ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 95

(SENATOR JARRELL, original sponsor)

[Passed February 22, 1988; 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; and to amend article eleven of said chapter by adding thereto a new section, designated section eight-a, all relating to the appointment of nonresident fiduciaries; expanding the list of nonresidents who may qualify and act as nonresident fiduciaries; permitting nonresidents to be appointed committee for a resident incompetent; prescribing the methods for qualification and appointment of such nonresident fiduciaries; setting forth new and changing certain present bond requirements therefor; appointment of county clerk as attorney-in-fact for service of process and prescribing procedures therefor; permitting other lawful methods of service; setting forth restrictions and procedure for removal of personal assets of an estate; providing for joint and several liability of nonresident fiduciaries and sureties on bonds; setting forth penalties; establishing a procedure for the removal of assets from this state by certain nonresident fiduciaries; providing for liability of the surety for a violation thereof; and holding nonresident fiduciaries accountable after removal of such assets.
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; and that article eleven of said chapter be amended by adding thereto a new section, designated section eight-a, all 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.

(a) Notwithstanding any other provision of law, no individual who is a nonresident of this state nor any nonresident banking institution nor any corporation having its principal office or place of business outside this state may be appointed or act as executor, administrator, curator, guardian or committee in this state, except that:

(1) An individual who is a nonresident of this state may be appointed ancillary administrator of a nonresident decedent's assets situate in this state if such nonresident individual is lawfully acting as executor in said decedent's state of domicile and submits letters of probate authenticated by the probate authorities of the decedent's state of domicile to the clerk of the county commission of any county of this state wherein ancillary administration is sought;

(2) An individual who is a nonresident of this state may be appointed ancillary administrator of a nonresident decedent's assets situate in this state if such nonresident individual is acting as administrator in said decedent's state of domicile and submits letters of administration authenticated by the probate authorities of the decedent's state of domicile to the clerk of the county commission of any county of this state wherein ancillary administration is sought;

(3) An individual who is a nonresident of this state may be appointed and act as testamentary guardian of a nonresident infant and thereby exercise dominion and control over such nonresident infant's assets situate in this state upon submission of authenticated documentation that such nonresident testamentary guardian was so appointed at the place of domicile of the nonresident infant. Such authenticated documentation shall be submitted to the
clerk of the county commission of any county of this state wherein assets belonging to such nonresident infant are situate;

(4) An individual who is a nonresident of this state and who is named executor by a resident decedent may qualify and act as executor in this state;

(5) An individual who is a nonresident of this state may be appointed and act as administrator of a nonresident decedent's assets in this state if appointed in accordance with the provisions of section four, article one of this chapter;

(6) An individual who is a nonresident of this state may be appointed as the testamentary guardian of a resident infant if appointed in accordance with the provisions of section one, article ten of this chapter;

(7) An individual who is a nonresident of this state may be appointed as committee of a resident incompetent:

Provided, That such appointment is made in accordance with the provisions of section one, article eleven, chapter twenty-seven of this code and if such nonresident individual may otherwise qualify as committee.

(b) Nonresident individuals enumerated in subsection (a) of this section shall give bond with corporate surety thereon, qualified to do business in this state, and the amount of such bond shall not be less than double the value of the personal assets and double the value of any real property authorized to be sold or double the value of any rents and profits from any real property which the nonresident individual is authorized to receive, except that:

(1) Any nonresident individual enumerated in subsection (a) of this section who is the spouse, parent, sibling, lineal descendant or sole beneficiary of a resident or nonresident decedent shall give bond with corporate surety thereon qualified to do business in this state, with such penalty as may be fixed pursuant to the provisions of section seven, article one of this chapter, as approved by the clerk of the county commission;

(2) Where the terms of a decedent's will direct that a nonresident individual enumerated in subdivisions (1), (3), (4) and (6) of subsection (a) of this section named in a decedent's will shall not give bond or give bond at a specified amount, it shall not be required or shall be required only to the extent required under the terms of the
will, unless at the time the will is admitted to record or at any time subsequently, on the application of any person interested, or from the knowledge of the commission or clerk admitting the will to record, it is deemed proper that greater bond be given.

(c) When a nonresident individual is appointed as executor, administrator, testamentary guardian or committee pursuant to the provisions of subsection (a) of this section, said individual thereby constitutes the clerk of the county commission wherein such appointment was made as his true and lawful attorney-in-fact upon whom may be served all notices and process in any action or proceeding against him as executor, administrator, testamentary guardian or committee or with respect to such estate, and such qualification shall be a manifestation of said nonresident individual's agreement that any notice or process, which is served in the manner hereinafter provided in this subsection, shall be of the same legal force and validity as though such nonresident was personally served with notice and process within this state. Service shall be made by leaving the original and two copies of any notice or process, together with a fee of five dollars, with the clerk of such county commission. The fee of five dollars shall be deposited with the county treasurer. Such clerk shall thereupon endorse upon one copy thereof the day and hour of service and shall file such copy in his office and such service shall constitute personal service upon such nonresident: Provided, That the other copy of such notice or process shall be forthwith sent by registered or certified mail, return receipt requested, deliver to addressee only, by said clerk to such nonresident at the address last furnished by him to said clerk and either: (1) Such nonresident's return receipt signed by him or (2) the registered or certified mail bearing thereon the stamp of the post office department showing that delivery therefor was refused by such nonresident is appended to the original notice or process filed therewith in the office of the clerk of the county commission from which such notice or process was issued. No notice or process may be served on such clerk of the county commission or accepted by him less than thirty days before the return day thereof. The clerk of such county commission shall keep a record in his office of all such notices and processes and the day and hour of service.
(d) The personal estate of a resident decedent, infant or incompetent may not be removed from this state until the inventory or appraisement of that resident decedent's, infant's or incompetent's assets has been filed and any new or additional bond required to satisfy the penalties specified in subsection (b) of this section has been furnished. The liability of a nonresident executor, administrator, testamentary guardian or committee and of any such surety shall be joint and several and a civil action on any such bond may be instituted and maintained against the surety, notwithstanding any other provision of this code to the contrary, even though no civil action has been instituted against such nonresident.

(e) Any such nonresident who removes from this state assets administered in and situate in this state without complying with the provisions of this section, the provisions of article eleven, chapter forty-four of this code or any other requirement pertaining to fiduciaries generally, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars or confined in the county jail for not more than one year, or, in the discretion of the court, by both such fine and imprisonment.

(f) If a nonresident appointed pursuant to subsection (a) of this section fails or refuses to file an accounting required by this chapter, and the failure continues for two months after the due date, he may, upon notice and hearing, be removed or subjected to any other appropriate order by the county commission, and if his failure or refusal to account continues for six months, he shall be removed by the county commission.

ARTICLE 11. TRANSFER OF PROPERTY OF NONRESIDENTS AND RESIDENTS.

§44-11-8a. Removal of property of resident infant, incompetent or insane person from this state by nonresident testamentary guardian or nonresident committee.

(a) No property or money in this state belonging to a
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2 resident infant, incompetent or insane person may be
3 removed from this state by a nonresident testamentary
4 guardian or nonresident committee appointed or qualified
5 in this state unless:
6 (1) Such nonresident testamentary guardian or
7 nonresident committee files a petition to remove such
8 property or money in the circuit court of the county wherein
9 such guardian or committee was appointed or qualified, or
10 in which the property or money, or some part thereof, is
11 located;
12 (2) The infant, incompetent or insane person is made a
13 party defendant to such petition;
14 (3) Notice of the petition is filed as a Class II legal
15 advertisement in compliance with the provisions of article
16 three, chapter fifty-nine of this code, and publication area
17 for such publication is the county in which the petition is
18 filed; and
19 (4) The court determines, after a hearing, that the
20 removal of such property or money will not impair the
21 rights of or be prejudicial to the interests of such infant,
22 incompetent or insane person, or of any other person.
23 (b) If any nonresident testamentary guardian or
24 nonresident committee removes from this state property or
25 money belonging to a resident infant, incompetent or insane
26 person without obtaining an order entered pursuant to the
27 provisions of subsection (a) of this section, the same shall
28 work a forfeiture of his bond, and the liability of such
29 nonresident guardian or committee and of his surety shall
30 be joint and several, and a civil action on any such bond may
31 be instituted and maintained against the surety, notwithstanding any other provision of this code to the
32 contrary, even though no civil action has been instituted
33 against the nonresident testamentary guardian or
34 nonresident committee.
35 (c) Notwithstanding any provision of section nine of
36 this article to the contrary, any nonresident testamentary
37 guardian or nonresident committee who obtains an order
38 described in subsection (a) of this section shall remain
39 accountable to the county commission of the county in
40 which he was appointed or qualified.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within...........................this the 1st day of March 1988.

Governor