

6 memorandum of costs. The clerk shall also keep such other
7 indices, books and records as the judge may direct.

ARTICLE 5. JURISDICTION; VENUE; TRANSFER OF CASES FROM JUSTICES.

§1. Jurisdiction; amount.

1 The court shall have civil jurisdiction within the county,
2 subject to the right of appeal as hereinafter provided:

3 (a) Of all civil actions for the recovery of money or the
4 possession of property, including actions in which damages
5 are claimed as compensation for injury or wrong: *Provided*,
6 That the amount of money or damages, or the value of the
7 property claimed, does not exceed two thousand dollars,
8 exclusive of interest and costs; subject, nevertheless, to the
9 exceptions hereinafter contained;

10 (b) Of actions of unlawful entry and detainer of real estate
11 situated within the county as provided by law for such actions
12 before justices;

13 (c) Of actions for damages to real estate, or to rights
14 pertaining thereto, if the cause of action arose within the
15 county;

16 (d) Of actions on bonds, except for bonds given in
17 criminal matters;

18 (e) Of actions to recover rent as provided by law for
19 such actions before justices;

20 (f) Of actions in which the state, or any political sub-
21 division thereof, is a party;

22 (g) To administer any oath or affirmation, authorized
23 or required by law to be administered, and to take any
24 affidavit or deposition, unless otherwise expressly provided.

25 Except as may be provided by the court in accordance with
26 the provisions of section one, article nine of this act, the West
27 Virginia rules of civil procedure for trial courts of record
28 shall not apply to the court established by this act.

§2. Cases in which no jurisdiction.

1 The court shall not have cognizance of any action:

2 (a) In which the title to real estate is sought to be re-
3 covered, or is drawn in question;

4 (b) For false imprisonment;

5 (c) For malicious prosecution; or

6 (d) For slander or libel, oral or written.

§3. Venue.

1 The venue of cases brought in the court shall be determined
2 by the same venue requirements as apply to civil actions
3 brought in the circuit court, except those as may apply in
4 actions to which the state, or any political subdivision
5 thereof, is a party.

§4. Removal of cases from justices; procedure; fees.

1 If any party defendant in a civil action as provided for by
2 section one, article four, chapter fifty of the code of West Vir-
3 ginia, one thousand nine hundred thirty-one, as amended, or
4 in an action of unlawful entry and detainer of real estate
5 situated within the county, or in an action for damages to real
6 estate or rights pertaining thereto, if the cause of action arose
7 within the county, or in an action on a bond, except for bonds
8 given in criminal matters, or in an action to recover rent,
9 pending before a justice within Kanawha county, shall so desire,
10 such party may, as a matter of absolute right, but subject
11 to the conditions hereinafter provided, remove such proceed-
12 ing to the court created by this act. Such party shall, at least
13 two days prior to the return date thereof, present the
14 summons issued by the justice to the clerk or shall otherwise
15 demonstrate to the clerk that the party has been served
16 with process issued by a justice, and shall pay to the
17 clerk a removal fee of three dollars. Upon such proof
18 and payment of such fee, the clerk shall immediately set
19 the matter for trial in the small claims court on a day not
20 less than five nor more than fifteen days after the return date
21 of the summons, and shall issue a notice of removal in a
22 form substantially as follows:

23 IN THE SMALL CLAIMS COURT OF
24 KANAWHA COUNTY, WEST VIRGINIA
25 NOTICE OF REMOVAL

26 A. B., Plaintiff
27 vs.
28 C. D., Defendant

29 TO: _____, Justice of the Peace—

30 You are hereby notified that the above-styled action, insti-

31 tuted in your court on the day of, 19.....,
 32 and returnable on the day of, 19.....,
 33 has been removed, upon the request of the defendant (s) (or
 34 if more than one, the name of the defendant or defendants
 35 requesting removal), to the Small Claims Court of Kanawha
 36 County, West Virginia, and set for trial on the day of
 37, 19....., at M. at

38 _____
 39 (address of court, including room number, if applicable.)

40 You may retain such fees as you have collected from the
 41 plaintiff for services heretofore actually rendered by you, but
 42 shall proceed no further herein.

43 You are directed to deliver a copy of this notice to the
 44 plaintiff and any defendants not requesting removal, or
 45 notify him (or them) of this removal.

