

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1937



ENROLLED

HOUSE BILL No. 189

(By Mr. Slaven & Skinner)



PASSED

March 1

1937

In Effect

from

Passage

ENROLLED

House Bill No. 189

(By MESSRS. SLAVEN AND SKINNER)

[Passed March 1, 1937; in effect from passage.]

AN ACT to amend article three, chapter fifty-six of the code of West Virginia, one thousand nine hundred thirty-one, by adding thereto section thirty-one, to provide for the service of process on non-resident operators of motor vehicles in legal actions involving accidents or collisions on the streets or highways of West Virginia by appointing the auditor as attorney for the service of process upon such non-resident operators.

Be it enacted by the Legislature of West Virginia:

That article three, chapter fifty-six, of the code of West Virginia, one thousand nine hundred thirty-one, be amended by adding thereto a new section to be designated section thirty-one, to read as follows:

Sec. 31. *Service of Process on Non-Resident Operators of*

2 *Motor Vehicles In Legal Actions Involving Accidents on High-*
3 *ways By Appointing Auditor As Attorney for Service of Such*
4 *Process.* The operation by a non-resident, or by his duly
5 authorized agent, of a motor vehicle upon a public street,
6 road or highway of this state, shall be deemed equivalent to an
7 appointment by such non-resident of the state auditor, or his
8 successor in office, to be his true and lawful attorney upon
9 whom may be served all lawful process in any action or pro-
10 ceeding against him, in any court of record in this state, in-
11 cluding action or proceeding brought by non-resident plain-
12 tiff or plaintiffs, growing out of any accident or collision in
13 which such non-resident may be involved while so operating or
14 so permitting to be operated a motor vehicle on any such
15 street, road or highway, and such operation shall be a signifi-
16 cation of his agreement that any such process against him,
17 which is served in the manner hereinafter provided, shall be
18 of the same legal force and validity as process duly served up-
19 on him in this state.

20 (a) At the time of filing praecipe and before process is
21 issued thereon, the plaintiff, or some one for him, shall exe-
22 cute a bond in the sum of one hundred dollars before the

23 clerk of the court, with surety to be approved by said clerk,
24 conditioned that on failure of the plaintiff to prevail in the
25 action that he will reimburse the defendant, or cause him to
26 be reimbursed, the necessary expense incurred by him in and
27 about the defense of the action in this state, and upon the is-
28 sue of process the clerk will certify thereon that said bond
29 has been given and approved. Service of such process shall
30 be made by leaving the original and a copy thereof with the
31 certificate aforesaid of the clerk thereon, and a fee of two
32 dollars with said auditor, or in his office, and said service
33 shall be sufficient upon said non-resident: *Provided*, That no-
34 tice of such service and a copy of the process shall forthwith
35 be sent by registered mail, return receipt requested, by said
36 auditor to the defendant, and the defendant's return receipt
37 signed by himself or his duly authorized agent or the regis-
38 tered mail so sent by said auditor is refused by the addressee
39 and the registered mail is returned to said auditor, or to his
40 office, showing thereon the stamp of the postoffice depart-
41 ment that delivery has been refused, is appended to the orig-
42 inal process and filed therewith in the clerk's office of the
43 court from which process issued. The court may order such

44 continuances as may be reasonable to afford the defendant
45 opportunity to defend the action.

46 (b) The fee of two dollars, remitted to the said auditor
47 at the time of service, shall be taxed in the costs of the pro-
48 ceeding and said auditor shall pay into the state treasury all
49 funds so coming into his hands from such service. The aud-
50 itor shall keep a record in his office of all such process and
51 the day and hour of service thereof.

52 (c) The following words and phrases, when used in this
53 article, shall, for the purpose of this article and unless a dif-
54 ferent intent on the part of the Legislature be apparent from
55 the context, have the following meanings:

56 (1) "Duly authorized agent" shall mean and include
57 among others a person who operates a motor vehicle in this
58 state for a non-resident as defined in this section and act, in
59 pursuit of business, pleasure, or otherwise, or who comes into
60 this state and operates a motor vehicle therein for, or with
61 the knowledge or acquiescence of, such non-resident; and shall
62 include among others a member of the family of such non-
63 resident or a person who, at the residence, place of business

64 or post office of such non-resident, usually receives and re-
65 ceipts for mail addressed to such non-resident.

66 (2) "Motor vehicle" shall mean and include any self-
67 propelled vehicle, including motorcycle, tractor, and trailer,
68 not operated exclusively upon stationary tracks.

69 (3) "Non-resident" shall mean any person who is not a
70 resident of this state, and among others includes a non-resi-
71 dent firm, partnership, corporation or voluntary association.

72 (4) "Non-resident plaintiff or plaintiffs" shall mean a
73 non-resident of this state who institutes an action in a court
74 in this state having jurisdiction against a non-resident of this
75 state in pursuance of the provisions of this article.

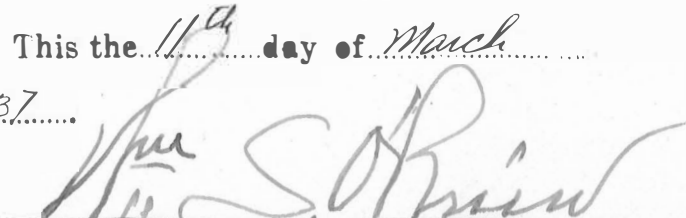
76 (5) "Street," "road" or "highway" shall mean the en-
77 tire width between property lines of every way or place of
78 whatever nature when any part thereof is open to the use of
79 the public, as a matter of right, for purposes of vehicular
80 traffic.

81 (d) The provision for service of process herein is cumu-
82 lative and nothing herein contained shall be construed as a
83 bar to the plaintiff in any action from having process in such
84 action served in any other mode and manner provided by law.

85 (e) This act shall not be retroactive and the provisions
86 thereof shall not be available to a plaintiff in a cause of action
87 arising or an accident occurring prior to the date this act
88 takes effect.

I certify that the foregoing act,
having been presented to the Governor for
his approval, and not having been returned
by him to the House of the Legislature in
which it originated within the time pre-
scribed by the constitution of the state, has
become a law without his approval.

This the 11th day of March
1937.....


SECRETARY OF STATE

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

Paul B. Galbraith

.....
Chairman Senate Committee

Paul B. Baer

.....
Chairman House Committee

Originated in the.....

Takes effect..... passage.

Chas. E. Hays

.....
Clerk of the Senate

Wm. S. Hall

.....
Clerk of the House of Delegates

Chas. E. Hays

.....
President of the Senate

James Kay Thomas

.....
Speaker House of Delegates

The within..... this the.....

day of....., 1937.

.....
Governor.

Filed in the office of the Secretary of State
of West Virginia **MAR 11 1937**
Wm. S. O'BRIEN,
Secretary of State