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WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1992



ENROLLED

HOUSE BILL No. 4704

(By Delegate Mr. SPEAKER, Mr. CHAMBERS AND
DELEGATE BURK)
[By REQUEST]

Passed MARCH 7, 1992

In Effect July 1, 1992 ~~Passage~~

ENROLLED
H. B. 4704

(By MR. SPEAKER, MR. CHAMBERS, AND DELEGATE BURK)
[By Request]

[Passed March 7, 1992; in effect July 1, 1992.]

AN ACT to amend article one, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty; to amend and reenact sections one and two, article three of said chapter; to further amend said article by adding thereto fifteen new sections, designated sections eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one and thirty-two; and to amend and reenact section thirteen, article four of said chapter, all relating to insurance; defining “authorized insurer” and “unauthorized insurer”; requiring licenses; providing a criminal penalty for noncompliance with licensing requirements; designating certain provisions as the unauthorized insurers act; requiring insurer to be authorized in state or country of domicile; prohibiting transaction of kinds of insurance not defined in section ten, article one of said chapter; designating other unlawful insurance transactions; providing for injunctive relief; creating means of service of process on an unauthorized insurer; providing for enforcement of foreign decrees; establishing a penalty for transacting unauthorized acts of insurance; making persons providing specified coverage subject to regulation by the insurance commissioner; requiring proof of regulation

by the federal government; insurers required to submit to examination by the insurance commissioner; setting forth information to be provided to agents, brokers and others; establishing requirements for the statement of charges; providing for notice of hearing and orders after hearings; administrative fines and modification and review of orders; authorizing administrative fines for violations; and providing for substitute service of process on unlicensed insurers in proceedings before the insurance commissioner.

Be it enacted by the Legislature of West Virginia:

That article one, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section twenty; that sections one and two, article three of said chapter be amended and reenacted; that said article be further amended by adding thereto fifteen new sections, designated sections eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one and thirty-two; and that section thirteen, article four of said chapter be amended and reenacted, all to read as follows:

ARTICLE 1. DEFINITIONS.

§33-1-20. Authorized and unauthorized insurers.

1 (a) An "authorized insurer" is one authorized to
2 transact insurance or reinsurance in this state under a
3 subsisting license issued by the commissioner;

4 (b) An "unauthorized insurer" is one not so authorized.

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

§33-3-1. License required.

1 (a) No person may act as an insurer and no insurer
2 may transact insurance in West Virginia except as
3 authorized by a valid license issued by the commis-
4 sioner, except as to such transactions as are expressly
5 otherwise provided for in this chapter.

6 (b) No such license may be required for an insurer,
7 formerly holding a valid license, to enable it to inves-

8 tigate and settle losses under its policies lawfully
9 written in West Virginia while such license was in
10 effect, or to liquidate such assets and liabilities of the
11 insurer (other than the collection of new premiums) as
12 may have resulted from its former authorized operations
13 in West Virginia.

14 (c) An insurer not transacting new insurance business
15 in West Virginia but continuing collection of premiums
16 on and servicing of policies remaining in force as to
17 residents of or risks located in West Virginia, is
18 transacting insurance in West Virginia for the purpose
19 of premium and annuity tax requirements but is not
20 required to have a license therefor.

21 (d) A domestic insurer or a foreign insurer from
22 offices or by personnel or facilities located in this state
23 shall not solicit insurance applications or otherwise
24 transact insurance in another state or country unless it
25 holds a subsisting license granted to it by the commis-
26 sioner authorizing it to transact the same kind or kinds
27 of insurance in this state.

28 (e) Any officer, director, agent, representative or
29 employee of any insurer who willfully authorizes,
30 negotiates, makes or issues any insurance contract in
31 violation of this section is guilty of a misdemeanor, and,
32 upon conviction thereof, shall be fined not more than ten
33 thousand dollars, or imprisoned in the county jail not
34 more than one year, or both fined and imprisoned.

§33-3-2. Qualifications for license.