46 Given under my hand and seal and mailed to the aforesaid
 47 Justice of the Peace this day of, 19.....
 48 _____ (SEAL)

49 Clerk, Small Claims Court
 50 of Kanawha County.

51 The clerk shall immediately mail the necessary number of
 52 copies of the aforesaid notice to the justice before whom the
 53 action was instituted and removal shall then be complete and
 54 effective. The justice may retain such fees as he has collected
 55 from the plaintiff for services actually rendered to the plaintiff
 56 prior to notice of removal, but shall proceed no further in the
 57 matter. The justice shall forthwith notify the plaintiff and
 58 any defendants not requesting removal of the removal, but
 59 his failure to do so shall not affect the validity of such
 60 removal. He shall charge no fee to the defendant therefor.
 61 Only actions instituted before justices subsequent to the
 62 effective date of this act shall be removable as aforesaid.

ARTICLE 6. PLEADINGS; PRACTICES AND TRIAL.

§1. Starting an action.

1 The plaintiff shall commence his action by filing a state-
 2 ment of claim, together with a copy thereof for each defendant.
 3 The statement of claim may be filed by mail. The clerk
 4 shall assist the plaintiff in preparing and filing his statement
 5 of claim when necessary. Neither the plaintiff, nor the
 6 defendant, need be represented by an attorney.

§2. Form of statement of claim and notice.

1 The statement of claim of the plaintiff and notice of same
2 by the clerk, to the extent pertinent, shall be in form sub-
3 stantially as follows:

4 IN THE SMALL CLAIMS COURT OF
5 KANAWHA COUNTY, WEST VIRGINIA

6 A. B., Plaintiff
7 vs.
8 C. D., Defendant

9 _____, says that he is
10 _____ (Agent for, an officer
11 of, attorney for) the plaintiff and that the defendant owes to
12 the plaintiff, exclusive of all counterclaims and just grounds
13 of defense the amount of _____ dollars
14 (\$_____) as follows:

15 (Here set forth a statement of plaintiff's claim)

16 _____
17 Plaintiff (or representative)

18 IN THE SMALL CLAIMS COURT OF
19 KANAWHA COUNTY, WEST VIRGINIA

20 NOTICE

21 To C. D., Defendant—

22 _____
23 (Home Address)

24 _____
25 (Business Address)

26 You are hereby notified that A. B. has made a claim and
27 is demanding judgment against you in the amount of _____
28 _____ dollars (\$_____), as shown by
29 the foregoing (enclosed, attached) statement. The court will
30 hold a hearing on this claim on _____ at _____ M.
31 _____ (date) _____ (time)

32 at _____
33 (Address of court, including room number, if applicable)

34 You are required to be present at the hearing to avoid a
35 judgment by default against you.

36 If you have witnesses or books, receipts or other papers
37 bearing on this claim, you should bring them with you at the
38 time of the hearing.

39 If you wish to have witnesses subpoenaed, see the clerk at
40 once for assistance.

41 If you admit the claim, but desire additional time to pay,
42 you must come to the hearing in person and state the circum-
43 stances to the court.

44 You may appear in person or by a lawyer.

45 If you desire trial by jury you must notify the clerk at
46 least one day prior to the hearing date.

47

48

Clerk of the Small Claims Court.

§3. Service of process.

1 The notice, together with a copy of the statement of claim,
2 shall be served on the defendant by any method which is law-
3 ful for service of process for the circuit court. The fees for ser-
4 vice shall be the same as charged for service of process of the
5 circuit court.

§4. Defendant's answer; counterclaim not to exceed jurisdiction.

1 The defendant may if he desires file an answer in form sim-
2 ilar to the plaintiff's statement of claim. Any counterclaim may
3 be asserted in the answer, but shall not exceed the jurisdiction-
4 al amount of the court: *Provided*, That any excess thereof may
5 be waived. Any counterclaim arising from the same subject
6 matter as the plaintiff's claim must be raised prior to judg-
7 ment of the court or shall be deemed to have been waived.

§5. Liberality of pleading.

1 Liberality of pleading shall be permitted, including but not
2 limited to, the following matters:

3 (a) The defendant may prior to trial implead as third-party
4 defendant a person who may be liable to the defendant for all
5 or a part of the plaintiff's claim. The statement of claim against
6 the third-party defendant and notice of trial shall be served in
7 the same manner as the plaintiff's statement of claim, and a
8 copy of such third-party claim shall be served on the plain-
9 iff. The third-party defendant may file a counterclaim, cross

10 claim or third-party claim.

