

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1967



ENROLLED

HOUSE BILL No. 594

(By Mr. Hill.....)



PASSED March 9,..... 1967

In Effect thirty days from Passage

FILED IN THE OFFICE  
ROBERT D. BAILEY  
SECRETARY OF STATE  
THIS DATE 3-21-67

# 994

**ENROLLED**  
**House Bill No. 994**  
(By MR. HILL)

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[Passed March 9, 1967; in effect ninety days from passage.]

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AN ACT to amend and reenact section thirteen, article four, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the power of the insurance commissioner to proceed against unlicensed insurers.

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

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

**ARTICLE 4. GENERAL PROVISIONS.**

**§33-4-13. Service of process on unlicensed insurers.**

1 (a) The purpose of this section is to subject certain

2 insurers to the jurisdiction of the courts of this state in  
3 suits by or on behalf of insurers or beneficiaries under  
4 certain insurance contracts and to subject said insurers  
5 to the jurisdiction of the courts of this state in suits  
6 by or on behalf of the insurance commissioner of West  
7 Virginia. The Legislature declares that it is a subject  
8 of concern that certain insurers, while not licensed to  
9 transact insurance in this state, are soliciting the sale  
10 of insurance and selling insurance to residents of this  
11 state, thus presenting the insurance commissioner with  
12 the problem of resorting to courts of foreign jurisdic-  
13 tions for the purpose of enforcing the insurance laws  
14 of this state for the protection of our citizens. The  
15 Legislature declares that it is also a subject of concern  
16 that many residents of this state hold policies of insur-  
17 ance issued or delivered in this state by insurers while  
18 not licensed to transact insurance in this state, thus  
19 presenting to such residents the often insuperable obstacle  
20 of resorting to distant forums for the purpose of  
21 asserting legal rights under such policies. In further-  
22 ance of such State interest, the Legislature herein

23 provides a method of substituted service of process upon  
24 such insurers and declares that in so doing it exercises  
25 its powers to protect its residents and to define, for the  
26 purpose of this section, what constitutes transacting  
27 insurance in this state, and also exercises powers and  
28 privileges available to the state by virtue of public law  
29 number fifteen, seventy-ninth Congress of the United  
30 States, chapter twenty, first session, senate number  
31 three hundred forty, as amended, which declares that  
32 the business of insurance and every person engaged  
33 therein shall be subject to the laws of the sev-  
34 eral states.

35 (b) (1) Any of the following acts in this state,  
36 effected by mail or otherwise, by an unlicensed foreign  
37 or alien insurer: (1) The issuance or delivery of con-  
38 tracts of insurance to residents of this state or to cor-  
39 porations authorized to do business therein, (2) the  
40 solicitation of applications for such contracts, (3) the  
41 collection of premiums, membership fees, assessments  
42 or other considerations for such contracts, or (4) any  
43 other transaction of business, is equivalent to and shall

44 constitute an appointment by such insurer of the auditor  
45 of the state and his successor in office, to be its true and  
46 lawful attorney, upon whom may be served all lawful  
47 process in any action, suit, or proceeding instituted  
48 by or on behalf of an insured or beneficiary arising out  
49 of any such contract of insurance, and in any action,  
50 suit, or proceeding which may be instituted by the in-  
51 surance commissioner in the name of any such insured  
52 or beneficiary or in the name of the state of West Vir-  
53 ginia, and any such act shall be signification of its  
54 agreement that such service of process is of the same  
55 legal force and validity as personal service of process in  
56 this state upon such insurer.

57 (2) Such service of process upon any such insurer  
58 in any such action or proceeding in any court of com-  
59 petent jurisdiction of this state, may be made by serving  
60 the auditor of the state or his chief clerk with two  
61 copies thereof and the payment to him of a fee of two  
62 dollars. The auditor shall forward a copy of such pro-  
63 cess by registered mail to the defendant at its last-known  
64 principal place of business, and shall keep a record

65 of all process so served upon him. Such services of  
66 process is sufficient, provided notice of such service and  
67 a copy of the process are sent within ten days there-  
68 after by or on behalf of the plaintiff to the defendant  
69 at its last-known principal place of business by regis-  
70 tered mail with return receipt requested. The plaintiff  
71 shall file with the clerk of the court in which the action  
72 is pending, or with the judge or justice of such court,  
73 in case there be no clerk, an affidavit of compliance  
74 herewith, a copy of the process, and either a return  
75 receipt purporting to be signed by the defendant or  
76 a person qualified to receive its registered mail in ac-  
77 cordance with the rules and customs of the postoffice  
78 department; or, if acceptance was refused by the de-  
79 fendant or its agent, the original envelope bearing a  
80 notation by the postal authorities that receipt was re-  
81 fused. Service of process so made shall be deemed  
82 to have been made within the territorial jurisdiction of  
83 any court in this state.