1 (a) To qualify for a license to transact insurance in
2 West Virginia an insurer must be otherwise in com-
3 pliance with the provisions of this chapter and with its
4 charter, and must be an incorporated stock insurer, or
5 an incorporated mutual insurer or a reciprocal insurer.

6 (b) No license to transact insurance in this state may
7 be issued, renewed or continued in effect to any
8 domestic, foreign or alien insurer which is owned, or
9 financially controlled, in whole or in part, by any state,
10 or by a foreign government, or any political subdivision,
11 instrumentality or agency of either, or which is an

12 agency of any such state, government or subdivision,
13 unless such insurer was so owned, controlled or consti-
14 tuted prior to the first day of January, one thousand nine
15 hundred fifty-five, and licensed to transact insurance in
16 this state prior to the first day of January, one thousand
17 nine hundred fifty-five.

18 (c) No foreign insurer may be authorized to transact
19 insurance in this state if it is domiciled in a state that
20 does not have reserve requirements that are equal to or
21 greater than those required by article seven of this
22 chapter, as applicable to the kind or kinds of insurance
23 transacted by such insurer, wherever transacted in the
24 United States of America, or which transacts business
25 anywhere in the United States of America on the
26 assessment plan, the stipulated premium plan or any
27 similar plan.

28 (d) No insurer may be authorized to transact a kind
29 of insurance in this state unless duly authorized or
30 qualified to transact such insurance in the state or
31 country of its domicile.

32 (e) No insurer may be authorized to transact in this
33 state any kind of insurance which is not defined in
34 section ten, article one of this chapter.

35 (f) No authority to transact such insurance may be
36 granted or continued to any insurer that is in arrears
37 to the state for fees, licenses, taxes, assessments, fines
38 or penalties accrued on insurance previously transacted
39 in this state.

**§33-3-18. Purpose of enactment of provisions regarding
unauthorized insurers.**

1 The purpose of the enactment of this section and
2 sections nineteen through thirty-two, inclusive, of this
3 article in the regular session of the Legislature during
4 the year one thousand nine hundred ninety-two, is to
5 subject certain persons and insurers to the jurisdiction
6 of the commissioner and the courts of this state in suits
7 by or on behalf of the state. The Legislature declares
8 that it is concerned with the protection of residents of
9 this state against acts by insurers not authorized to

10 transact an insurance business in this state, by the
11 maintenance of fair and honest insurance markets, by
12 protecting authorized insurers which are subject to
13 regulation from unfair competition by unauthorized
14 insurers, and by protecting against the evasion of the
15 insurance regulatory laws of this state. In furtherance
16 of such state interest, the Legislature provides methods
17 in this article for substituted service of process upon
18 such insurers in any proceeding, suit or action in any
19 court and substituted service of any notice, order,
20 pleading or process upon such insurers in any proceed-
21 ing by the commissioner to enforce or effect full
22 compliance with the insurance laws of this state.

§33-3-19. Short title.

1 Sections eighteen through thirty-two, inclusive, of this
2 article constitute and may be cited as the "Unauthorized
3 Insurers Act."

§33-3-20. Unlawful transaction of business; exceptions.

1 (a) As used in this section unless otherwise indicated,
2 "insurer" includes:

3 (1) All corporations, associations, trusts, partnerships,
4 natural persons and other legal entities engaged as
5 principals in the business of insurance, including a
6 fraternal benefit society, a nonprofit corporation
7 offering dental, hospital and medical services, a health
8 maintenance organization and an organization for
9 dental care; and

10 (2) Interinsurance exchanges and mutual benefit
11 societies.

