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**HOUSE BILL NO. 723**

Offered January 9, 2002

Prefiled January 9, 2002

*A BILL to amend and reenact § 26-59 of the Code of Virginia, relating to waiver of surety of nonresident fiduciaries.*

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 Patron—Howell
 

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 Referred to Committee for Courts of Justice
 

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**Be it enacted by the General Assembly of Virginia:****1. That § 26-59 of the Code of Virginia is amended and reenacted as follows:**

§ 26-59. Nonresident fiduciaries.

A. A natural person, not a resident of this Commonwealth, may be appointed or allowed to qualify or act as personal representative, or trustee under a will, of any decedent, or appointed as guardian of an infant's estate, or guardian or conservator of the property of an incapacitated person under Article 1.1 (§ 37.1-134.6 et seq.) of Chapter 4 of Title 37.1.

Qualification of such person as a personal representative, or trustee under a will of any decedent shall be subject to the provisions of Article 1 (§ 64.1-116 et seq.) of Chapter 6 of Title 64.1.

At the time of qualification or appointment each such person shall file with the clerk of the circuit court of the jurisdiction wherein such qualification is had or appointment is made, his consent in writing that service of process in any action or proceeding against him as personal representative, trustee under a will, conservator or guardian, or any other notice with respect to the administration of the estate, trust, or person in his charge in this Commonwealth may be by service upon the clerk of the court in which he is qualified or appointed, or upon such resident of this Commonwealth and at such address as he may appoint in the written instrument. In the event of the death, removal, resignation or absence from this Commonwealth of a resident agent or any successor named by a similar instrument filed with the clerk, or if a resident agent or any such successor cannot with due diligence be found for service at the address designated in such instrument, then any process or notice may be served on the clerk of such circuit court. Notwithstanding §§ 37.1-134.15 and 64.1-121, where any nonresident qualifies, other than as a guardian, pursuant to this subsection, bond with surety shall be required in every case, unless a resident personal representative, trustee, or fiduciary qualifies at the same time or the court ~~or clerk~~ making the appointment waives surety under the provisions of § 26-4.

B. No corporation shall be appointed or allowed to qualify or act as personal representative, or trustee under a will, or as one of the personal representatives or trustees under a will, of any decedent, or appointed or allowed to qualify or act as guardian of an infant, or as one of the guardians of an infant, or guardian of the person or property of an incapacitated person under Article 1.1 (§ 37.1-134.6 et seq.) of Chapter 4 of Title 37.1, or as one of such guardians or conservators, unless such corporation is authorized to do business in this Commonwealth. Nothing in this section shall be construed to impair the validity of any appointment or qualification made prior to January 1, 1962, nor to affect in any way the other provisions of this chapter or of § 64.1-130. The provisions of this section shall not authorize or allow any appointment or qualifications prohibited by § 6.1-5.

C. The fact that an individual nominated or appointed as the guardian of the person of an infant is not a resident of this Commonwealth shall not prevent the qualification of the individual to serve as the sole guardian of the person of the infant.

INTRODUCED

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