

# WEST VIRGINIA CODE: §33-12C-20

## §33-12C-20. Service of process.

(a) Any act of transacting insurance by an unauthorized person or a nonadmitted insurer is equivalent to and shall constitute an irrevocable appointment by the unauthorized person or insurer, binding upon it, its executor or administrator, or successor in interest of the Secretary of State or his or her successor in office, to be the true and lawful attorney of the unauthorized person or insurer upon whom may be served all lawful process in any action, suit or proceeding in any court by the commissioner or by the state and upon whom may be served any notice, order, pleading or process in any proceeding before the commissioner and which arises out of transacting insurance in this state by the unauthorized person or insurer. Any act of transacting insurance in this state by a nonadmitted insurer shall signify its acceptance of its agreement that any lawful process in such court action, suit or proceeding and any notice, order, pleading or process in such administrative proceeding before the commissioner so served shall be of the same legal force and validity as personal service of process in this state upon the unauthorized person or insurer.

(b) Service of process in the action shall be made by delivering to and leaving with the Secretary of State, or some person in apparent charge of the office, two copies thereof and by payment to the Secretary of State of the fee prescribed by law. Service upon the Secretary of State as attorney shall be service upon the principal.

(c) The Secretary of State shall forward by certified mail one of the copies of the process or notice, order, pleading or process in proceedings before the commissioner to the defendant in the court proceeding or to whom the notice, order, pleading or process in the administrative proceeding is addressed or directed at its last known principal place of business and shall keep a record of all process so served on the commissioner which shall show the day and hour of service. Service is sufficient, provided:

(1) Notice of service and a copy of the court process or the notice, order, pleading or process in the administrative proceeding are sent within fifteen days by certified mail by the plaintiff or the plaintiff's attorney in the court proceeding or by the commissioner in the administrative proceeding to the defendant in the court proceeding or to whom the notice, order, pleading or process in the administrative proceeding is addressed or directed at the last known principal place of business of the defendant in the court or administrative proceeding; and

(2) The defendant's receipt or receipts issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person or insurer to whom the letter is addressed, and an affidavit of the plaintiff or the plaintiff's attorney in a court proceeding or of the commissioner in an administrative proceeding, showing compliance are filed with the clerk of the court in which the action, suit or proceeding is pending or with the commissioner in administrative proceedings, on or

before the date the defendant in the court or administrative proceeding is required to appear or respond, or within such further time as the court or commissioner may allow.

(d) A plaintiff shall not be entitled to a judgment or a determination by default in any court or administrative proceeding in which court process or notice, order, pleading or process in proceedings before the commissioner is served under this section until the expiration of forty-five days from the date of filing of the affidavit of compliance.

(e) Nothing in this section shall limit or affect the right to serve any process, notice, order or demand upon any person or insurer in any other manner now or hereafter permitted by law.

(f) Each nonadmitted insurer assuming insurance in this state, or relative to property, risks or exposures located or to be performed in this state, shall be deemed to have subjected itself to this article.

(g) Notwithstanding conditions or stipulations in the policy or contract, a nonadmitted insurer may be sued upon any cause of action arising in this state, or relative to property, risks or exposures located or to be performed in this state, under any insurance contract made by it.

(h) Notwithstanding conditions or stipulations in the policy or contract, a nonadmitted insurer subject to arbitration or other alternative dispute resolution mechanism arising in this state or relative to property, risks or exposures located or to be performed in this state under an insurance contract made by it shall conduct the arbitration or other alternative dispute resolution mechanism in this state.

(i) A policy or contract issued by the nonadmitted insurer or one which is otherwise valid and contains a condition or provision not in compliance with the requirements of this article is not thereby rendered invalid but shall be construed and applied in accordance with the conditions and provisions which would have applied had the policy or contract been issued or delivered in full compliance with this article.