

HB4013 CC #1 3-6

90 days

Robey 7888

Senator Trump, from the committee of conference on matters of disagreement between the two houses, as to

Eng. House Bill No. 4013, Clarifying venue in West Virginia state courts as it applies to nonresidents of the state.

Submitted the following report, which was received:

Your committee of conference on the disagreeing votes of the two houses as to the amendments of the Senate to Engrossed Committee Substitute for House Bill 4013 having met, after full and free conference, have agreed to recommend and do recommend to their respective houses, as follows:

That both houses recede from their respective positions as to the amendment of the Senate, striking out everything after the enacting clause, and agree to the same as follows:

CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.

ARTICLE 9A. OPEN GOVERNMENTAL PROCEEDINGS.

§6-9A-6. Enforcement by injunctions; actions in violation of article voidable; voidability of bond issues.

1 The circuit court in the county where the public agency regularly meets has jurisdiction
2 and is a proper venue to enforce this article upon civil action commenced by any citizen of this
3 state within 120 days after the action complained of was taken or the decision complained of was
4 made. Where the action seeks injunctive relief, no bond may be required unless the petition
5 appears to be without merit or made with the sole intent of harassing or delaying or avoiding return
6 by the governing body.

7 The court is empowered to compel compliance or enjoin noncompliance with the
8 provisions of this article and to annul a decision made in violation of this article. An injunction may
9 also order that subsequent actions be taken or decisions be made in conformity with the
10 provisions of this article: *Provided*, That no bond issue that has been passed or approved by any
11 governing body in this state may be annulled under this section if notice of the meeting at which
12 the bond issue was finally considered was given at least 10 days prior to the meeting by a Class
13 I legal advertisement published in accordance with the provisions of §59-3-1 *et seq.* of this code
14 in a qualified newspaper having a general circulation in the geographic area represented by that
15 governing body.

16 In addition to or in conjunction with any other acts or omissions which may be determined
17 to be in violation of this article, it is a violation of this article for a governing body to hold a private
18 meeting with the intention of transacting public business, thwarting public scrutiny and making
19 decisions that eventually become official action.

20 Any order which compels compliance or enjoins noncompliance with the provisions of this
21 article, or which annuls a decision made in violation of this article shall include findings of fact and
22 conclusions of law and shall be recorded in the minutes of the governing body.

CHAPTER 14. CLAIMS DUE AND AGAINST THE STATE.

ARTICLE 2. CLAIMS AGAINST THE STATE.

§14-2-2a. Venue for suits and actions involving ~~West Virginia University and Marshall~~ ~~University~~ state institutions of higher education.

1 (a) Notwithstanding the provisions of §14-2-2 of this code, any civil action in which ~~the~~
2 ~~West Virginia University board of Governors, West Virginia University, the West Virginia University~~
3 ~~Medical School~~ the governing board of any state institution of higher education, any state
4 institution of higher education, or any department or office of any of those entities, or any officer,
5 employee, agent, intern or resident of any of those entities, acting within the scope of his or her

6 employment, is made a party defendant, shall be brought in the circuit court of any county wherein
7 the cause of action arose, unless otherwise agreed by the parties.

8 ~~(b) Notwithstanding the provisions of section two of this article, any civil action in which~~
9 ~~Marshall University board of Governors, Marshall University, the Marshall University School of~~
10 ~~Medicine or any department or office of any of those entities, or any officer, employee, agent,~~
11 ~~intern or resident of any of those entities, acting within the scope of his or her employment, is~~
12 ~~made a party defendant, shall be brought in the circuit court of any county wherein the cause of~~
13 ~~action arose, unless otherwise agreed by the parties.~~

14 ~~(e)~~ (b) The exclusive venue provisions of this section are not applicable to:

15 (1) An action involving an entity or person named in subsections (a) ~~or (b)~~ of this section
16 as garnishee or suggestee; and

17 (2) A proceeding for injunctive or mandamus relief involving the taking, title, or collection
18 for or prevention of damage to real property, and where general laws or court rules provide that
19 proper venue is in the county in which the real property affected is situate.

20 ~~(d)~~ (c) This section ~~shall apply~~ applies only to such proceedings ~~as are~~ not prohibited by
21 the constitutional immunity of the state from suit under section thirty-five, article VI of the
22 Constitution of the State.

CHAPTER 56. PLEADING AND PRACTICE.

ARTICLE 1. VENUE.

§56-1-1. Venue generally.

