

5  
2956  
5  
HB

FILED

2007 APR -4 PM 7: 38

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2007



# ENROLLED

## House Bill No. 2956

(By Delegates Webster, DeLong, Ellem, Fleischauer,  
Hamilton, Hrutkay, M. Poling, Proudfoot, Morgan, Varner  
and White)



Passed March 9, 2007

In Effect Ninety Days from Passage

ENROLLED

H. B. 2956

FILED

2007 APR -4 PM 7: 38

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

(BY DELEGATES WEBSTER, DELONG, ELLEM, FLEISCHAUER,  
HAMILTON, HRUTKAY, M. POLING, PROUDFOOT, MORGAN,  
VARNER AND WHITE)

[Passed March 9, 2007; in effect ninety days from passage.]

AN ACT to amend and reenact §56-1-1 of the Code of West Virginia, 1931, as amended, and to amend said code by adding thereto a new section, designated §56-1-1a, relating to civil actions filed in the courts of the state; repealing unconstitutional venue provision; and the codification of the doctrine of forum non conveniens.

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

That §56-1-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section designated as §56-1-1a, all to read as follows:

**ARTICLE 1. VENUE**

**§ 56-1-1. Venue generally.**

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

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

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

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

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

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

34 (6) If it be on behalf of the state in the name of the  
35 attorney general or otherwise, where the seat of government  
36 is; or

37 (7) If a judge of a circuit be interested in a case which,  
38 but for such interest, would be proper for the jurisdiction of

39 his or her court, the action or suit may be brought in any  
40 county in an adjoining circuit.

41 (b) Whenever a civil action or proceeding is brought in  
42 the county where the cause of action arose under the  
43 provisions of subsection (a) of this section, if no defendant  
44 resides in the county, a defendant to the action or proceeding  
45 may move the court before which the action is pending for a  
46 change of venue to a county where one or more of the  
47 defendants resides and upon a showing by the moving  
48 defendant that the county to which the proposed change of  
49 venue would be made would better afford convenience to the  
50 parties litigant and the witnesses likely to be called, and if the  
51 ends of justice would be better served by the change of  
52 venue, the court may grant the motion.

**§56-1-1a. Forum non conveniens.**

1 (a) In any civil action if a court of this state, upon a  
2 timely written motion of a party, finds that in the interest of  
3 justice and for the convenience of the parties a claim or  
4 action would be more properly heard in a forum outside this  
5 state, the court shall decline to exercise jurisdiction under the  
6 doctrine of forum non conveniens and shall stay or dismiss  
7 the claim or action, or dismiss any plaintiff: *Provided*, That  
8 the plaintiff's choice of a forum is entitled to great deference,  
9 but this preference may be diminished when the plaintiff is a  
10 nonresident and the cause of action did not arise in this state.  
11 In determining whether to grant a motion to stay or dismiss  
12 an action, or dismiss any plaintiff under the doctrine of forum  
13 non conveniens, the court shall consider:

14 (1) whether an alternate forum exists in which the claim  
15 or action may be tried;

16 (2) whether maintenance of the claim or action in the  
17 courts of this state would work a substantial injustice to the  
18 moving party;

19 (3) whether the alternate forum, as a result of the  
20 submission of the parties or otherwise, can exercise

21 jurisdiction over all the defendants properly joined to the  
22 plaintiff's claim;

23 (4) the state in which the plaintiff(s) reside;

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

25 (6) whether the balance of the private interests of the  
26 parties and the public interest of the state predominate in  
27 favor of the claim or action being brought in an alternate  
28 forum, which shall include consideration of the extent to  
29 which an injury or death resulted from acts or omissions that  
30 occurred in this state. Factors relevant to the private interests  
31 of the parties include, but are not limited to, the relative ease  
32 of access to sources of proof; availability of compulsory  
33 process for attendance of unwilling witnesses; the cost of  
34 obtaining attendance of willing witnesses; possibility of a  
35 view of the premises, if a view would be appropriate to the  
36 action; and all other practical problems that make trial of a  
37 case easy, expeditious and inexpensive. Factors relevant to  
38 the public interest of the state include, but are not limited to,  
39 the administrative difficulties flowing from court congestion;  
40 the interest in having localized controversies decided within  
41 the state; the avoidance of unnecessary problems in conflict  
42 of laws, or in the application of foreign law; and the  
43 unfairness of burdening citizens in an unrelated forum with  
44 jury duty;

