

710. 78 ✓

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1985



ENROLLED

Committee Substitute for
SENATE BILL NO. 78

(By Mr. Rogers)



PASSED April 2, 1985

In Effect July 1, 1985 Passage



ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 78

(BY MR. ROGERS, *original sponsor*)

[Passed April 2, 1985; to take effect July 1, 1985.]

AN ACT to amend and reenact sections eleven, twelve-a and thirteen, article six, chapter fifty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to reducing from twelve to six the size of juries in civil trials; specifying that juries in criminal trials in circuit court shall consist of twelve members; jury in cases of eminent domain to consist of twelve freeholders; waiver of right to jury trial in criminal cases; alternate jurors, qualifications and challenges, number of alternate jurors; special juries, number of special jurors.

Be it enacted by the Legislature of West Virginia:

That sections eleven, twelve-a and thirteen, article six, chapter fifty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 6. TRIAL.

§56-6-11. Execution of order of inquiry and trial of case by court; six member jury in civil trials; twelve member jury in eminent domain and criminal trials.

1 The court, in an action at law, if neither party requires a

2 jury, or if the defendant has failed to appear and the
3 plaintiff does not require a jury, shall ascertain the amount
4 the plaintiff is entitled to recover in the action, if any, and
5 render judgment accordingly. In any case in which a trial by
6 jury would be otherwise proper, the parties or their counsel,
7 by consent entered of record, may waive the right to have a
8 jury, and thereupon the whole matter of law and fact shall
9 be heard and determined, and judgment given by the court.
10 Absent such waiver, in any civil trial a jury shall consist of
11 six members and in any criminal trial a jury shall consist of
12 twelve members.

13 The provisions of this section shall not apply to any
14 proceeding had pursuant to article two, chapter fifty-four
15 of this code, the provisions of which shall apply in all cases
16 involving the taking of property for a public use.

**§56-6-12a. Alternate jurors for protracted civil cases;
qualifications and challenges.**

1 In any civil case, whenever in the opinion of the court the
2 trial is likely to be a protracted one, the court may direct
3 that not more than four jurors, in addition to the regular
4 jury, be called and impaneled to sit as alternate jurors. Said
5 alternate jurors shall be chosen from a separate panel of six
6 after the regular jury of six or twelve, as the case may be, has
7 been selected. Alternate jurors in the order in which they
8 are called shall replace jurors who, prior to the time the jury
9 retires to consider its verdict, become unable or disqualified
10 to perform their duties. Alternate jurors shall be drawn in
11 the same manner, shall have the same qualifications, shall
12 be subject to the same examination and challenges, shall
13 take the same oath and shall have the same functions,
14 powers, facilities and privileges as the regular jurors. An
15 alternate juror who does not replace a regular juror shall be
16 discharged after the jury retires to consider its verdict. Each
17 side is entitled to one peremptory challenge in addition to
18 those otherwise allowed by law if one or two alternate
19 jurors are to be impaneled, and two peremptory challenges
20 if three or four alternate jurors are to be impaneled. The
21 additional peremptory challenges may be used against an
22 alternate juror only, and the other peremptory challenges
23 allowed by this section may not be used against an alternate
24 juror.

§56-6-13. Special jury in civil cases.

1 (a) Except as provided in subsection (b) of this section,
2 any court may allow a special jury in any civil case, to be
3 formed in the following manner: The court shall direct a
4 panel of ten jurors to be drawn by the clerk, in the presence
5 of the court, from the box mentioned in section seven,
6 article one, chapter fifty-two of this code, who shall be
7 summoned by the sheriff to attend on the day named in the
8 order, from which number eight shall be chosen by lot; and
9 the parties thereupon, the plaintiff's attorney beginning,
10 shall alternately strike off one until the number be reduced
11 to six, which number shall complete the jury for the trial of
12 the case. The court may also allow a special jury in any civil
13 case when the panel of drawn jurors is exhausted, upon the
14 motion of either of the parties, to be summoned by the
15 sheriff so far as may be required from the body of the
16 county; but no such special jury shall be allowed in any case
17 unless the court certifies of record that the interest of the
18 parties so asking such jury will be promoted by the
19 allowance of such special jury.

20 (b) In any case held pursuant to article two, chapter
21 fifty-four of this code, for the taking of property for a public
22 use, any court may allow a special jury to be formed in the
23 following manner: The court shall direct a panel of twenty
24 jurors, who are qualified freeholders of the county wherein
25 the property to be taken is situate, to be drawn by the clerk,
26 in the presence of the court, from the box mentioned in
27 section seven, article one, chapter fifty-two of this code,
28 who shall be summoned by the sheriff to attend on the day
29 named in the order, from which number sixteen shall be
30 chosen by lot; and the parties thereupon, the plaintiff's
31 attorney beginning, shall alternately strike off one until the
32 number be reduced to twelve, which number shall complete
33 the jury for the trial of the case, but no such special jury
34 shall be allowed in any case unless the court certifies of
35 record that the interest of the parties so asking such jury
36 will be promoted by the allowance of such special jury.

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

Barney D. Williams
.....
Chairman Senate Committee

Floyd Fuller
.....
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1985.

Todd C. Wells
.....
Clerk of the Senate

Donald L. Kopp
.....
Clerk of the House of Delegates

Dan Tombari
.....
President of the Senate

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

The within *approved* this the *10th*
April day of 1985.

Arch A. Shroyer
.....
Governor

PRESENTED TO THE
GOVERNOR

Date 4/8/85

Time 3:20 p.m.

RECEIVED

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE