

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1961



44

ENROLLED

Committee Substitute for
HOUSE BILL No. 44

(By Mr. Myles)



PASSED March 9 1961

In Effect Ninety Days from Passage

Filed in Office of the Secretary of State
of West Virginia MAR 17 1961
JOE F. BURDETT
SECRETARY OF STATE

ENROLLED
COMMITTEE SUBSTITUTE
FOR
House Bill No. 44

[Passed March 9, 1961; in effect ninety days from passage.]

AN ACT to amend and reenact section thirty-one, article three, chapter fifty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to actions by or against nonresident operators of motor vehicles involved in highway accidents.

Be it enacted by the Legislature of West Virginia:

That section thirty-one, article three, chapter fifty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 31. *Actions by or against Nonresident Operators*
2 *of Motor Vehicles Involved in Highway Accidents.*—The
3 operation by a nonresident, or by his duly authorized
4 agent, of a motor vehicle upon a public street, road or
5 highway of this state, shall be deemed equivalent to an

6 appointment by such nonresident of the state auditor,
7 or his successor in office, to be his true and lawful attor-
8 ney upon whom may be served all lawful process in any
9 action or proceeding against him, in any court of record
10 in this state, including action or proceeding brought by
11 nonresident plaintiff or plaintiffs, growing out of any ac-
12 cident or collision in which such nonresident may be in-
13 volved while so operating or so permitting to be operated
14 a motor vehicle on any such street, road or highway, and
15 such operation shall be a signification of his agreement
16 that any such process against him, which is served in the
17 manner hereinafter provided, shall be of the same legal
18 force and validity as though said non-resident were per-
19 sonally served with a summons and complaint within
20 this state.

21 (a) At the time of filing a complaint and before a
22 summons is issued thereon, the plaintiff, or some one for
23 him, shall execute a bond in the sum of one hundred
24 dollars before the clerk of the court, with surety to be
25 approved by said clerk, conditioned that on failure of the
26 plaintiff to prevail in the action that he will reimburse

27 the defendant, or cause him to be reimbursed, the neces-
28 sary expense incurred by him in and about the defense
29 of the action in this state, and upon the issue of a sum-
30 mons the clerk will certify thereon that said bond has
31 been given and approved. Service shall be made by leav-
32 ing the original and two copies of both the summons and
33 complaint with the certificate aforesaid of the clerk
34 thereon, and a fee of two dollars with said auditor, or
35 in his office, and said service shall be sufficient upon said
36 nonresident: *Provided*, That notice of such service and
37 a copy of the summons and complaint shall forthwith be
38 sent by registered mail, return receipt requested, by said
39 auditor to the defendant, and the defendant's return re-
40 ceipt signed by himself or his duly authorized agent or
41 the registered mail so sent by said auditor is refused
42 by the addressee and the registered mail is returned to
43 said auditor, or to his office, showing thereon the stamp
44 of the postoffice department that delivery has been re-
45 fused, is appended to the original summons and complaint,
46 and filed therewith in the clerk's office of the court from
47 which process issued. The court may order such contin-

48 uances as may be reasonable to afford the defendant op-
49 portunity to defend the action.

50 (b) The fee of two dollars, remitted to the said auditor
51 at the time of service, shall be taxed in the costs of the
52 proceeding and said auditor shall pay into the state
53 treasury all funds so coming into his hands from such
54 services. The auditor shall keep a record in his office of
55 all such process and the day and hour of service thereof.

56 (c) The following words and phrases, when used in this
57 article, shall, for the purpose of this article and unless
58 a different intent on the part of the Legislature be ap-
59 parent from the context, have the following meanings:

60 (1) "Duly authorized agent" shall mean and include
61 among others a person who operates a motor vehicle in
62 this state for a nonresident as defined in this section and
63 chapter, in pursuit of business, pleasure, or otherwise,
64 or who comes into this state and operates a motor ve-
65 hicle therein for, or with the knowledge or acquiescence
66 of, such nonresident; and shall include among others a
67 member of the family of such nonresident or a person
68 who, at the residence, place of business or post office of

69 such nonresident, usually receives and receipts for mail
70 addressed to such nonresident.

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

74 (3) "Nonresident" shall mean any person who is not
75 a resident of this state or resident who has moved from
76 the state subsequent to said accident or collision, and
77 among others includes a nonresident firm, partnership,
78 corporation, or voluntary association, or a firm, part-
79 nership, corporation or voluntary association that has
80 moved from the state subsequent to said accident or
81 collision.

82 (4) "Nonresident plaintiff or plaintiffs" shall mean a
83 nonresident of this state who institutes an action in a
84 court in this state having jurisdiction against a nonresi-
85 dent of this state in pursuance of the provisions of this
86 article.

87 (5) "Street," "road" or "highway" shall mean the en-
88 tire width between property lines of every way or place
89 of whatever nature when any part thereof is open to the

90 use of the public, as a matter of right, for purposes of
91 vehicular traffic.

92 (d) The provision for service of process herein is cumu-
93 lative and nothing herein contained shall be construed
94 as a bar to the plaintiff in any action from having process
95 in such action served in any other mode and manner pro-
96 vided by law.

97 (e) This section shall not be retroactive and the pro-
98 visions thereof shall not be available to a plaintiff in a
99 cause of action arising or an accident occurring prior to
100 the date this section takes effect.

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

James Davis, Jr.
Chairman Senate Committee

Mrs. H. H. Withrow
Chairman House Committee

Originated in the House.

Takes effect *ninety days from* passage.

J. Howard Myers
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

Howard W. Carson
President of the Senate

Julus W. Singleton, Jr.
Speaker House of Delegates

The within *approved* this the *17th*
day of *March*, 1961.

W. R. Barr
Governor



Filed in Office of the Secretary of State
of West Virginia
MAR 17 1961
JOE F. BURDETT
SECRETARY OF STATE