

1 court shall decline to exercise jurisdiction under the doctrine of
2 forum non conveniens and shall stay or dismiss the claim or action
3 or dismiss any plaintiff. ~~Provided, That~~ The plaintiff's choice of
4 a forum is entitled to great deference but this preference may be
5 diminished when the plaintiff is a nonresident and the cause of
6 action did not arise in this state. In determining whether to
7 grant a motion to stay or dismiss an action or dismiss ~~any~~ a
8 plaintiff under the doctrine of forum non conveniens, the court
9 shall consider:

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

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

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

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

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

20 (6) Whether the balance of the private interests of the
21 parties and the public interest of the state predominate in favor
22 of the claim or action being brought in an alternate forum, which
23 shall include consideration of the extent to which an injury or
24 death resulted from acts or omissions that occurred in this state.

1 Factors relevant to the private interests of the parties include,
2 but are not limited to, the relative ease of access to sources of
3 proof; availability of compulsory process for attendance of
4 unwilling witnesses; the cost of obtaining attendance of willing
5 witnesses; possibility of a view of the premises, if a view would
6 be appropriate to the action; and all other practical problems that
7 make trial of a case easy, expeditious and inexpensive. Factors
8 relevant to the public interest of the state include, but are not
9 limited to, the administrative difficulties flowing from court
10 congestion; the interest in having localized controversies decided
11 within the state; the avoidance of unnecessary problems in conflict
12 of laws or in the application of foreign law; and the unfairness of
13 burdening citizens in an unrelated forum with jury duty;

14 (7) Whether not granting the stay or dismissal would result in
15 unreasonable duplication or proliferation of litigation; and

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

17 (b) A motion pursuant to subsection (a) of this section is
18 timely if it is filed either concurrently or prior to the filing of
19 either a motion pursuant to Rule 12 of the West Virginia Rules of
20 Civil Procedure or a responsive pleading to the first complaint
21 that gives rise to the grounds for such a motion. ~~Provided, That~~
22 A court may, for good cause shown, extend the period for the filing
23 of such a motion.

24 (c) If the statute of limitations in the alternative forum

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

11 (d) Except as provided in subsection (b), section one of this
12 article, if an action involves both legal resident and nonresident
13 plaintiffs, the court may not stay or dismiss the action under
14 subsection (a) if the plaintiffs who are legal residents of this
15 state are properly joined in the action and the action arose out of
16 a single occurrence. The court shall dismiss a claim under
17 subsection (a) if the court finds by a preponderance of the
18 evidence that a party was joined solely for the purpose of
19 obtaining or maintaining jurisdiction in this state and the party's
20 claim would be more properly heard in a forum outside this state.

21 ~~(d)~~ (e) In actions filed pursuant to Rule 23 of the West
22 Virginia Rules of Civil Procedure, the provisions of this section
23 shall apply only to the class representative(s).

24 ~~(e)~~ (f) A court that grants a motion to stay or dismiss an

1 action pursuant to this section shall set forth specific findings
2 of fact and conclusions of law.

3 (g) For the purposes of this section, "legal resident" means
4 an individual who is a resident of West Virginia at the time the
5 cause of action arose or at the time the action is filed without
6 regard to the individual's country of citizenship or national
7 origin. The term does not include an individual who adopts a
8 residence in this state in bad faith for purposes of avoiding the
9 application of this section.

NOTE: The purpose of this bill is to provide direction under the doctrine of forum non conveniens when civil actions have both a resident and nonresident plaintiff and to define "legal resident" for purposes of this section.

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