# WEST VIRGINIA CODE: §33-44-5

**§33-44-5. Service of process on unauthorized insurers.**

(a) Any act of transacting insurance by any unauthorized insurer is equivalent to and constitutes an irrevocable appointment by an unauthorized insurer, binding upon him or her, his or her 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 an unauthorized insurer upon whom may be served all lawful process in any action, suit or proceeding in any court by the commissioner, the state or an insured and upon whom may be served any notice, order, pleading or process in any proceeding before the commissioner and which arises out of transacting an insurance business in this state by such an insurer. Any act of transacting insurance in this state by any unauthorized insurer or any person acting in furtherance of an unauthorized insurer's business, signifies the agreement of the person or unauthorized insurer that any lawful process in such a court action, suit or proceeding or any notice, order, pleading or process in an administrative proceeding before the commissioner so served is of the same legal force and validity as personal service or process in this state upon an insurer.

(b) Service of process in an action must be made by delivering to and leaving with the Secretary of State, or some person in apparent charge of his or her office, two copies thereof and by payment to the Secretary of State the fee prescribed by section two, article one, chapter fifty-nine of this code together with any other fees prescribed by law. Service upon the Secretary of State as attorney is service upon the principal.

(c) Upon receipt by the Secretary of State of two copies of the process to be served, and the payment of all relevant fees, the Secretary of State shall cause the process to be served in the manner prescribed in subsection (d) of this section.

(d) The Secretary of State shall forward a copy of the process by registered or certified mail to the unauthorized insurer or any person acting in furtherance of an unauthorized insurer's business at its last-known principal place of business and shall keep a record of all process so served upon the person or unauthorized insurer. Service of process is sufficient, provided notice of service and a copy of the process are sent within ten days thereafter by or on behalf of the moving party to the responding party, at its last-known principal place of business by registered or certified mail with return receipt requested. The moving party shall file with the clerk of the court in which the action is pending, or with the judge or magistrate of the court in case there be no clerk, or in the official records of the commissioner if an administrative proceeding before the commissioner, an affidavit of compliance herewith, a copy of the process and either a return receipt purporting to be signed by the defendant or responding party or a person qualified to receive its registered or certified mail in accordance with the rules and customs of the post-office department; or, if acceptance was refused by the defendant or responding party or an agent thereof, the original envelope bearing a notation by the postal authorities that receipt was refused.

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Service of process so made is considered to have been made within the territorial jurisdiction of any court in this state.

(e) In addition to the manner provided in subsection (d) of this section, service of process in any action, suit or administrative proceeding shall be valid if served upon any person who engages in any act which constitutes the transaction of unauthorized insurance: Provided, That notice of service and a copy of process are sent within ten days thereafter, by or on behalf of the moving party to the responding party at the last-known principal place of business of the responding party, by registered or certified mail with return receipt requested. The moving party shall file with the clerk of the court in which the action is pending, or with the judge or magistrate of the court in case there be no clerk, or in the official records of the commissioner if an administrative proceeding before the commissioner, an affidavit of compliance herewith, a copy of the process and either a return receipt purporting to be signed by the responding party, or a person qualified to receive its registered or certified mail in accordance with the rules and customs of the post-office department; or, if acceptance was refused by the responding party or an agent thereof, the original envelope bearing a notation by the postal authorities that receipt was refused. In the instance that service of process is refused by the responding party or an agent thereof, service shall be considered sufficient to bestow jurisdiction on the tribunal in which the action was filed.

(f) The papers referred to in subsections (d) and (e) of this section shall be filed within thirty days after the return receipt or other official proof of delivery or the original envelope bearing a notation of refusal, as the case may be, is received by the moving party. Service of process shall be complete ten days after the process and the accompanying papers are filed in accordance with this section.

(g) Nothing contained in this section shall limit or abridge the right to serve any process, notice or demand upon any unauthorized insurer or upon any person engaged in the transaction of insurance in any other manner now or hereafter permitted by law.

(h) For the purposes of this section, "process" in an action in a court includes only a summons or the initial documents served in an action. The Secretary of State is not required to serve any documents in an action after the initial service of process.

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