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SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1993



ENROLLED

Com. Sub. For
HOUSE BILL No. 2596.....

(By Delegates *Williams, Carson,*
Rullidge and Ashley)



Passed *April 9,*..... 1993

In Effect *Ninty Days from*..... Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR

H. B. 2596

(By DELEGATES WILLIAMS, CARPER, RUTLEDGE AND ASHLEY)

[Passed April 9, 1993; in effect ninety days from passage.]

AN ACT to amend and reenact sections ten, thirteen, fourteen, fifteen, seventeen and eighteen, article five, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to suggestions on judgments; setting forth procedures for suggestion on a judgment creditor; requiring judgment creditor to furnish information, to the extent possible, identifying the judgment debtor; defining a suggestee's obligation when served with a summons on a suggestion filed by a judgment creditor; clarifying the effective date of a suggestee execution; and making certain technical corrections.

Be it enacted by the Legislature of West Virginia:

That sections ten, thirteen, fourteen, fifteen, seventeen and eighteen, article five, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 5. PROCEEDINGS IN AID OF EXECUTION; INTERROGATORIES; SUGGESTION.

§38-5-10. Suggestion on judgment; summons against person suggested.

1 (a) Upon a suggestion by the judgment creditor that

2 a person is indebted or liable to the judgment debtor or
3 has in the person's possession or control personal
4 property belonging to the judgment debtor, which debt
5 or liability could be enforced, when due, or which
6 property could be recovered, when it became returnable,
7 by the judgment debtor in a court of law, and which
8 debt or liability or property is subject to the judgment
9 creditor's writ of fieri facias, a summons against such
10 person may be issued out of the office of the clerk of the
11 circuit court of the county in which such person so
12 indebted or liable, or so having such personal property,
13 resides, or, if such person be a nonresident of the state,
14 in the county in which the person may be found, upon
15 an attested copy of such writ of fieri facias being filed
16 with the clerk to be preserved in the clerk's office,
17 requiring such person to answer the suggestion in
18 writing and under oath. The return day of the summons
19 shall be the next term of the court.

20 (b) The suggestion by the judgment creditor provided
21 for herein shall include, to the extent possible, the
22 present address and social security number of the
23 judgment debtor, which information shall be made
24 available to the person suggested for purposes of
25 identifying the judgment debtor and facilitating a
26 proper answer to the suggestion.

**§38-5-13. Contents of answer of person suggested;
verification.**

1 The answer of the person suggested shall state, in
2 addition to the matters required to be disclosed by the
3 summons mentioned in section ten of this article, the
4 nature and amount of liability or indebtedness to the
5 judgment debtor at the time of service of the summons,
6 or a description of the property of the judgment debtor
7 held by the person suggested at the time of service of
8 the summons, and whether the liability of the person,
9 or any part thereof, is represented by a negotiable
10 instrument, and, in the case of a bailee, whether there
11 is outstanding any negotiable warehouse receipt, bill of
12 lading, or other negotiable instrument for any of the
13 personal property in the person's possession or under the
14 person's control. The answer shall be verified in the

15 manner prescribed for the verification of other plead-
16 ings.

§38-5-14. Discharge of person suggested by payment of money or delivery of property; officer's receipt.

1 A person suggested may, at any time before the return
2 day of the summons mentioned in section ten of this
3 article, deliver the property or pay the money for which
4 the person is liable at the time of service of the
5 summons, or a sufficiency thereof to satisfy the execu-
6 tion, and shall thereby be discharged from any further
7 liability under the execution, and, as to the property so
8 delivered and/or money so paid, the person shall be
9 discharged from all liability whatsoever to the judgment
10 debtor: *Provided*, That if the obligation upon which the
11 person is indebted to the judgment debtor is evidenced
12 by a negotiable instrument, the obligation shall not, as
13 to a holder in due course, be discharged by the payment:
14 *Provided, however*, That the right of a holder in due
15 course, of a negotiable warehouse receipt, bill of lading,
16 or other negotiable instrument for any property so
17 delivered, shall not be impaired by the delivery. If any
18 payment or delivery is made to the officer under the
19 provisions of this section, the officer shall give a receipt
20 for, and make a return of, what is so paid and delivered.

§38-5-15. Order of court for payment by person suggested.

