

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1974



ENROLLED

SENATE BILL NO. 350

(By Mr. Hubbard)



PASSED March 9 1974

In Effect ninety days from Passage



FILED IN THE OFFICE
EDGAR F. HEISKELL III
SECRETARY OF STATE
THIS DATE 3-19-74

350

ENROLLED

Senate Bill No. 350

(By MR. HUBBARD)

[Passed March 8, 1974; in effect ninety days from passage.]

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 administrators of the estates 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 administrator and his surety shall be joint and several; relating to service of notice or process on nonresident administrators; 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 administrator 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 administrator 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 or
5 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 be
8 appointed and act, a nonresident as his executor, and ex-
9 cept that for the guardian of an infant who is a nonresi-
10 dent 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 deced-
13 ent who was a resident of this state at the time of his
14 death, hereinafter in this section referred to as "resident
15 decedent," designates an individual, who is the husband,
16 wife, father, mother, brother, sister, child, grandchild or
17 sole beneficiary of such resident decedent, as executor,
18 then such designated individual may qualify and act as
19 such executor notwithstanding the fact that he is a non-
20 resident: *Provided further*, That a nonresident individual
21 may be appointed as administrator of an estate in accord-
22 ance with the provisions of section four, article one of this
23 chapter and act as such administrator if such individual
24 be the husband, wife, father, mother, brother, sister, child,
25 grandchild or the sole beneficiary of a decedent who was
26 a resident of this state at the time of his death, hereinafter
27 in this section also referred to as a "resident decedent,"
28 and if such individual may otherwise qualify as such ad-
29 ministrator. Nonresident executors and administrators of

30 resident decedents shall give bond with corporate surety
31 thereon, qualified to do business in this state, in such
32 penalty as may be fixed pursuant to the provisions of sec-
33 tion seven, article one of this chapter except that such
34 penalty in the case of a nonresident executor shall not
35 be less than (1) double the value of the personal estate
36 and (2) double the value of any real property authorized
37 to be sold under the will or the value of any rents and
38 profits from any real property which the will authorizes
39 such nonresident executor to receive, and except that such
40 penalty in the case of a nonresident administrator shall
41 not be less than double the value of the personal estate.
42 The personal estate of a resident decedent may not be re-
43 moved from this state until the inventory or appraisalment
44 of the resident decedent's estate has been filed and any
45 new or additional bond required to satisfy the penalty
46 specified above in this section has been furnished. The
47 liability of such nonresident executor or administrator
48 and such surety shall be joint and several and a civil ac-
49 tion on any such bond may be instituted and maintained
50 against the surety, notwithstanding any other provision of
51 this code to the contrary, even though no civil action has
52 been instituted against the nonresident executor or ad-
53 ministrator.

54 When a nonresident qualifies as an executor or admin-
55 istrator pursuant to the provisions of this section, he
56 thereby constitutes the clerk of the county court wherein
57 the will was admitted to probate or wherein he was ap-
58 pointed as administrator, or such clerk's successor in office,
59 his true and lawful attorney in fact upon whom may be
60 served all notices and process in any action or proceed-
61 ing against him as executor or administrator or with
62 respect to such estate, and such qualification shall be a
63 signification of such executor's or administrator's agree-
64 ment that any such notice or process, which is served in
65 the manner hereinafter in this section provided, shall be
66 of the same legal force and validity as though said execu-
67 tor or administrator were personally served with notice
68 and process within this state. Service shall be made by
69 leaving the original and two copies of any notice or pro-
70 cess, together with a fee of five dollars, with the clerk of

71 such county court, whereupon such clerk shall endorse
72 upon one copy thereof the day and hour of service and
73 shall file such copy in his office and said service shall
74 constitute personal service upon such nonresident execu-
75 tor or administrator: *Provided, however,* That the other
76 copy of such notice or process shall be forthwith sent by
77 registered or certified mail, return receipt requested, de-
78 liver to addressee only, by said clerk to the nonresident
79 executor or administrator at the address last furnished by
80 him to said clerk and either (a) such nonresident execu-
81 tor's or administrator's return receipt signed by him or
82 (b) the registered or certified mail bearing thereon the
83 stamp of the post-office department showing that delivery
84 therefor was refused by such nonresident executor or
85 administrator is appended to the original notice or pro-
86 cess and filed therewith in the office of the clerk of the
87 court from which such notice or process was issued. No
88 notice or process shall be served on such clerk of the
89 county court or accepted by him less than twenty days
90 before the return day thereof. The clerk of such county
91 court shall keep a record in his office of all such notices
92 and process and the day and hour of service thereof. The
93 provision for service of notice or process herein provided
94 is cumulative and nothing herein contained shall be con-
95 strued as a bar to service by publication where proper or
96 to the service of notice or process in any other lawful
97 mode or manner. The fee of five dollars shall be deposited
98 in the county treasury.

99 Any nonresident executor or administrator who re-
100 moves from this state the personal estate of a resident
101 decedent without complying with the provisions of this
102 section shall be guilty of a misdemeanor, and, upon con-
103 viction thereof, shall be punished by a fine of not more
104 than one thousand dollars or by confinement in the county
105 jail for not more than one year, or, in the discretion of the
106 court, by both such fine and imprisonment.

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

H. Darrel Darby
Chairman Senate Committee

Clarence C. Chester, Jr.
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Howard W. Carson
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

H. P. Brotherton, Jr.
President of the Senate

Lewis J. McManis
Speaker House of Delegates

The within approved this the 18th
day of March, 1974.

Arch A. Moore, Jr.
Governor



PRESENTED TO THE
GOVERNOR

Date 3/14/74

Time 2:15 p.m.