

HB 2194

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WEST VIRGINIA LEGISLATURE  
STATE HOUSE

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1997



# ENROLLED

HOUSE BILL No. 2194

Staton, Amores  
and Fleischauer

(By Delegate S \_\_\_\_\_ )



Passed \_\_\_\_\_ April 11, \_\_\_\_\_ 1997

In Effect \_\_\_\_\_ Ninety Days From \_\_\_\_\_ Passage

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**ENROLLED**

**H. B. 2194**

(BY DELEGATES STATON, AMORES AND FLEISCHAUER)

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[Passed April 11, 1997; in effect ninety days from passage.]

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AN ACT to amend and reenact section ten, article four, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to procedures that must be followed before default judgment against a person in active military service of the United States may be rendered in magistrate court.

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

That section ten, article four, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 4. PROCEDURE BEFORE TRIAL.**

**§50-4-10. Default judgment; confession of judgment.**

1 (a) If a defendant in a civil action fails to appear or  
2 otherwise notify the magistrate court within the time limits  
3 prescribed by section five of this article that he wishes to  
4 contest the action, the magistrate may render judgment as  
5 justice may require as follows:

6 (1) The magistrate shall render judgment by default  
7 only upon affidavit or sworn testimony reflecting the  
8 nature of the claim, whether or not it is for a sum certain  
9 or for a sum which can by computation be made certain,  
10 the defendant's failure to appear or otherwise notify the  
11 court within the time limits prescribed by section five of  
12 this article that he wishes to contest the action and  
13 supporting the relief sought. In the event the plaintiff's  
14 claim is not for a sum certain or for a sum which can by

15 computation be made certain, the court shall require such  
16 further proof by affidavit or sworn testimony as is  
17 necessary to determine the propriety of the relief sought.

18 (2)(A) No judgment by default shall be rendered  
19 against a person who is an infant, incompetent person or  
20 incarcerated convict unless such person is represented in  
21 the action by a guardian ad litem, guardian, committee,  
22 curator or other like fiduciary.

23 (B) No judgment by default may be rendered against  
24 a person in active military service of the United States who  
25 has not made an appearance unless the provisions of 50  
26 App. U.S.C. §520 have been followed, including the  
27 appointment of an attorney upon motion of a plaintiff.

28 (b) Upon motion made by the defendant within  
29 twenty days after the date of such judgment, or, in the case  
30 of a person in the military service, within the time  
31 provided by 50 App. U.S.C. §520, the magistrate may, for  
32 good cause shown, set aside the judgment and set the  
33 matter for trial.

34 (c) If a defendant offers to confess judgment at any  
35 time, the magistrate shall take the same in writing and  
36 render judgment for the amount confessed plus costs. In  
37 the event the amount claimed by the plaintiff exceeds the  
38 amount confessed by the defendant the plaintiff may  
39 request that the matter be set for trial. If the plaintiff's  
40 recovery therein does not exceed the amount confessed,  
41 costs shall be assessed against the plaintiff.

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

*[Handwritten Signature]*

Chairman Senate Committee

*[Handwritten Signature]*

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

*[Handwritten Signature]*

Clerk of the Senate

*[Handwritten Signature]*

Clerk of the House of Delegates

*[Handwritten Signature]*

President of the Senate

*[Handwritten Signature]*

Speaker of the House of Delegates

The within is approved this the 5<sup>th</sup> day of May, 1997.

*[Handwritten Signature]*

Governor

PRESENTED TO THE  
GOVERNOR

Date 4/21/97

Time 11:27am