12 (b) It is unlawful for any insurer to transact an
13 insurance business in this state as set forth in subsection
14 (c) of this section, without a license from the commis-
15 sioner. This section does not apply to:

16 (1) Any transaction for which a license is not required
17 pursuant to section one of this article including, but not
18 limited to, the lawful transaction of surplus lines
19 insurance and reinsurance by insurers;

20 (2) Attorneys at law acting in the ordinary relation of

21 attorney and client in the adjustment of claims or losses;
22 and

23 (3) Transactions in this state relative to a policy issued
24 or to be issued outside this state involving insurance on
25 cargo vessels, their craft or hulls, their cargoes, marine
26 builder's risk, commercial marine protection and
27 indemnity or other risk, including strikes and war risks
28 commonly insured under ocean marine forms of policy.
29 Transactions in this state involving group life insurance,
30 group accident and sickness insurance or group annui-
31 ties providing coverage under policies that are recog-
32 nized under articles fourteen and sixteen, respectively,
33 of this chapter where (1) the master policy of such
34 groups was lawfully issued and delivered in and
35 pursuant to the laws of a state in which the insurer was
36 authorized to do an insurance business, to a group
37 organized for purposes other than the procurement of
38 insurance, and where the policyholder is domiciled or
39 otherwise has a bona fide situs, and (2) except for group
40 annuities, the insurer complies with article six, section
41 thirty-five of this chapter. The commissioner may
42 require the insurer which has issued such master policy
43 to submit such information as the commissioner re-
44 quires in order to determine if probable cause exists to
45 convene a hearing to determine whether the total
46 charges for the insurance to the persons insured are
47 reasonable in relation to the benefits provided under
48 such policy.

49 (c) Any of the following acts in this state effected by
50 mail or otherwise by or on behalf of an unauthorized
51 insurer constitutes the transaction of an insurance
52 business in this state:

53 (1) The making of or proposing to make, as an insurer,
54 an insurance contract;

55 (2) The making of or proposing to make, as guarantor
56 or surety, any contract of guaranty or suretyship as a
57 vocation and not merely incidental to any other legiti-
58 mate business or activity of the guarantor or surety;

59 (3) The taking or receiving of any application for
60 insurance;

61 (4) The receiving or collection of any premium,
62 commission, membership fees, assessments, dues or
63 other consideration for any insurance or any part
64 thereof;

65 (5) The issuance or delivery of contracts of insurance
66 to residents of this state or to persons authorized to do
67 business in this state;

68 (6) The acting, directly or indirectly, as an agent for
69 or otherwise representing or aiding on behalf of another
70 any person or insurer in the solicitation, negotiation,
71 procurement or effectuation of insurance or renewals
72 thereof or in the dissemination of information as to
73 coverage or rates, forwarding of applications, delivery
74 of policies or contracts, inspection of risks, fixing of
75 rates, investigating or adjusting of claims or losses,
76 transacting of matters after effectuation of the contract
77 and arising out of it, or in any other manner represent-
78 ing or assisting a person or insurer in the transaction
79 of insurance with respect to subjects of insurance that
80 are resident, located or to be performed in this state.
81 The provisions of this paragraph do not prohibit full-
82 time salaried employees of a corporate insured from
83 acting in the capacity of an insurance manager or buyer
84 in placing insurance on behalf of such an insured;

85 (7) The transacting of any kind of insurance business
86 specifically recognized as transacting an insurance
87 business or transacting insurance within the meaning of
88 provisions of this chapter;

89 (8) The transacting of or proposing to transact any
90 insurance business in substance equivalent to any of the
91 activities described in this subsection, in a manner
92 designed to evade the provisions of this chapter.

93 (d) The venue of an act committed by mail is at the
94 point where the matter transmitted by mail is delivered
95 and takes effect, or in any action filed on behalf of the
96 commissioner is at such point as above described or, at
97 the election of the commissioner, in the circuit court of
98 Kanawha County.

99 (e) The failure of an insurer transacting insurance

100 business in this state to obtain a license does not impair
101 the validity of any act or contract of the insurer and does
102 not prevent the insurer from defending any action at
103 law or suit in equity in any court of this state: *Provided,*
104 That no insurer transacting insurance business in this
105 state without a license may maintain an action in any
106 court of this state to enforce any right, claim or demand
107 arising out of the transaction of such business until the
108 insurer has obtained a license. In the event of a failure
109 by an unauthorized insurer to pay any claim or loss
110 within the provisions of an insurance contract, any
111 person who assisted or in any manner aided directly or
112 indirectly in the procurement of the insurance contract
113 is liable to the insured for the full amount of the claim
114 or loss in the manner provided by the provisions of the
115 insurance contract.

