

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **Senate Bill 107**

BY SENATOR TRUMP

[Introduced January 13, 2016;

Referred to the Committee on the Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
2 designated §56-12-1, §56-12-2, §56-12-3, §56-12-4, §56-12-5, §56-12-6, §56-12-7 and  
3 §56-12-8, all relating to creating the Uniform Interstate Depositions and Discovery Act.

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

1 That the Code of West Virginia, 1931, as amended, be amended and reenacted by adding  
2 thereto a new article, designated §56-12-1, §56-12-2, §56-12-3, §56-12-4, §56-12-5, §56-12-6,  
3 §56-12-7 and §56-12-8, all to read as follows:

**ARTICLE 12. UNIFORM INTERSTATE DEPOSITIONS AND DISCOVERY ACT.**

**§56-12-1. Short title.**

4 This article may be cited as the Uniform Interstate Depositions and Discovery Act.

**§56-12-2. Definitions.**

5 In this article:

6 “Foreign jurisdiction” means a state other than this state.

7 “Foreign subpoena” means a subpoena issued under authority of a court of record of a  
8 foreign jurisdiction.

9 “Person” means an individual, corporation, business trust, estate, trust, partnership,  
10 limited liability company, association, joint venture, public corporation, government, or  
11 governmental subdivision, agency or instrumentality, or any other legal or commercial entity.

12 “State” means a state of the United States, the District of Columbia, Puerto Rico, the  
13 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the  
14 United States.

15 “Subpoena” means a document, however denominated, issued under authority of a court  
16 of record requiring a person to:

17 (1) Attend and give testimony at a deposition;

18 (2) Produce and permit inspection and copying of designated books, documents, records,  
19 electronically stored information or tangible things in the possession, custody or control of the

20 person; or

21 (3) Permit inspection of premises under the control of the person.

**§56-12-3. Issuance of subpoena.**

22 (a) To request issuance of a subpoena under this section, a party must submit a foreign  
23 subpoena to a clerk of court in the county in which discovery is sought to be conducted in this  
24 state. A request for the issuance of a subpoena under this act does not constitute an appearance  
25 in the courts of this state.

26 (b) When a party submits a foreign subpoena to a clerk of court in this state, the clerk, in  
27 accordance with that court's procedure, shall promptly issue a subpoena for service upon the  
28 person to which the foreign subpoena is directed.

29 (c) A subpoena under subsection (b) of this section must:

30 (1) Incorporate the terms used in the foreign subpoena; and

31 (2) Contain or be accompanied by the names, addresses and telephone numbers of all  
32 counsel of record in the proceeding to which the subpoena relates and of any party not  
33 represented by counsel.

**§56-12-4. Service of subpoena.**

34 A subpoena issued by a clerk of court under section three of this article must be served in  
35 compliance with West Virginia Rules of Civil Procedure.

**§56-12-5. Deposition, production and inspection.**

36 The West Virginia Rules of Civil Procedure apply to subpoenas issued under section three  
37 of this article.

**§56-12-6. Application to court.**

38 An application to the court for a protective order or to enforce, quash, or modify a  
39 subpoena issued by a clerk of court under section three of this article must comply with the rules  
40 or statutes of this state and be submitted to the court in the county in which discovery is to be  
41 conducted.

**§56-12-7. Uniformity of application and construction.**

42 In applying and construing this article, consideration must be given to the need to promote  
43 uniformity of the law with respect to its subject matter among states that enact the uniform act.

**§56-12-8. Application to pending actions.**

44 This article applies to requests for discovery in cases pending on the effective date of this  
45 article.

NOTE: The purpose of this bill is to create the Uniform Interstate Depositions and Discovery Act.

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

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JUDICIARY COMMITTEE AMENDMENT

By striking out the title and substituting therefor a new title, to read as follows:

Eng. Senate Bill 107– A Bill to amend and reenact the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §56-12-1, §56-1-2, §56-12-3, §56-12-4, §56-12-5, §56-12-6, §56-12-7 and §56-12-8, all relating to creating and adopting the Uniform Interstate Depositions and Discovery Act; establishing the short and citation title of the act; defining terms; creating the procedure governing issuance of subpoenas by clerks of the court in this state; clarifying the rules governing service of such subpoenas; establishing application of the West Virginia Rules of Civil Procedure to subpoenas issued under the act; requiring that any application or motion to enforce, quash or modify a subpoena issued under the act comply with the rules and statutes of this state including where to file any such application or motion; encouraging consideration of uniformity of the law with respect to the act whenever it is applied or construed; and establishing the application of the effective date of the act.