1 If it appears from the answer of the person suggested
2 that, at the time the writ of fieri facias was delivered
3 to the officer to be executed, or thereafter, and before
4 the time of the service of the summons, or the return
5 day of the writ of fieri facias, whichever comes first, the
6 person was indebted or liable to the judgment debtor,
7 or had in the person's possession or under the person's
8 control any personal property belonging to the judgment
9 debtor, and that the person had not, before notice of the
10 delivery of the writ of fieri facias to the officer, paid the
11 money or delivered the property to the judgment debtor,
12 or upon the judgment debtor's order, and that the debt
13 or liability to pay the money or deliver the property was

14 not evidenced by a negotiable instrument, the court may
15 order the person to pay the amount so due from the
16 person and to deliver the property, or any part of the
17 money or property, to such person as the court may
18 designate as receiver: *Provided*, That if it shall appear
19 from the answer of the person suggested, that the
20 person's debt or liability to pay money or deliver
21 property is evidenced by a negotiable instrument, the
22 court may order the payment or delivery, but only upon
23 condition that the holder of the negotiable instrument
24 shall deliver the same to the person suggested simul-
25 taneously with the payment of the money or delivery of
26 the property: *Provided, however*, That any person
27 suggested holding property under a pledge or lien shall
28 not be required to deliver up the property except upon
29 payment to such person of the debt secured by the
30 pledge or lien.

§38-5-17. Failure of person suggested to answer.

1 If any person suggested, summoned as provided in
2 this article, fails to answer, the court may either compel
3 the person to answer, or hear proof of the matters
4 required by section fifteen of this article to be disclosed
5 by the person's answer, concerning any debt or liability
6 due by the person to, or personal property in the person's
7 possession or under the person's control of, the judgment
8 debtor at the time of service of the summons, and make
9 the orders in relation thereto as if what is so proved had
10 appeared in the person's answer.

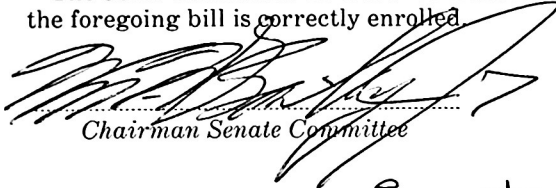
§38-5-18. Jury trial in suggestion proceedings; waiver of jury; right of appeal; costs.

1 When it is suggested by the judgment creditor in any
2 case of suggestion that the person suggested has not
3 fully disclosed the debts or liabilities due by the person
4 to, or personal property in the person's possession or
5 under the person's control of, the judgment debtor at the
6 time of service of the summons, or has not delivered to
7 the officer the property, or paid the money, for which
8 the person was liable, the court shall cause a jury to be
9 impaneled, without any formal pleadings, to inquire as
10 to the debts or liabilities or property, or as to the

11 payment or delivery, unless a trial by jury is waived by
12 the parties, and if trial by jury be waived, the court shall
13 proceed to hear and determine the questions at issue.
14 Whether the issues of fact be found by the court or by
15 a jury, the court shall proceed in respect to any fact so
16 found, in the same manner as if they had been confessed
17 by the person suggested, but either party shall be
18 entitled to a writ of error or an appeal as in other cases.
19 If the verdict or decision of the court be for the person
20 suggested, the person shall have judgment for the
21 person's costs against the judgment creditor, and if the
22 judgment be against the person suggested, the person
23 shall be adjudged liable for the costs of the suggestion
24 proceeding.

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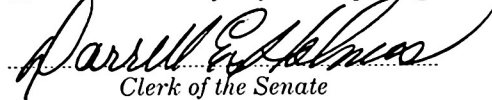
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


.....
Chairman Senate Committee


.....
Chairman House Committee

Originating in the House.

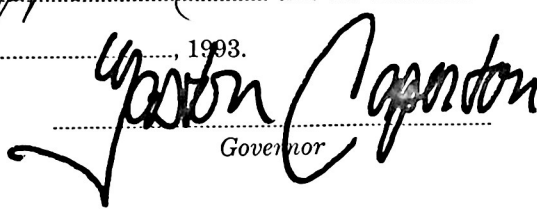
Takes effect ninety days from passage.


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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


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Speaker of the House of Delegates

The within is approved..... this the 26th
day of April..... 1993.

.....
Governor

PRESENTED TO THE

GOVERNOR

Date 4/20/93

Time 10:30am