§33-3-21. Injunctive relief.

1 (a) Whenever the commissioner believes, from evi-
2 dence satisfactory to him or her, that any insurer is
3 violating or is about to violate the provisions of sections
4 eighteen through thirty-two, inclusive, of this article, the
5 commissioner may cause a complaint to be filed in any
6 appropriate circuit court of this state seeking to enjoin
7 and restrain such insurer from continuing such violation
8 or engaging therein or doing any act in furtherance
9 thereof.

10 (b) The circuit court shall have jurisdiction of the
11 proceeding and have the power to make and enter an
12 order or judgment awarding such preliminary or final
13 injunctive relief as in its judgment is proper. The
14 commissioner may elect to file such complaint in any
15 circuit where transactions have occurred or in the
16 circuit court of Kanawha County.

§33-3-22. Service of process on unauthorized insurer.

1 (a) Any act of transacting an insurance business as set
2 forth in section twenty of this article by any unautho-
3 rized insurer is equivalent to and constitutes an
4 irrevocable appointment by such an insurer, binding
5 upon him or her, his or her executor or administrator,
6 or successor in interest, of the secretary of state or his

7 or her successor in office, to be the true and lawful
8 attorney of such an insurer upon whom may be served
9 all lawful process in any action, suit or proceeding in
10 any court by the commissioner or by the state and upon
11 whom may be served any notice, order, pleading or
12 process in any proceeding before the commissioner and
13 which arises out of transacting an insurance business in
14 this state by such an insurer. Any act of transacting an
15 insurance business in this state by any unauthorized
16 insurer is signification of its agreement that any such
17 lawful process in such a court action, suit or proceeding
18 any such notice, order, pleading or process in such an
19 administrative proceeding before the commissioner so
20 served is of the same legal force and validity as personal
21 service or process in this state upon such an insurer.

22 (b) Service of process in such an action must be made
23 by delivering to and leaving with the secretary of state,
24 or some person in apparent charge of his or her office,
25 two copies thereof and by payment to the secretary of
26 state the fees prescribed by law. Service upon the
27 secretary of state as attorney is service upon the
28 principal.

29 (c) Upon receipt by the secretary of state of two copies
30 of the process to be served, as set forth in subsection (b)
31 of this section and the payment of all relevant fees, the
32 secretary of state shall cause such process to be served
33 in the manner dictated by section thirteen, article four
34 of this chapter, for service of process on unauthorized
35 or unlicensed insurers.

36 (d) For the purposes of this section, "process" in an
37 action in a court includes only a summons or the initial
38 documents served in such an action. The secretary of
39 state is not required to serve any documents in such an
40 action after the initial service of process.

41 (e) Nothing in this section limits or affects the right
42 to serve any process, notice, order or demand upon any
43 person or insurer in any other manner permitted by law.

§33-3-23. Enforcement of foreign decrees.

1 (a) As used in this section:

2 (1) "Foreign decree" means any decree or order of a
3 court located in a reciprocal state or other state
4 including a court of the United States located therein,
5 against any insurer incorporated or authorized to do
6 business in this state.

7 (2) "Qualified party" means a state regulatory agency
8 acting in its capacity to enforce the insurance laws of
9 its state.

10 (3) "Reciprocal state" means any state or territory of
11 the United States the laws of which contain procedures
12 substantially similar to those specified in this section for
13 the enforcement of decrees or orders issued by courts
14 located in other states or territories of the United States,
15 against any insurer incorporated or authorized to do
16 business in such state or territory.

17 (b) The commissioner may proceed in the courts of this
18 state, any reciprocal state, or any other state to enforce
19 an order or decision in any court proceeding or in any
20 administrative proceeding before the commissioner.

21 (c) The commissioner shall determine which states
22 and territories qualify as reciprocal states and shall
23 maintain at all times an up-to-date list of such states.