45 (7) whether not granting the stay or dismissal would  
46 result in unreasonable duplication or proliferation of  
47 litigation; and

48 (8) whether the alternate forum provides a remedy.

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

56 (c) If the statute of limitations in the alternative forum  
57 expires while the claim is pending in a court of this state, the  
58 court shall grant a dismissal under this section only if each  
59 defendant waives the right to assert a statute of limitation  
60 defense in the alternative forum. The court may further  
61 condition a dismissal under this section to allow for the  
62 reinstatement of the same cause of action in the same forum  
63 in the event a suit on the same cause of action or on any  
64 cause of action arising out of the same transaction or  
65 occurrence is commenced in an appropriate alternative forum  
66 within sixty days after the dismissal under this section and  
67 such alternative forum declines jurisdiction.

68 (d) Except as provided in subsection (b), section one of  
69 this article, if an action involves both legal resident and non-  
70 resident plaintiffs, the court may not stay or dismiss the  
71 action under subsection (a) if the plaintiffs who are legal  
72 residents of this state are properly joined in the action and the  
73 action arose out of a single occurrence. The court shall  
74 dismiss a claim under subsection (a) if the court finds by a  
75 preponderance of the evidence that a party was joined solely  
76 for the purpose of obtaining or maintaining jurisdiction in  
77 this state and the party's claim would be more properly heard  
78 in a forum outside this state.

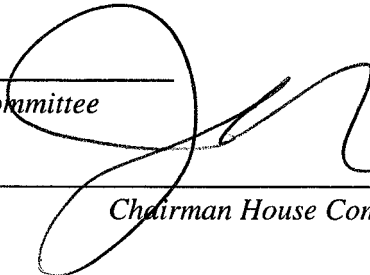
79 (e) In actions filed pursuant to Rule twenty-three of the  
80 West Virginia Rules of Civil Procedure the provisions of this  
81 section shall apply only to the class representative(s).

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

85 (g) For the purposes of this section "legal resident" means  
86 an individual who is a resident of West Virginia at the time  
87 the cause of action arose or at the time the action is filed,  
88 without regard to the individual's country of citizenship or  
89 national origin. The term does not include an individual who  
90 adopts a residence in this State in bad faith for purposes of  
91 avoiding the application of this section.


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

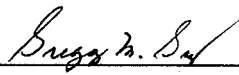
  
\_\_\_\_\_  
Chairman Senate Committee

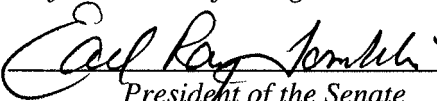
  
\_\_\_\_\_  
Chairman House Committee

Originating in the House.

In effect ninety days from passage.

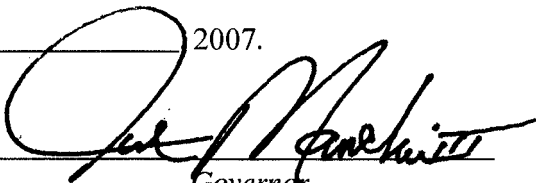
  
\_\_\_\_\_  
Clerk of the Senate

  
\_\_\_\_\_  
Clerk of the House of Delegates

  
\_\_\_\_\_  
President of the Senate

  
\_\_\_\_\_  
Speaker of the House of Delegates

The within is approved this the 4<sup>th</sup>  
day of April 2007.

  
\_\_\_\_\_  
Governor

PRESENTED TO THE  
GOVERNOR

MAR 22 2007

Time 3:45 pm