

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

House Bill 4013

BY DELEGATES HANSHAW, MILLER, C., OVERINGTON,

GRAVES, WESTFALL, ANDERSON, FRICH, COOPER,

ATKINSON, ROMINE, R., AND HOLLEN

[Introduced January 12, 2018; Referred

to the Committee on the Judiciary]

1 A BILL to repeal §56-1-1a of the Code of West Virginia, 1931, as amended; and to amend and
 2 reenact §56-1-1 of said code, all relating to venue in West Virginia state courts as it applies
 3 to nonresidents of the state and providing that a nonresident generally may not bring an
 4 action in the state unless all or a substantial part of the acts or omissions giving rise to the
 5 claim asserted occurred in this state.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. VENUE.

§56-1-1a. Forum nonconveniens.

1 [Repealed]

§56-1-1. Venue generally.

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

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

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

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

16 (4) If it ~~be~~ is against one or more nonresidents of the state, where any one of them may

17 be found and served with process or may have estate or debts due him or her or them;

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

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

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

27 (b) Whenever a civil action or proceeding is brought in the county where the cause of
28 action arose under the provisions of subsection (a) of this section, if no defendant resides in the
29 county, a defendant to the action or proceeding may move the court before which the action is
30 pending for a change of venue to a county where one or more of the defendants resides and upon
31 a showing by the moving defendant that the county to which the proposed change of venue would
32 be made would better afford convenience to the parties litigant and the witnesses likely to be
33 called, and if the ends of justice would be better served by the change of venue, the court may
34 grant the motion

35 (c) For all civil actions filed on or after July 1, 2018, a nonresident of the state may not
36 bring an action in a court of this state unless all or a substantial part of the acts or omissions giving
37 rise to the claim asserted occurred in this state: *Provided*, That unless barred by the statute of
38 limitations or otherwise time barred in the state where the action arose, a nonresident of this state
39 may file an action in state court in this state if the nonresident cannot obtain jurisdiction in either
40 federal or state court against the defendant in the state where the action arose. A nonresident
41 bringing such an action in this state shall be required to establish, by filing an affidavit with the
42 complaint for consideration by the court, that the action cannot be maintained in the state where

43 the action arose due to lack of any legal basis to obtain personal jurisdiction over the defendant.

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

51 For purposes of this subsection, “nonresident” means any person, whether a citizen of this
52 state or another state, who was domiciled outside the State of West Virginia at the time of the
53 acts or omissions giving rise to the claim asserted: *Provided*, That a member of the armed forces
54 of the United States who is stationed beyond the territorial limits of this state, but who was a
55 resident of this state at the time of his or her entry into such service and any full-time student of
56 any college or university of this state, even though he or she is paying a nonresident tuition, is
57 considered a resident under this subsection.

NOTE: The purpose of this bill is to clarify venue in West Virginia state courts as it applies to nonresidents of the state, and to provide that nonresidents generally may not bring an action in the state unless a substantial part of the acts or omissions giving rise to the claim occurred in the state in order to preserve access to West Virginia courts for West Virginia residents and nonresidents who are actually injured in the state.

This bill also reflects the decision of the Supreme Court of the United States in *Bristol-Myers Squibb Co. v. Superior Court of California*, 137 S. Ct. 1773 (2017), which requires that nonresident plaintiffs have a “connection between the forum and the specific claims at issue” that amounts to the nonresident plaintiffs alleging that they suffered harm in the forum state, in order for courts to claim specific jurisdiction. *Id.* at 1781. As the Supreme Court has previously announced, “[a] corporation’s ‘continuous activity of some sorts within a state is not enough to support the demand that the corporation be amenable to suits unrelated to that activity.’” *Id.* (quoting *Goodyear Dunlop Tire Operations, S.A. v. Brown*, 564 U.S. 915, 927 (2011)).

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