

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1951



# ENROLLED

HOUSE BILL No. 227

(By Mr. Meadows)



PASSED March 5, 1951

In Effect from Passage



**ENROLLED**  
**House Bill No. 227**  
(By MR. MEADOWS)

[Passed March 5, 1951; in effect from passage.]

AN ACT to amend article two, 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 forty-nine, relating to insurers not authorized to transact business in this state; providing for actions in this state against and for the service of process upon such insurers; prescribing how a defense may be made by such insurers; and providing for the allowance of attorneys fees in actions against such insurers.

*Be it enacted by the Legislature of West Virginia:*

That article two, 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 forty-nine, to read as follows:

Section 49. *Service of Process on Auditor of the State as*  
2 *Attorney for Unauthorized Insurers.*—(1) The purpose of

3 this section is to subject certain insurers to the jurisdic-  
4 tion of the courts of this state in suits by or on behalf  
5 of insureds or beneficiaries under certain insurance con-  
6 tracts. The Legislature declares that it is a subject of con-  
7 cern that many residents of this state hold policies of  
8 insurance issued or delivered in this state by insurers  
9 while not authorized to do business in this state, thus  
10 presenting to such residents the often insuperable obstacle  
11 of resorting to distant forums for the purpose of asserting  
12 legal rights under such policies. In furtherance of such  
13 state interest, the Legislature herein provides a method of  
14 substituted service of process upon such insurers and de-  
15 clares that in so doing it exercises its power to protect  
16 its residents and to define, for the purpose of this section,  
17 what constitutes doing business in this state, and also  
18 exercises powers and privileges available to the state by  
19 virtue of public law number fifteen, seventy-ninth con-  
20 gress of the United States, chapter twenty, first session,  
21 senate number three hundred forty, as amended, which  
22 declares that the business of insurance and every person

23 engaged therein shall be subject to the laws of the several  
24 states.

25 2. (a) Any of the following acts in this state, effected  
26 by mail or otherwise, by an unauthorized foreign or alien  
27 insurer; (1) the issuance or delivery of contracts of in-  
28 surance to residents of this state or to corporations au-  
29 thorized to do business therein, (2) the solicitation of  
30 applications for such contracts, (3) the collection of  
31 premiums, membership fees, assessments or other con-  
32 siderations for such contracts, or (4) any other transac-  
33 tion of business, is equivalent to and shall constitute an  
34 appointment by such insurer of the auditor of the state  
35 and his successor in office, to be its true and lawful attor-  
36 ney, upon whom may be served all lawful process in any  
37 action, suit, or proceeding instituted by or on behalf of an  
38 insured or beneficiary arising out of any such contract  
39 of insurance, and any such act shall be signification of  
40 its agreement that such service of process is of the same  
41 legal force and validity as personal service of process in  
42 this state upon such insurer.

43 (b) Such service of process upon any such insurer in

44 any such action or proceeding in any court of competent  
45 jurisdiction of this state, may be made by serving the  
46 auditor of the state or his chief clerk with two copies  
47 thereof and the payment to him of a fee of two dollars.  
48 The auditor shall forward a copy of such process by regis-  
49 tered mail to the defendant at its last known principal  
50 place of business, and shall keep a record of all process so  
51 served upon him. Such service of process is sufficient,  
52 provided notice of such service and a copy of the process  
53 are sent within ten days thereafter by or on behalf of the  
54 plaintiff to the defendant at its last known principal place  
55 of business by registered mail with return receipt re-  
56 quested. The plaintiff shall file with the clerk of the court  
57 in which the action is pending, or with the judge or jus-  
58 tice of such court, in case there be no clerk, an affidavit  
59 of compliance herewith, a copy of the process, and either  
60 a return receipt purporting to be signed by the defendant  
61 or a person qualified to receive its registered mail in ac-  
62 cordance with the rules and customs of the post office  
63 department; or, if acceptance was refused by the defend-  
64 ant or its agent, the original envelope bearing a notation

65 by the postal authorities that receipt was refused. Service  
66 of process so made shall be deemed to have been made  
67 within the territorial jurisdiction of any court in this  
68 state.

69 (c) Service of process in any such action, suit or pro-  
70 ceeding shall in addition to the manner provided in sub-  
71 section (b) of this section be valid if served upon any  
72 person within this state who, in this state on behalf of  
73 such insurer, is

74 (1) soliciting insurance, or

75 (2) making, issuing or delivering any contract of in-  
76 surance, or

77 (3) collecting or receiving any premium, membership  
78 fee, assessment or other consideration for insurance; pro-  
79 vided notice of such service and a copy of such process  
80 are sent within ten days thereafter, by or on behalf of  
81 the plaintiff to the defendant at the last known principal  
82 place of business of the defendant, by registered mail  
83 with return receipt requested. The plaintiff shall file  
84 with the clerk of the court in which the action is pending,  
85 or with the judge or justice of such court in case thereby

86 no clerk, an affidavit of compliance herewith, a copy of  
87 the process, and either a return receipt purporting to be  
88 signed by the defendant or a person qualified to receive  
89 its registered mail in accordance with the rules and cus-  
90 toms of the post office department; or, if acceptance was  
91 refused by the defendant or its agent the original envelope  
92 bearing a notation by the postal authorities that receipt  
93 was refused.