24 (d) A copy of any foreign decree authenticated in
25 accordance with federal statutes may be filed in the
26 office of the clerk of any circuit court of this state. The
27 clerk of the circuit court, upon verifying with the
28 commissioner that the decree or order qualified as a
29 foreign decree, shall treat the foreign decree in the same
30 manner as a decree of a circuit court of this state. A
31 foreign decree, so filed, has the same effect and shall be
32 deemed as a decree of a circuit court of this state, and
33 is subject to the same procedures, defenses and proceed-
34 ings for reopening, vacating or staying as a decree of
35 a circuit court of this state and may be enforced or
36 satisfied in like manner.

37 (e) At the time of the filing of the foreign decree,
38 counsel for the commissioner shall make and file with
39 the clerk of the circuit court an affidavit setting forth
40 the name and last known post office address of the

41 defendant. Promptly upon the filing of the foreign
42 decree and the affidavit, the clerk of the circuit court
43 shall mail notice of the filing of the foreign decree to
44 the defendant at the address given and to the commis-
45 sioner and shall make a note of the mailing in the
46 docket. In addition, counsel for the commissioner may
47 mail a notice of the filing of the foreign decree to the
48 defendant and to the commissioner and may file proof
49 of mailing with the clerk of the circuit court. Lack of
50 mailing notice of filing by the clerk of the circuit court
51 shall not affect the enforcement proceedings if proof of
52 mailing by the counsel for the commissioner has been
53 filed. No execution or other process for enforcement of
54 a foreign decree filing under this section may issue until
55 thirty days after the date the decree is filed.

56 (f) If the defendant shows the circuit court:

57 (1) That an appeal from the foreign decree is pending
58 or will be taken, or that a stay of execution has been
59 granted, the court shall stay enforcement of the foreign
60 decree until the appeal is concluded, the time for appeal
61 expires or the stay of execution expires or is vacated
62 upon proof that the defendant has furnished the security
63 for the satisfaction of the decree required by the state
64 in which it was rendered.

65 (2) Any ground upon which enforcement of a decree
66 of any circuit court of this state would be stayed, the
67 court may stay enforcement of the foreign decree which
68 is required in this state.

69 (g) Any person filing a foreign decree shall pay to the
70 clerk of the circuit court such fees as are otherwise
71 authorized by this code.

§33-3-24. Penalty.

1 Any unauthorized insurer who transacts any unauth-
2 orized act of an insurance business as set forth in
3 sections eighteen through thirty-two of this article,
4 inclusive, may be fined by the commissioner, after notice
5 and hearing, pursuant to section thirteen, article two of
6 this chapter, such fine not to exceed twenty thousand
7 dollars.

§33-3-25. Person providing specified coverage.

1 Any person who transacts insurance, transacts an
2 insurance business or provides insurance coverage in
3 this state for the cost of:

4 (a) Medical care;

5 (b) Surgery;

6 (c) Chiropractic;

7 (d) Physical therapy;

8 (e) Speech pathology;

9 (f) Audiology;

10 (g) Professional care of mental health;

11 (h) Dental care;

12 (i) Hospital care; or

13 (j) Ophthalmic care, whether the coverage provides
14 for direct payment, reimbursement or any other method
15 of payment, is subject to regulation by the commissioner
16 and to the provisions of this code unless he or she shows
17 that while transacting insurance, or transacting an
18 insurance business or providing such coverage he or she
19 is subject to regulation by an agency of federal govern-
20 ment.

§33-3-26. Proof of regulation by a federal government agency.

1 A person may show that he or she is subject to
2 regulation by an agency of the federal government by
3 providing the commissioner with the appropriate
4 certificate or other document which permits the person
5 to provide those services.

§33-3-27. Submission to examination by commissioner.

1 Any such person who is unable to show, upon request
2 by the commissioner, that he or she is subject to
3 regulation by an agency of the federal government shall
4 submit to an examination by the commissioner to
5 determine the organization and solvency of the person
6 and to determine whether he or she is in compliance

7 with the applicable provisions of this code.

§33-3-28. Information to be provided to agents, brokers and others.

