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No: 1707

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OFFICE OF THE SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1985

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ENROLLED

Com. Sub. for
HOUSE BILL No. 1707

(By Mr. Del. Jordan + Del. Garrett)

—●—

Passed April 13, 1985

In Effect July 1, 1985 Passage



ENROLLED
COMMITTEE SUBSTITUTE
FOR

H. B. 1707

(By DELEGATE JORDAN and DELEGATE GARRETT)

[Passed April 13, 1985; in effect July 1, 1985.]

AN ACT to amend and reenact section eight, article one, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section three, article five of said chapter, all relating to the appointment of a nonresident as executor of an estate; when such executor may be required to give security or bond; the form and amount of such surety; and criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. PERSONAL REPRESENTATIVES.

§44-1-8. When executor not to give security on bond.

1 Subject to the provisions of section three, article five of this
2 chapter governing the appointment of a nonresident of this
3 state as an executor, where the will directs that an executor
4 shall not give security, it shall not be required of him, unless
5 at the time the will is admitted to probate or at any time
6 subsequently, on the application of any person interested, or
7 from the knowledge of the court or clerk admitting the will

8 to probate, it is deemed proper that security ought to be given.

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 not
2 a resident of this state nor any nonresident banking institution
3 nor any corporation having its principal office or place of
4 business outside this state may be appointed or act as executor,
5 administrator, curator, guardian or committee, except that a
6 testator who is a nonresident of this state at the time of his
7 death may name, and there may be appointed and act, a
8 nonresident as his executor, and except that for the guardian
9 of an infant who is a nonresident of this state there may be
10 appointed and act the same person who is appointed guardian
11 at the domicile of the infant: *Provided*, That whenever the will
12 of a decedent who was a resident of this state at the time of
13 his death, hereinafter in this section referred to as "resident
14 decedent," designates an individual, who is the husband, wife,
15 father, mother, brother, sister, child, grandchild or sole
16 beneficiary of such resident decedent as executor, then such
17 designated individual may qualify and act as executor
18 notwithstanding the fact that he is a nonresident: *Provided*,
19 *however*, That a nonresident individual or individuals may be
20 appointed as the testamentary guardian of a resident infant if
21 appointed in accordance with the provisions of section one,
22 article twelve of this chapter: *Provided further*, That a
23 nonresident individual may be appointed as administrator of
24 an estate in accordance with the provisions of section four,
25 article one of this chapter and act as such administrator and,
26 notwithstanding any other provision of law as to the form or
27 amount of surety, shall give bond with such surety as may be
28 approved by the clerk if such individual be the husband, wife,
29 father, mother, brother, sister, child, grandchild or the sole
30 beneficiary of a decedent who was a resident of this state at
31 the time of his death, hereinafter in this section also referred
32 to as a "resident decedent," and if such individual may
33 otherwise qualify as such administrator. Nonresident executors
34 and administrators of resident decedents, and nonresident
35 testamentary guardians who are not such relatives named
36 above or sole beneficiary shall give bond with corporate surety
37 thereon, qualified to do business in this state, in such penalty

38 as may be fixed pursuant to the provisions of section seven,
39 article one of this chapter except that such penalty in the case
40 of a nonresident executor shall not be less than (1) double the
41 value of the personal estate, and (2) double the value of any
42 real property authorized to be sold under the will or the value
43 of any rents and profits from any real property which the will
44 authorizes the nonresident executor to receive, and except that
45 such penalty in the case of a nonresident administrator shall
46 not be less than double the value of the personal estate: *And*
47 *provided further*, That where the will directs that a nonresident
48 executor who is the husband, wife, father, mother, brother,
49 sister, child or grandchild or sole beneficiary of the decedent
50 shall not give security, it may be required of that person only
51 as hereinbefore provided. The personal estate of a resident
52 decedent may not be removed from this state until the
53 inventory or appraisement of the resident decedent's estate has
54 been filed and any new or additional bond required to satisfy
55 the penalty specified above in this section has been furnished.
56 The liability of a nonresident executor or administrator and
57 such surety shall be several and a civil action on any such bond
58 may be instituted and maintained against the surety,
59 notwithstanding any other provision of this code to the
60 contrary, even though no civil action has been instituted
61 against the nonresident executor or administrator.

62 When a nonresident qualifies as an executor, administrator
63 or guardian of an infant pursuant to the provisions of this
64 section, he thereby constitutes the clerk of the county
65 commission wherein the will was admitted to probate or
66 wherein he was appointed as administrator, or such clerk's
67 successor in office, his true and lawful attorney-in-fact upon
68 whom may be served all notices and process in any action or
69 proceeding against him as executor, administrator or guardian
70 or with respect to such estate, and such qualification shall be
71 a signification of the executor's, or administrator's or
72 guardian's agreement that any notice or process, which is
73 served in the manner hereinafter in this section provided, shall
74 be of the same legal force and validity as though the executor,
75 administrator or guardian were personally served with notice
76 and process within this state. Service shall be made by leaving
77 the original and two copies of any notice or process, together
78 with a fee of five dollars, with the clerk of such county
79 commission. Such clerk shall thereupon endorse upon one


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

105 If a nonresident testamentary guardian appointed pursuant
106 to this section fails or refuses to file an accounting required
107 by this chapter while his ward remains a resident of this state,
108 and the failure continues for two months after the due date,
109 he may, upon notice and hearing, be removed or subjected to
110 any other appropriate order by the county commission, and
111 if his failure or refusal to account continues for six months,
112 he shall be removed as testamentary guardian by the county
113 commission.

114 Any nonresident executor, administrator or guardian who
115 removes from this state the personal estate of a resident
116 decedent or of the infant of a resident decedent without
117 complying with the provisions of this section, the provisions
118 of article eleven, chapter forty-four of this code or any other
119 requirement pertaining to fiduciaries generally, shall be guilty
120 of a misdemeanor, and, upon conviction thereof, shall be

121 punished by a fine of not more than one thousand dollars or
122 by confinement in the county jail for not more than one year,
123 or, in the discretion of the court, by both such fine and
124 imprisonment.

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

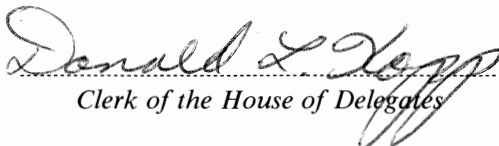

Chairman Senate Committee

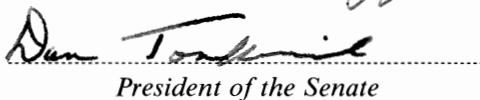

Chairman House Committee

Originating in the House.

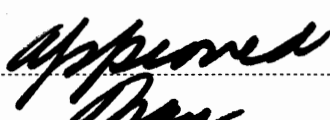
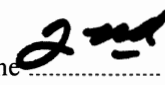


Takes effect July 1, 1985.


Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within  this the 
day of , 1985.

Governor

PRESENTED TO THE

GOVERNOR

Date

4/19/85

Time

8:33 p.m.