94 (d) The papers referred to in paragraphs (b) and (c)  
95 of this subsection shall be filed within thirty days after  
96 the return receipt or other official proof of delivery or  
97 the original envelope bearing a notation of refusal, as the  
98 case may be, is received by the plaintiff. Service of process  
99 shall be complete ten days after such process and the  
100 accompanying papers are filed in accordance with this  
101 section.

102 (e) Nothing in this section contained shall limit or  
103 abridge the right to serve any process, notice or demand  
104 upon any insurer in any other manner now or hereafter  
105 permitted by law.

106 3. (a) Before any unauthorized foreign or alien insurer

107 shall file or cause to be filed any pleading in any action,  
108 suit or proceeding instituted against it, such unauthorized  
109 insurer shall either (1) deposit with the clerk of the  
110 court in which such action, suit or proceeding is pending,  
111 cash or securities or file with such clerk a bond with good  
112 and sufficient sureties, to be approved by the court, in an  
113 amount to be fixed by the court sufficient to secure the  
114 payment of any final judgment which may be rendered  
115 in such action: *Provided, however,* That the court may  
116 in its discretion make an order dispensing with such  
117 deposit or bond where the auditor of the state shall have  
118 certified to such court that such insurer maintains within  
119 this state funds or securities in trust or otherwise suffi-  
120 cient and available to satisfy any final judgment which  
121 may be entered in such action, suit or proceeding; or (2)  
122 procure a license to do an insurance business in this  
123 state.

124 (b) The court in any action, suit, or proceedings, in  
125 which service is made in the manner provided in para-  
126 graphs (b) or (c) of subsection two may, in its discretion,  
127 order such postponement as may be necessary to afford



128 the defendant reasonable opportunity to comply with the  
129 provisions of paragraph (a) of this subsection and to de-  
130 fend such action.

131 (c) Nothing in paragraph (a) of this subsection is to  
132 be construed to prevent an unauthorized foreign or alien  
133 insurer from filing a motion to set aside service thereof  
134 made in the manner provided in paragraphs (b) or (c)  
135 of subsection two hereof on the ground either (1) that  
136 such unauthorized insurer has not done any of the acts  
137 enumerated in paragraph (a) of subsection two, or (2)  
138 that the person on whom service was made pursuant to  
139 paragraph (c) of subsection two was not doing any of the  
140 acts therein enumerated.

141 4. In any action against an unauthorized foreign or alien  
142 insurer upon a contract of insurance issued or delivered  
143 in this state to a resident thereof or to a corporation au-  
144 thorized to do business therein, if the insurer has failed  
145 for thirty days after demand prior to the commencement  
146 of the action to make payment in accordance with the  
147 terms of the contract, and it appears to the court that  
148 such refusal was vexatious and without reasonable cause,

149 the court may allow to the plaintiff a reasonable attorney's  
150 fee and include such fee in any judgment that may be  
151 rendered in such action. Such fee shall not exceed twelve  
152 and one-half per cent of the amount which the court finds  
153 the plaintiff is entitled to recover against the insurer, but  
154 in no event shall such fee be less than twenty-five dollars.  
155 Failure of an insurer to defend any such action shall be  
156 deemed prima facie evidence that its failure to make pay-  
157 ment was vexatious and without reasonable cause.

158 5. The provisions of this section shall not apply to any  
159 suit, action or proceeding against any unauthorized for-  
160 eign or alien insurer arising out of any contract of insur-  
161 ance effected in accordance with article seven-a of  
162 this chapter where any such contract contains a provision  
163 designating the auditor or his successor in office its true  
164 and lawful attorney upon whom may be served all lawful  
165 process in any action, suit or proceeding instituted by or  
166 on behalf of an insured or beneficiary arising out of such  
167 contract of insurance.

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

*Robert L. Byrd*  
Chairman Senate Committee

*James M. Loop*  
Chairman House Committee

Originated in the House of Delegates

Takes effect *from* passage.

*Howard Meyer*  
Clerk of the Senate

*J.R. Gless*  
Clerk of the House of Delegates

*W. Raleigh Hunter*  
President of the Senate

*W.E. Dean*  
Speaker House of Delegates

The within *approved* this the *16*

day of *March*, 1951.

*Chas. L. Patton*  
Governor



FILED IN THE OFFICE OF THE SECRETARY OF STATE  
of West Virginia

**MAR 16 1951**

**D. PITT O'BRIEN,**  
SECRETARY OF STATE