

1 **Senate Bill No. 371**

2 (By Senators Carmichael and Karnes)

3 _____
4 [Introduced January 30, 2015; referred to the Committee on the Judiciary.]
5 _____

6
7
8
9 A BILL to amend and reenact §56-1-1a of the Code of West Virginia, 1931, as amended, relating
10 to application of the doctrine of *forum non conveniens* when civil actions involve both legal
11 resident and nonresident plaintiffs.

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

13 That §56-1-1a of the Code of West Virginia, 1931, as amended, be amended and reenacted
14 to read as follows:

15 **ARTICLE 1. VENUE.**

16 **§56-1-1a. Forum non conveniens.**

17 (a) In any civil action if a court of this state, upon a timely written motion of a party, finds
18 that in the interest of justice and for the convenience of the parties a claim or action would be more
19 properly heard in a forum outside this state, the court shall decline to exercise jurisdiction under the
20 doctrine of forum non conveniens and shall stay or dismiss the claim or action, or dismiss any
21 plaintiff: *Provided*, That the plaintiff's choice of a forum is entitled to great deference, but this
22 preference may be diminished when the plaintiff is a nonresident and the cause of action did not arise

1 in this state. In determining whether to grant a motion to stay or dismiss an action, or dismiss any
2 plaintiff under the doctrine of forum non conveniens, the court shall consider:

3 (1) Whether an alternate forum exists in which the claim or action may be tried;

4 (2) Whether maintenance of the claim or action in the courts of this state would work a
5 substantial injustice to the moving party;

6 (3) Whether the alternate forum, as a result of the submission of the parties or otherwise, can
7 exercise jurisdiction over all the defendants properly joined to the plaintiff's claim;

8 (4) The state in which the plaintiff(s) reside;

9 (5) The state in which the cause of action accrued;

10 (6) Whether the balance of the private interests of the parties and the public interest of the
11 state predominate in favor of the claim or action being brought in an alternate forum, which shall
12 include consideration of the extent to which an injury or death resulted from acts or omissions that
13 occurred in this state. Factors relevant to the private interests of the parties include, but are not
14 limited to, the relative ease of access to sources of proof; availability of compulsory process for
15 attendance of unwilling witnesses; the cost of obtaining attendance of willing witnesses; possibility
16 of a view of the premises, if a view would be appropriate to the action; and all other practical
17 problems that make trial of a case easy, expeditious and inexpensive. Factors relevant to the public
18 interest of the state include, but are not limited to, the administrative difficulties flowing from court
19 congestion; the interest in having localized controversies decided within the state; the avoidance of
20 unnecessary problems in conflict of laws, or in the application of foreign law; and the unfairness of
21 burdening citizens in an unrelated forum with jury duty;

22 (7) Whether not granting the stay or dismissal would result in unreasonable duplication or

1 proliferation of litigation; and

2 (8) Whether the alternate forum provides a remedy.

3 (b) A motion pursuant to subsection (a) of this section is timely if it is filed either
4 concurrently or prior to the filing of either a motion pursuant to Rule twelve of the West Virginia
5 Rules of Civil Procedure or a responsive pleading to the first complaint that gives rise to the grounds
6 for such a motion: *Provided*, That a court may, for good cause shown, extend the period for the
7 filing of such a motion.

8 (c) If the statute of limitations in the alternative forum expires while the claim is pending in
9 a court of this state, the court shall grant a dismissal under this section only if each defendant waives
10 the right to assert a statute of limitation defense in the alternative forum. The court may further
11 condition a dismissal under this section to allow for the reinstatement of the same cause of action
12 in the same forum in the event a suit on the same cause of action or on any cause of action arising
13 out of the same transaction or occurrence is commenced in an appropriate alternative forum within
14 sixty days after the dismissal under this section and such alternative forum declines jurisdiction.

15 (d) In actions filed pursuant to Rule twenty-three of the West Virginia Rules of Civil
16 Procedure the provisions of this section shall apply only to the class representative(s).

17 (e) A court that grants a motion to stay or dismiss an action pursuant to this section shall set
18 forth specific findings of fact and conclusions of law.

19 (f) Except as provided in subsection (b) of this section, if an action involves both legal
20 resident and nonresident plaintiffs, the court may not stay or dismiss the action under section one of
21 this article, if the plaintiffs who are legal residents of this state are properly joined in the action and
22 the action arose out of a single occurrence. The court shall dismiss a claim under subsection (a) of

- 1 this section if the court finds by a preponderance of the evidence that a party was joined solely for
- 2 the purpose of obtaining or maintaining jurisdiction in this state and the party's claim would be more
- 3 properly heard in a forum outside this state.

NOTE: The purpose of this bill is to provide for the application of the doctrine of forum non conveniens when civil actions involve both legal resident and nonresident plaintiffs and the proper dismissal of such actions.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.