84 (3) Service of process in any such action, suit or  
85 proceeding shall in addition to the manner provided

86 in subparagraph (2) of this paragraph (b) be valid  
87 if served upon any person within this state who, in  
88 this state on behalf of such insurer, is

89 A. Soliciting insurance, or

90 B. Making, issuing or delivering any contract of in-  
91 surance, or

92 C. Collecting or receiving any premium, member-  
93 ship fee, assessment or other consideration for insur-  
94 ance; provided notice of such service and a copy of such  
95 process are sent within ten days thereafter, by or on  
96 behalf of the plaintiff to the defendant at the last-known  
97 principal place of business of the defendant, by regis-  
98 tered mail with return receipt requested. The plaintiff  
99 shall file with the clerk of the court in which the action  
100 is pending, or with the judge or justice of such court in  
101 case there be no clerk, an affidavit of compliance here-  
102 with, a copy of the process, and either a return receipt  
103 purporting to be signed by the defendant or a per-  
104 son qualified to receive its registered mail in accordance  
105 with the rules and customs of the postoffice depart-  
106 ment; or, if acceptance was refused by the defendant

107 or its agent the original envelope bearing a no-  
108 tation by the postal authorities that receipt was  
109 refused.

110 (4) The papers referred to in subparagraphs (2)  
111 and (3) of this paragraph (b) shall be filed within  
112 thirty days after the return receipt or other official proof  
113 of delivery or the original envelope bearing a notation  
114 of refusal, as the case may be, is received by the plain-  
115 tiff. Service of process shall be complete ten days after  
116 such process and the accompanying papers are filed in  
117 accordance with this section.

118 (5) Nothing in this section contained shall limit or  
119 abridge the right to serve any process, notice or demand  
120 upon any insurer in any other manner now or here-  
121 after permitted by law.

122 (c) (1) Before any unlicensed foreign or alien in-  
123 surer shall file or cause to be filed any pleading in  
124 any action, suit or proceeding instituted against it, such  
125 unlicensed insurer shall either (1) deposit with the  
126 clerk of the court in which such action, suit or proceed-  
127 ing is pending, cash or securities or file with such clerk



128 a bond with good and sufficient sureties, to be approved  
129 by the court, in an amount to be fixed by the court  
130 sufficient to secure the payment of any final judgment  
131 which may be rendered in such action: *Provided, how-*  
132 *ever,* That the court may in its discretion make an order  
133 dispensing with such deposit or bond where the  
134 auditor of the state shall have certified to such court  
135 that such insurer maintains within this State funds or  
136 securities in trust or otherwise sufficient and available  
137 to satisfy any final judgment which may be entered  
138 in such action, suit or proceeding; or (2) procure a license  
139 to transact insurance in this state.

140 (2) The court in any action, suit or proceeding, in  
141 which service is made in the manner provided in sub-  
142 paragraphs (2) or (3) of paragraph (b) of this section  
143 may, in its discretion, order such postponement as may  
144 be necessary to afford the defendant reasonable oppor-  
145 tunity to comply with the provisions of subparagraph  
146 (1) of this paragraph (c) and to defend such  
147 action.

148 (3) Nothing in subparagraph (1) of this paragraph

149 (c) is to be construed to prevent an unlicensed foreign  
150 or alien insurer from filing a motion to set aside service  
151 thereof made in the manner provided in subparagraphs  
152 (2) or (3) of paragraph (b) of this section on the  
153 grounds either (1) that such unlicensed insurer has not  
154 done any of the acts enumerated in subparagraph (1)  
155 of paragraph (b) of this section, or (2) that the person  
156 on whom service was made pursuant to subparagraph  
157 (3) of paragraph (b) of this section was not doing any  
158 of the acts therein enumerated.

159 (d) In any action against an unlicensed foreign or  
160 alien insurer upon a contract of insurance issued or  
161 delivered in this State to a resident thereof or to a cor-  
162 poration authorized to do business therein, if the in-  
163 surer has failed for thirty days after demand prior to  
164 the commencement of the action to make payment in  
165 accordance with the terms of the contract, and it appears  
166 to the court that such refusal was vexatious and with-  
167 out reasonable cause, the court may allow to the  
168 plaintiff a reasonable attorney's fee and include such  
169 fee in any judgment that may be rendered in such action.

170 Such fee shall not exceed twelve and one half per cent  
171 of the amount which the court finds the plaintiff is  
172 entitled to recover against the insurer, but in no event  
173 shall such fee be less than twenty-five dollars. Failure  
174 of an insurer to defend any such action shall be deemed  
175 prima facie evidence that its failure to make payment  
176 was vexatious and without reasonable cause.

177 (e) The provisions of this section shall not apply  
178 to any suit, action or proceeding against any unlicensed  
179 foreign or alien insurer arising out of any contract of  
180 excess line insurance effected in accordance with article  
181 twelve of this chapter where any such contract con-  
182 tains a provision designating the auditor or his successor  
183 in office its true and lawful attorney upon whom may  
184 be served all lawful process in any action, suit or pro-  
185 ceeding instituted by or on behalf of an insured or bene-  
186 ficiary arising out of such contract of insurance.

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

*William Tompkins*  
 Chairman Senate Committee

*Clayton C. Davidson*  
 Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

*Howard Meyers*  
 Clerk of the Senate

*W. Blankenship*  
 Clerk of the House of Delegates

*Howard W. Carson*  
 President of the Senate

*H. Lebau White*  
 Speaker House of Delegates

The within approved this the 17  
 day of March, 1967.

*Hullett C. Smith*  
 Governor

PRESENTED TO THE  
GOVERNOR

Date 3/17/67

Time 4:00 P.M.