1 An administrator who advertises or administers
2 coverage in this state which is:

3 (a) Of a kind described in section twenty-five of this
4 article; and

5 (b) Provided by a person described in section twenty-
6 seven of this article shall inform each agent, broker or
7 other person who advertises, procures, renews, con-
8 tinues, sells or negotiates or solicits the sale of such
9 coverage, of the elements of the coverage, including the
10 amount of excess insurance or reinsurance in effect.

§33-3-29. Statement of charges; notice of hearing.

1 (a) If the commissioner has reason to believe that a
2 person described in section twenty-seven of this article
3 is providing any type of coverage described in section
4 twenty-five of this article, the commissioner may:

5 (1) Issue a statement of charges and a notice of a
6 hearing to be held on those charges; and

7 (2) Serve the statement and notice upon the person so
8 charged.

9 (b) The statement and notice must be:

10 (1) Issued pursuant to section thirteen, article two of
11 this chapter; and

12 (2) Served personally, or by certified or registered
13 mail at the last known address of such person, or in
14 compliance with section twenty-two of this article.

§33-3-30. Order after hearing; administrative fines; modification of order.

1 (a) After the commissioner conducts a hearing
2 pursuant to section twenty-nine of this article, he or she
3 shall issue an order pursuant to section thirteen, article
4 two of this chapter. If the commissioner determines that
5 the person being charged has engaged in a practice
6 prohibited by this chapter, the commissioner shall order

7 him or her to cease and desist from that practice.

8 (b) If the person knew or reasonably should have
9 known that he or she was in violation of this chapter,
10 the commissioner may order him or her to pay an
11 administrative fine of not more than one thousand
12 dollars for each act or violation up to an aggregate
13 penalty of twenty thousand dollars.

14 (c) The commissioner may modify or set aside, in
15 whole or in part, any order issued by him or her
16 pursuant to this section, but any such action must be
17 made before the expiration of the period for appeal or
18 before the official record in the proceeding has been
19 filed with the court pursuant to section fourteen, article
20 two of this chapter.

§33-3-31. Review of order.

1 An order issued pursuant to section thirty of this
2 article may be reviewed pursuant to section fourteen,
3 article two of this chapter.

§33-3-32. Administrative fine for violation.

1 If a person violates an order issued pursuant to section
2 thirty of this article, the commissioner may impose an
3 administrative fine after giving notice and a hearing
4 pursuant to section thirteen, article two of this chapter.
5 Such fine may not exceed five thousand dollars for each
6 violation.

ARTICLE 4. GENERAL PROVISIONS.

§33-4-13. Service of process on unlicensed insurers.

1 (a) The purpose of this section is to subject certain
2 insurers to the jurisdiction of the courts of this state in
3 suits by or on behalf of insureds or beneficiaries under
4 certain insurance contracts and to subject said insurers
5 to the jurisdiction of the courts of this state in suits by
6 or on behalf of the insurance commissioner of West
7 Virginia. The Legislature declares that it is a subject
8 of concern that certain insurers, while not licensed to
9 transact insurance in this state, are soliciting the sale
10 of insurance and selling insurance to residents of this
11 state, thus presenting the insurance commissioner with

12 the problem of resorting to courts of foreign jurisdic-
13 tions for the purpose of enforcing the insurance laws of
14 this state for the protection of our citizens. The
15 Legislature declares that it is also a subject of concern
16 that many residents of this state hold policies of
17 insurance issued or delivered in this state by insurers
18 not licensed to transact insurance in this state, thus
19 presenting to such residents the often insuperable
20 obstacle of resorting to distant fora for the purpose of
21 asserting legal rights under such policies. In further-
22 ance of such state interest, the Legislature herein
23 provides a method of substituted service of process upon
24 such insurers and declares that in so doing it exercises
25 its powers to protect its residents and to define, for the
26 purpose of this section, what constitutes transacting
27 insurance in this state, and also exercises powers and
28 privileges available to the state by virtue of public law
29 number fifteen, seventy-ninth Congress of the United
30 States, chapter twenty, first session, Senate number
31 three hundred forty, as amended, which declares that
32 the business of insurance and every person engaged
33 therein shall be subject to the laws of the several states.