(a) Any civil action or other proceeding, except where it is otherwise specially provided,
may hereafter be brought in the circuit court of any county:

(1) Wherein any of the defendants may reside or the cause of action arose, except that an
action of ejectment or unlawful detainer must be brought in the county wherein the land sought to
be recovered, or some part thereof, is;

(2) If a corporation or other corporate entity ~~be~~ is a defendant, wherein its principal office is or wherein its mayor, president or other chief officer resides; or if its principal office be not in this state, and its mayor, president or other chief officer do not reside therein, wherein it does business; or if it ~~be~~ is a corporation or other corporate entity organized under the laws of this state which has its principal office located outside of this state and which has no office or place of business within the state, the circuit court of the county in which the plaintiff resides or the circuit court of the county in which the seat of state government is located ~~shall have~~ has jurisdiction of all actions at law or suits in equity against the corporation or other corporate entity, where the cause of action arose in this state or grew out of the rights of stockholders with respect to corporate management;

(3) If it ~~be~~ is to recover land or subject it to a debt, where the land or any part may be;

(4) If it ~~be~~ is against one or more nonresidents of the state, where any one of them may be found and served with process or may have estate or debts due him, her, or them;

(5) If it ~~be~~ is to recover a loss under any policy of insurance upon either property, life or health or against injury to a person, where the property insured was situated either at the date of the policy or at the time when the right of action accrued or the person insured had a legal residence at the date of his or her death or at the time when the right of action accrued;

(6) If it ~~be~~ is on behalf of the state in the name of the Attorney General or otherwise, where the seat of government is; or

(7) If a judge of a circuit ~~be~~ is interested in a case which, but for such interest, would be proper for the jurisdiction of his or her court, the action or suit may be brought in any county in an adjoining circuit.

(b) Whenever a civil action or proceeding is brought in the county where the cause of action arose under the provisions of subsection (a) of this section, if no defendant resides in the county, a defendant to the action or proceeding may move the court before which the action is pending for a change of venue to a county where one or more of the defendants resides and upon

a showing by the moving defendant that the county to which the proposed change of venue would be made would better afford convenience to the parties litigant and the witnesses likely to be called, and if the ends of justice would be better served by the change of venue, the court may grant the motion

(c) For all civil actions filed on or after July 1, 2018, a nonresident of the state may not bring an action in a court of this state unless all or a substantial part of the acts or omissions giving rise to the claim asserted occurred in this state: *Provided*, That unless barred by the statute of limitations or otherwise time barred in the state where the action arose, a nonresident of this state may file an action in state court in this state if the nonresident cannot obtain jurisdiction in either federal or state court against the defendant in the state where the action arose. A nonresident bringing such an action in this state shall be required to establish, by filing an affidavit with the complaint for consideration by the court, that the action cannot be maintained in the state where the action arose due to lack of any legal basis to obtain personal jurisdiction over the defendant: *Provided, however*, that the provisions of this subsection do not apply to civil actions filed against West Virginia citizens, residents, corporations, or other corporate entities.

In a civil action where more than one plaintiff is joined, each plaintiff must independently establish proper venue. A person may not intervene or join in a pending civil action as a plaintiff unless the person independently establishes proper venue. If venue is not proper as to any such nonresident plaintiff in any court of this state, the court shall dismiss the claims of such plaintiff without prejudice to refile in a court in any other state or jurisdiction. When venue is proper as to one defendant, it is also proper as to any other defendant with respect to all actions arising out of the same transaction or occurrence.

For purposes of this subsection, “nonresident” means any person, whether a citizen of this state or another state, who was domiciled outside the State of West Virginia at the time of the acts or omissions giving rise to the claim asserted: *Provided*, That a member of the armed forces of the United States who is stationed beyond the territorial limits of this state, but who was a

resident of this state at the time of his or her entry into such service, and any full-time student of any college or university of this state, even though he or she is paying nonresident tuition, is considered a resident under this subsection.

And,

That both houses recede from their respective positions as to the title of the bill and agree to the same as follows:

Eng. House Bill No. 4013 -- A BILL to amend and reenact §6-9A-6 of the Code of West Virginia, 1931, as amended; to amend and reenact §14-2-2a of said code, and to amend and reenact §56-1-1 of said code, all relating to venue in West Virginia state courts; providing that the circuit court in the county where the public agency regularly meets is a proper venue for certain claims; providing that any civil action in which the governing board of any state institution of higher education or any state institution of higher education is made a party defendant shall be brought in the circuit court of the county wherein the cause of action arose, unless otherwise agreed upon; providing that nonresidents may not bring actions in the courts of this state unless all or a substantial part of the acts or omissions giving rise to the claim occurred in the state; providing an effective date; providing that nonresidents may file actions in the state courts if they cannot otherwise obtain jurisdiction in the state where the action arose, unless barred by the statute of limitations in the state the action arose; requiring the filing of an affidavit; providing that the provisions do not apply to actions filed against West Virginia citizens, residents, corporations, or other corporate entities; providing that each plaintiff must establish venue; providing that persons may not intervene or join in a pending action as plaintiff unless they independently establish venue; providing that courts shall dismiss claims without prejudice if venue is not proper as to a nonresident plaintiff; providing that venue is proper as to other defendants if venue is proper as to one defendant with respect to all actions arising out of the same transaction or occurrence;

providing a definition of “nonresident”; and providing exceptions for members of the armed forces of the United States and students of any college or university of this state.

Respectfully submitted,

Charles S. Trump IV,

Chair.

Roger Hanshaw,

Chair.

Ryan Weld,

Riley Moore,

Stephen Baldwin,

Conferees on the part of the Senate.

Chad Lovejoy,

*Conferees on the part of the House
of Delegates.*