11 (b) The plaintiff may include in his statement of claim
12 against the defendant separate matters arising from different
13 contracts or from tort and contract, and the defendant may do
14 likewise in a counterclaim.

15 (c) Any number of plaintiffs may join in suing a defendant
16 when the claims of the plaintiffs arise from a single transaction
17 or occurrence. The plaintiff may join as defendants all persons
18 against whom he asserts a claim arising from a single trans-
19 action or occurrence. The judge may consolidate related ac-
20 tions in his discretion.

21 (d) The defendant may assert a counterclaim not arising
22 from the particular transaction or occurrence which is the sub-
23 ject matter of the plaintiff's claim: *Provided*, That the subject
24 matter of such counterclaim is similar in nature to the plain-
25 tiff's claim.

26 (e) The court shall permit amendment of the pleadings to
27 conform to the proof: *Provided, however*, That no such amend-
28 ment shall increase the amount claimed in the statement of
29 claim and notice: *Provided further*, That the court may not
30 give judgment for an amount exceeding the monetary juris-
31 diction of the court.

32 (f) The court shall permit liberal substitution of parties in
33 event of transfer of ownership, death, or similar circum-
34 stance.

§6. Time and place of trial; continuance.

1 The plaintiff may request a certain time for trial. The clerk
2 shall set the time and shall notify the plaintiff if the time set
3 is different from that requested. The time for trial shall be not
4 less than five nor more than fifteen days from the day that
5 process is served upon the defendant, or, if there be more than
6 one defendant, the last defendant served. In the event that ser-
7 vice is made upon the state auditor as attorney-in-fact for a
8 defendant, the time for trial shall be not less than ten days,
9 nor more than twenty days, from the day that such service is
10 made upon the auditor. Trials may be held at any time and at
11 any place within the county, as the judge may deem advisable.
12 Continuance shall be granted by the judge as justice may re-
13 quire and no charge shall be made for any continuance.

§7. Trial by jury.

1 The right of trial by jury shall be preserved, but the plain-
2 tiff shall be deemed to have waived said right unless he re-
3 quests trial by jury upon the filing of his claim. If the defen-
4 dant desires trial by jury he shall notify the clerk of the court
5 at least one day prior to the trial date. Either party desiring
6 trial by jury shall deposit a sum of ten dollars with the clerk.
7 The clerk shall thereupon automatically continue the action
8 until the next scheduled period for jury trials, which shall not
9 be more than thirty days from the date of such continuance.
10 Such deposit shall not be refundable but shall be credited, by
11 the county court, to the credit of the court and used for the
12 maintenance thereof. At least once each three months a suffi-
13 cient number of jurors shall be summoned in the same manner
14 as in the circuit court and such jurors shall be paid at the same
15 rate as in the circuit court. The jury shall be selected in the
16 same manner as a jury is selected in the circuit court of such
17 county.

§8. Contempt.

1 The court shall have the same powers to punish for con-
2 tempt as in the circuit court.

§9. Trial procedure.

1 If both parties appear, the judge shall proceed to hear the
2 case. No party need have an attorney. No formal pleading oth-
3 er than the statement of claim, and a counterclaim if one be
4 made, is required. The parties and witnesses shall be sworn.
5 The judge shall conduct the trial in such manner as to do jus-
6 tice between the parties according to the law and the evidence.
7 It shall be the duty of the judge to develop all of the facts
8 pertinent to the action and he may question any party or wit-
9 ness and may, upon his own motion, summon any additional
10 person who appears to be a necessary witness and may order
11 continuances as he deems necessary for this purpose.

§10. Judge to render judgment; costs.

1 The judge shall render judgment within seventy-two hours of
2 the close of any action. The losing party shall be responsible

3 for all costs: *Provided*, That in the event a counterclaim is
4 allowed, costs shall be taxed as appears proper within the dis-
5 cretion of the court.

§11. Nonappearance by parties.

1 (a) If the defendant fails to appear and the plaintiff's claim
2 is verified and for a liquidated amount, the plaintiff shall be en-
3 titled to a judgment by default without further proof; but if the
4 plaintiff's claim is not for a liquidated amount, he shall be re-
5 quired to present proof of his claim.

6 (b) If the plaintiff fails to appear, the court may, in its
7 discretion, dismiss the action for lack of prosecution, or per-
8 mit the defendant to proceed to trial on the merits on any
9 counterclaim, or continue the case to a later date.