34 (b) (1) Any of the following acts in this state, effected
35 by mail or otherwise, by an unlicensed foreign or alien
36 insurer: (i) The issuance or delivery of contracts of
37 insurance to residents of this state or to corporations
38 authorized to do business therein, (ii) the solicitation of
39 applications for such contracts, (iii) the collection of
40 premiums, membership fees, assessments or other
41 considerations for such contracts, or (iv) any other
42 transaction of business, is equivalent to and shall
43 constitute an appointment by such insurer of the
44 secretary of state and his or her successor in office, to
45 be its true and lawful attorney, upon whom may be
46 served all lawful process in any action, suit or proceed-
47 ing instituted by or on behalf of an insured or benefi-
48 ciary arising out of any such contract of insurance, and
49 in any action, suit or proceeding which may be insti-
50 tuted by the insurance commissioner in the name of any
51 such insured or beneficiary or in the name of the state
52 of West Virginia, and in any administrative proceeding
53 before the commissioner, and any such act shall be

54 signification of its agreement that such service of
55 process is of the same legal force and validity as
56 personal service of process in this state upon such
57 insurer.

58 (2) Such service of process upon any such insurer or
59 upon an insurer pursuant to section twenty-two, article
60 three of this chapter in any such action or proceeding
61 in any court of competent jurisdiction of this state, or
62 in any administrative proceeding before the commis-
63 sioner, may be made by serving the secretary of state
64 or his or her chief clerk with two copies and an original
65 thereof and the payment to him or her of a fee of five
66 dollars. The secretary of state shall forward a copy of
67 such process by registered or certified mail to the
68 defendant at its last-known principal place of business
69 and shall keep a record of all process so served upon him
70 or her. Such service of process is sufficient, provided
71 notice of such service and a copy of the process are sent
72 within ten days thereafter by or on behalf of the plaintiff
73 or moving party to the defendant, or responding party,
74 at its last-known principal place of business by regis-
75 tered or certified mail with return receipt requested.
76 The plaintiff or moving party shall file with the clerk
77 of the court in which the action is pending, or with the
78 judge or ~~justice~~ magistrate of such court in case there
79 be no clerk, or in the official records of the commissioner
80 if an administrative proceeding before the commis-
81 sioner, an affidavit of compliance herewith, a copy of the
82 process and either a return receipt purporting to be
83 signed by the defendant or responding party or a person
84 qualified to receive its registered or certified mail in
85 accordance with the rules and customs of the post-office
86 department; or, if acceptance was refused by the
87 defendant or responding party or an agent thereof, the
88 original envelope bearing a notation by the postal
89 authorities that receipt was refused. Service of process
90 so made shall be deemed to have been made within the
91 territorial jurisdiction of any court in this state.

92 (3) Service of process in any such action, suit or
93 proceeding shall in addition to the manner provided in
94 subdivision (2) of this subsection (b) be valid if served

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95 upon any person within this state who, in this state on
96 behalf of such insurer, is

97 (A) Soliciting insurance, or

98 (B) Making, issuing or delivering any contract of
99 insurance, or

100 (C) Collecting or receiving any premium, membership
101 fee, assessment or other consideration for insurance:
102 *Provided*, That notice of such service and a copy of such
103 process are sent within ten days thereafter, by or on
104 behalf of the plaintiff or moving party to the defendant
105 or responding party at the last-known principal place of
106 business of the defendant or responding party, by
107 registered or certified mail with return receipt re-
108 quested. The plaintiff or moving party shall file with the
109 clerk of the court in which the action is pending, or with
110 the judge or magistrate of such court in case there be
111 no clerk, or in the official records of the commissioner
112 if an administrative proceeding before the commis-
113 sioner, an affidavit of compliance herewith, a copy of the
114 process and either a return receipt purporting to be
115 signed by the defendant or responding party, or a person
116 qualified to receive its registered or certified mail in
117 accordance with the rules and customs of the post-office
118 department; or, if acceptance was refused by the
119 defendant or responding party, or an agent thereof, the
120 original envelope bearing a notation by the postal
121 authorities that receipt was refused.

