

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 4629

BY DELEGATES STEELE, HANSHAW (MR. SPEAKER),

SUMMERS, ESPINOSA, ELLINGTON, HOUSEHOLDER,

FOSTER, D. JEFFRIES, BARRETT, MAYNOR, AND CRISS

[Passed March 12, 2022; in effect ninety days from passage.]

1 AN ACT to amend and reenact §55-17-3 of the Code of West Virginia, 1931, as amended; and to
2 amend said code by adding thereto a new section, designated §55-17-3a, all relating to
3 actions against the State of West Virginia; providing for expiration of notice of intent to
4 institute an action where an action has not been instituted within the prescribed time
5 period; requiring complaining party or parties to provide a new notice; requiring new
6 notices to be accompanied by the required fee payable to the attorney general or chief
7 officer of the state agency; providing that applicable statute of limitations is not tolled
8 during second or subsequent notices; prohibiting a court from issuing a writ of mandamus,
9 a writ of prohibition or an injunction against the Legislature under the separation of powers
10 provision of the state constitution; prohibiting the naming of the Legislature or its presiding
11 officers in any action challenging the constitutionality of a statute under the separation of
12 powers provision of the state constitution; requiring dismissal of such actions or dismissal
13 of the improperly joined parties; and providing for retrospective and retroactive application
14 of prohibitions to all actions pending at the time of the enactment of this bill.

Be it enacted by the Legislature of West Virginia:

ARTICLE 17. PROCEDURES FOR CERTAIN ACTIONS AGAINST THE STATE.

§55-17-3. Preliminary procedures; service on Attorney General; notice to the Legislature.

1 (a)(1) Notwithstanding any provision of law to the contrary, at least 30 days prior to the
2 institution of an action against a governmental agency, the complaining party or parties shall
3 provide the chief officer of the governmental agency and the Attorney General written notice, by
4 certified mail, return receipt requested, of the alleged claim and the relief desired. Upon receipt,
5 the chief officer of the governmental agency shall immediately forward a copy of the notice to the
6 President of the Senate and the Speaker of the House of Delegates. The provisions of this
7 subdivision do not apply in actions seeking injunctive relief where the court finds that irreparable
8 harm would have occurred if the institution of the action was delayed by the provisions of this
9 subsection.

10 (2) The written notice to the chief officer of the governmental agency and the Attorney
11 General required by subdivision (1) of this subsection is considered to be provided on the date of
12 mailing of the notice by certified mail, return receipt requested. If the written notice is provided to
13 the chief officer of the governmental agency as required by subdivision (1) of this subsection, any
14 applicable statute of limitations is tolled for 30 days from the date the notice is provided and, if
15 received by the governmental agency as evidenced by the return receipt of the certified mail, for
16 30 days from the date of the returned receipt.

17 (3) A copy of any complaint filed in an action as defined in §55-17-2 of this code shall be
18 served on the Attorney General.

19 (b) (1) Notwithstanding any procedural rule or any provision of this code to the contrary in
20 an action instituted against a governmental agency that seeks a judgment, as defined in §55-17-
21 2 of this code, the chief officer of the governmental agency which is named a party to the action
22 shall, upon receipt of service, immediately give written notice thereof, together with a copy of the
23 complaint filed, to the President of the Senate and the Speaker of the House of Delegates.

24 (2) Upon request, the chief officer of the governmental agency shall furnish the President
25 of the Senate and Speaker of the House with copies of pleadings filed and discovery produced in
26 the proceeding and other documents, information, and periodic reports relating to the proceeding
27 as may be requested.

28 (3) The chief officer of a governmental agency who fails without good cause to comply
29 with the provisions of this subsection is guilty of misfeasance. This subsection does not require a
30 notice or report to the President of the Senate and the Speaker of the House that no action has
31 been instituted or is pending against a governmental agency during a specified period.

32 (c) The requirements for notice and delivery of pleadings and other documents to the
33 President of the Senate or Speaker of the House of Delegates pursuant to the provisions of this
34 section do not constitute a waiver of any constitutional immunity or protection that proscribes or
35 limits actions, suits, or proceedings against the Legislature or the State of West Virginia.

36 (d) The exercise of authority granted by the provisions of this section does not subject the
37 Legislature or any member of the Legislature to any terms of a judgment.

38 (e) If 90 days elapse after service of notice required by subsection (a) of this section has
39 been effected and action has not been instituted, then the notice shall be considered to have
40 expired, and before an action may be instituted, the complaining party or parties must provide
41 new notice as required by subsection (a) of this section which shall be accompanied by a second
42 or subsequent notice fee of \$250 to the attorney general and by a second or subsequent notice
43 fee of \$250 to the chief officer of the governmental agency: *Provided*, That no further tolling of
44 any applicable statute of limitations shall occur during any second or subsequent notice.

**§55-17-3a. Legislature and its presiding officers never to be named as parties to a civil
action in court.**

1 (a) Article V of the Constitution of West Virginia provides that the legislative, executive,
2 and judicial departments of the government of West Virginia shall be separate and distinct, so
3 that neither shall exercise the powers properly belonging to either of the others.

4 (b) It is an unconstitutional violation of the separation of powers mandated by Article V of
5 the Constitution of West Virginia for:

6 (1) Any court of this state to issue a writ of mandamus, a writ of prohibition, or an injunction
7 against the Legislature; or

8 (2) Any person to name the Legislature or the presiding officers thereof, in any action
9 challenging the constitutionality of a statute.

10 (c) Pursuant to the separation of powers required by Article V of the West Virginia
11 Constitution, if any suit is filed seeking relief under subdivision (1), subsection (a) of this section,
12 or if any suit is filed naming the legislature, or the presiding officers thereof, in violation of the
13 provisions of subdivision (2), subsection (a) of this section, the court must, upon motion,
14 summarily dismiss the action, or dismiss the parties improperly joined.

15 (c) This section shall be applied retrospectively and retroactively to all actions pending at
16 the time of the enactment of this section.

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

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Chairman, House Committee

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Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

The within this the.....
day of, 2022.

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Governor