10 (c) If both parties fail to appear, the court may, in its
11 discretion, continue the case generally or to a later date, or
12 dismiss it for lack of prosecution, or make such other order
13 as justice may require.

§12. Setting aside judgment.

1 The court may, upon its own motion, or for good cause
2 shown, set aside any judgment and may order a new trial
3 within seven days of the rendition of such judgment.

ARTICLE 7. JUDGMENTS AND EXECUTIONS.

§1. Judgment and subsequent proceedings.

1 Upon every judgment of the court, the judgment creditor
2 shall be entitled to all liens, executions, suggestions, suggestee
3 executions and all other remedies to secure or recover the
4 same to which he would be entitled if the same were a judg-
5 ment of the circuit court. Judgments rendered in the court
6 may be docketed in the judgment lien docket kept in the coun-
7 ty clerk's office of any county in like manner and with like
8 effect as other judgments, and executions on such judgments
9 may likewise be docketed the same as executions from the
10 circuit court.

§2. Payment of judgment in installments.

1 The court may, upon a showing of hardship and the filing
2 of a sworn financial statement by a defendant, permit him to

3 pay the judgment in installments: *Provided*, That such install-
 4 ments shall aggregate not less than ten percent of the judgment
 5 per month. The clerk shall not issue execution or other supple-
 6 mentary process during the time such an extension is in effect.
 7 If the defendant fails without good cause to make the pay-
 8 ments as agreed, the court may terminate the extension and
 9 thereupon the plaintiff may have execution or supplementary
 10 process or remedy issued or placed in effect.

ARTICLE 8. APPEALS.

§1. Appeals; amounts; trial de novo; costs.

1 When the amount in controversy, after judgment and ex-
 2 clusive of interest and costs, exceeds fifty dollars, any dissatis-
 3 fied party may, within fifteen days after rendition of judgment
 4 and subject to the conditions hereinafter provided, appeal to
 5 the circuit court. The cost of filing an appeal shall be five dol-
 6 lars payable to the clerk. Trial in the circuit court shall be
 7 de novo, but no further pleadings shall be required. Costs up-
 8 on appeal shall be taxed to the losing party: *Provided*, That in
 9 the event a counterclaim is allowed, costs shall be taxed as
 10 appears proper within the discretion of the circuit court.

§2. Appeal bond required.

1 No appeal shall be granted unless the appellant shall first
 2 file a bond with good security, approved by the court, in a
 3 penalty equal to the judgment and costs complained of and
 4 conditioned to the effect that the appellant will satisfy any
 5 judgment that may be rendered against him upon such appeal.
 6 If an appeal is granted, all further proceedings upon such
 7 judgment shall cease.

§3. Appeals granted by circuit court.

1 The circuit court shall grant an appeal timely filed, upon the
 2 filing, with the clerk of the circuit court, of the bond required
 3 by section two of this article.

§4. Appeal by one of several parties.

1 Where there are two or more plaintiffs or defendants, any
 2 one or more of them may appeal without joining therein the
 3 others on the same side.

ARTICLE 9. LOCAL RULES; SUPPLEMENTAL PROCEDURE; SEVERABILITY.

§1. Local rules.

1 The court may make and promulgate local rules of prac-
2 tice and procedure not inconsistent with the provisions of
3 this act to effectuate the purposes hereof: *Provided*, That no
4 such rule shall be promulgated without the approval of the
5 judge of the circuit court of the thirteenth judicial circuit of
6 the state of West Virginia.

§2. Cases not provided for.

1 For all matters not provided for in this act or by local rule,
2 the practices and procedure prescribed by law for justice
3 courts shall apply.

§3. Severability.

1 In the event that any provision of this act cannot be
2 exercised or enforced under the Constitution, it is nevertheless
3 the intention that any provision not so determined shall be and
4 remain valid and effective and to this end the provisions of this
5 act are hereby declared to be severable.

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

N. Darrel Darby
Chairman Senate Committee

Clarence C. Christian Jr.
Chairman House Committee

Originated in the Senate.

Takes effect July 1, 1973.

Harold W. Carson
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

W. T. Brotherton Jr.
President of the Senate

Lewis J. A. Mann
Speaker House of Delegates

The within disapproved this the 27th
day of April, 1973.

Arch A. Mann Jr.
Governor

PRESENTED TO THE
GOVERNOR

Date 4/27/73

Time 10:39 a.m.