122 (4) The papers referred to in subdivisions (2) and (3)
123 of this subsection (b) shall be filed within thirty days
124 after the return receipt or other official proof of delivery
125 or the original envelope bearing a notation of refusal,
126 as the case may be, is received by the plaintiff or moving
127 party. Service of process shall be complete ten days after
128 such process and the accompanying papers are filed in
129 accordance with this section.

130 (5) Nothing in this section contained shall limit or
131 abridge the right to serve any process, notice or demand
132 upon any insurer in any other manner now or hereafter
133 permitted by law.

134 (c) (1) Before any unauthorized or unlicensed foreign
135 or alien insurer shall file or cause to be filed any
136 pleading in any action, suit or proceeding instituted
137 against it, or any notice, order, pleading or process in
138 an administrative proceeding before the commissioner
139 instituted against such insurer, such unauthorized or
140 unlicensed insurer shall either (i) deposit with the clerk
141 of the court in which such action, suit or proceeding is
142 pending, or with the commissioner in an administrative
143 proceeding before the commissioner, cash or securities
144 or file with such clerk or the commissioner a bond with
145 good and sufficient sureties, to be approved by the court
146 or the commissioner, in an amount to be fixed by the
147 court or commissioner sufficient to secure the payment
148 of any final judgment which may be rendered in such
149 action or administrative proceeding: *Provided*, That the
150 court or the commissioner may in its, his or her
151 respective discretion make an order dispensing with
152 such deposit or bond where the auditor of the state shall
153 have certified to such court or commissioner that such
154 insurer maintains within this state funds or securities
155 in trust or otherwise sufficient and available to satisfy
156 any final judgment which may be entered in such action,
157 suit or proceeding; or (ii) procure a license to transact
158 insurance in this state.

159 (2) The court or the commissioner in any action, suit
160 or proceeding in which service is made in the manner
161 provided in subdivision (2) or (3), subsection (b) of this
162 section may, in its, his or her respective discretion, order
163 such postponement as may be necessary to afford the
164 defendant or responding party reasonable opportunity to
165 comply with the provisions of subdivision (1) of this
166 subsection (c) and to defend such action or proceeding.

167 (3) Nothing in subdivision (1) of this subsection (c) is
168 to be construed to prevent an unauthorized or unlicensed
169 foreign or alien insurer from filing a motion to set aside
170 service thereof made in the manner provided in
171 subdivision (2) or (3), subsection (b) of this section on the
172 grounds that such insurer has not done any of the acts
173 enumerated in subdivision (1), subsection (b) of this
174 section, or in section twenty-two, article three of this

175 chapter.

176 (d) In any action against an unauthorized or unli-
177 censed foreign or alien insurer upon a contract of
178 insurance issued or delivered in this state to a resident
179 thereof or to a corporation authorized to do business
180 therein, if the insurer has failed for thirty days after
181 demand prior to the commencement of the action to
182 make payment in accordance with the terms of the
183 contract, and it appears to the court that such refusal
184 was vexatious and without reasonable cause, the court
185 may allow to the plaintiff a reasonable attorney's fee and
186 include such fee in any judgment that may be rendered
187 in such action. Such fee shall not exceed twelve and one-
188 half percent of the amount which the court finds the
189 plaintiff is entitled to recover against the insurer, but
190 in no event shall such fee be less than twenty-five
191 dollars. Failure of an insurer to defend any such action
192 shall be deemed prima facie evidence that its failure to
193 make payment was vexatious and without reasonable
194 cause.

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

Samuel Pece

Chairman Senate Committee

Ernest C. Morse

Chairman House Committee

Originating in the House.

Takes effect July 1, 1992.

Samuel E. Adams

Clerk of the Senate

Donald G. Kopf

Clerk of the House of Delegates

Kelly Brudette

President of the Senate

Robert Cole

Speaker of the House of Delegates

The within is approved this the 31st
day of March, 1992.

Yaston Caperton

Governor

PRESENTED TO THE

GOVERNOR

Date 3/30/92

Time 2:45 pm