

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 138

BY SENATORS AZINGER, TRUMP, AND CLEMENTS

[Introduced January 11, 2023]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §2-1-3, relating to clarifying secondary sources are not the law and public
3 policy of West Virginia in certain instances; and permitting the use of certified questions
4 on issues of first impression in certain circumstances.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. COMMON LAW.

§2-1-3. Secondary sources not controlling.

1 (a) A secondary source, including a legal treatise, scholarly publication, textbook, or other
2 explanatory text, does not constitute the law or public policy of this state and is only persuasive
3 authority to the extent its adoption would create, eliminate, expand, or restrict a cause of action,
4 right, or remedy, or to the extent it is inconsistent with, or in conflict with, or otherwise not
5 addressed by, West Virginia law.

6 (b) On a legal issue of first impression regarding the creation, elimination, expansion, or
7 restriction of a cause of action, right, or remedy, the circuit court may certify its question of law to
8 the Supreme Court of Appeals of West Virginia.