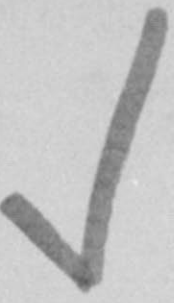
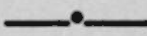


No: 60



**WEST VIRGINIA LEGISLATURE**

**REGULAR SESSION, 1985**

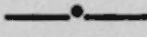


**ENROLLED**

*Committee Substitute for*

**SENATE BILL NO. 60**

(By Mr. Rogers)



PASSED March 12. 1985

In Effect from Passage



# ENROLLED

COMMITTEE SUBSTITUTE

FOR

## Senate Bill No. 60

(BY MR. ROGERS, *original sponsor*)

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[Passed March 12, 1985; in effect from passage.]

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AN ACT to amend and reenact section eighteen, article two, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section six, article seven, chapter fifty-five of said code, all relating to limitations of actions generally; providing for an extension of the limitation period for new action after abatement, dismissal, etc., in wrongful death actions.

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

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

### **ARTICLE 2. LIMITATION OF ACTIONS AND SUITS.**

#### **§55-2-18. Extension of period for new action after abatement, dismissal, etc., of action commenced within due time.**

- 1 If any action or suit, including an action for wrongful
- 2 death, commenced within due time, in the name of or

3 against one or more plaintiffs or defendants, abate as to one  
4 of them by the return of no inhabitant, or by his or her death  
5 or marriage, or if, in an action or suit, including an action  
6 for wrongful death, commenced within due time, judgment  
7 or decree (or other and further proceedings) for the  
8 plaintiffs should be arrested or reversed on a ground which  
9 does not preclude a new action or suit for the same cause, or  
10 if there be occasion to bring a new action or suit by reason of  
11 such cause having been dismissed for want of security for  
12 costs, or by reason of any other cause which could not be  
13 plead in bar of an action or suit, or of the loss or destruction  
14 of any of the papers or records in a former action or suit  
15 which was in due time; in every such case, notwithstanding  
16 the expiration of the time within which a new action or suit  
17 must otherwise have been brought, the same may be  
18 brought within one year after such abatement, dismissal or  
19 other cause, or after such arrest or reversal of judgment or  
20 decree, or such loss or destruction, but not after. The  
21 provisions of this section shall not apply to actions brought  
22 for the death of any person occurring prior to the first day of  
23 July, one thousand nine hundred eighty-two.

**ARTICLE 7. ACTIONS FOR INJURIES.**

**§55-7-6. By whom action for wrongful death to be brought;  
amount and distribution of damages; period of  
limitation.**

1 (a) Every such action shall be brought by and in the  
2 name of the personal representative of such deceased  
3 person who has been duly appointed in this state, or in any  
4 other state, territory or district of the United States, or in  
5 any foreign country, and the amount recovered in every  
6 such action shall be recovered by said personal  
7 representative and be distributed in accordance herewith.  
8 If the personal representative was duly appointed in  
9 another state, territory or district of the United States, or in  
10 any foreign country, such personal representative shall, at  
11 the time of filing of the complaint, post bond with a  
12 corporate surety thereon authorized to do business in this  
13 state, in the sum of one hundred dollars, conditioned that  
14 such personal representative shall pay all costs adjudged  
15 against him and that he shall comply with the provisions of

16 this section. The circuit court may increase or decrease the  
17 amount of said bond, for good cause.

18 (b) In every such action for wrongful death the jury, or  
19 in a case tried without a jury, the court, may award such  
20 damages as to it may seem fair and just, and, after making  
21 provision for those expenditures, if any, specified in  
22 subdivision (2), subsection (c) of this section, may direct in  
23 what proportion the remaining net damages shall be  
24 distributed to the surviving spouse and children, including  
25 adopted children, stepchildren and grandchildren of the  
26 deceased, and other persons, if any who were dependent  
27 upon the decedent for support, in whole or in part, or if  
28 there be none such, then to parents, brothers and sisters of  
29 the deceased, or if there be none such, then to such other  
30 persons, if any, entitled to inherit pursuant to the provisions  
31 of section one, article one, chapter forty-two of this code,  
32 unless the jury shall by its verdict allocate the remaining net  
33 amount in differing amounts and proportions among any  
34 surviving spouse, children, adopted children, stepchildren,  
35 grandchildren, other dependents, parents, brothers and  
36 sisters of the deceased. Where the matter was tried without  
37 a jury the court may find upon just and equitable principles  
38 that such net amount recovered should be distributed to  
39 such last named persons in different amounts and  
40 proportions, in which event the court shall make written  
41 findings of fact and then and there order such remaining net  
42 damages distributed to those persons in such amounts and  
43 proportions as the court finds to be fair, just and equitable.

44 (c) (1) The verdict of the jury shall include, but may  
45 not be limited to, damages for the following: (A) Sorrow,  
46 mental anguish, and solace which may include society,  
47 companionship, comfort, guidance, kindly offices and  
48 advice of the decedent; (B) compensation for reasonably  
49 expected loss of (i) income of the decedent, and (ii) services,  
50 protection, care and assistance provided by the decedent;  
51 (C) expenses for the care, treatment and hospitalization of  
52 the decedent incident to the injury resulting in death; and  
53 (D) reasonable funeral expenses.

54 (2) In its verdict the jury shall set forth separately the  
55 amount of damages, if any, awarded by it for reasonable  
56 funeral, hospital, medical and said other expenses incurred

57 as a result of the wrongful act, neglect or default of the  
58 defendant or defendants which resulted in death, and any  
59 such amount recovered for such expenses shall be so  
60 expended by the personal representative.

61 (d) Every such action shall be commenced within two  
62 years after the death of such deceased person, subject to the  
63 provisions of chapter fifty-five, article two, section  
64 eighteen. The provisions of this section shall not apply to  
65 actions brought for the death of any person occurring prior  
66 to the first day of July, one thousand nine hundred eighty-  
67 two.

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

*Reene O. Winters*  
.....  
Chairman Senate Committee

*Floyd Fuller*  
.....  
Chairman House Committee

Originated in the Senate.

In effect from passage.

*Todd C. Wallis*  
.....  
Clerk of the Senate

*Donald L. Keff*  
.....  
Clerk of the House of Delegates

*Dan Tordella*  
.....  
President of the Senate

*Joseph P. Albright*  
.....  
Speaker House of Delegates

The within *approved* ..... this the *19th* .....  
day of *March* ..... 1985.

*Ark A. Proctor, Jr.*  
.....  
Governor

PRESENTED TO THE

GOVERNOR

Date

3/13/85

Time

4:02 p.m.

47.

PRESENTED TO THE

GOVERNOR

Date

3/14/85

Time

3:34 p.m.

RECEIVED

1985 MAR 22 PM 5:14

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE