WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1975

ENROLLED

HOUSE BILL No. 1339

Originating in the House Committee on the Judiciary

PASSED March 8, 1975

In Effect July 1, 1975
ENROLLED

H. B. 1339

(Originating in the House Committee on the Judiciary)

[Passed March 8, 1975; in effect July 1, 1975.]

AN ACT to amend and reenact sections twelve and thirteen, article four, chapter thirty-three; sections four and seventeen, article twelve, chapter thirty-three; section twelve, article twenty-one, chapter thirty-three; section three, article twenty-seven, chapter thirty-three; sections seven, eight and nine, article one-a, chapter thirty-eight; section one hundred thirty-seven, article two, chapter forty-six-a; sections eleven and sixteen, article three, chapter fifty; and section thirteen, article three, chapter fifty-six, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended, transferring certain functions from the auditor of this state to the secretary of state of this state insofar as such functions relate to the designation, appointment or constituting of an attorney in fact, true and lawful attorney or agent for the service and acceptance of notice, orders or process for and upon behalf of certain persons, firms and corporations; and providing details with respect to the service of notice, orders and process upon such secretary of state as such attorney in fact, true and lawful attorney or agent for the service and acceptance of notice, orders or process and the acceptance of the same by such secretary of state.

Be it enacted by the Legislature of West Virginia:

That sections twelve and thirteen, article four, chapter thirty-three; sections four and seventeen, article twelve, chapter thirty-three; section twelve, article twenty-one, chapter thirty-three; section three,
article twenty-seven, chapter thirty-three; sections seven, eight and nine, article one-a, chapter thirty-eight; section one hundred thirty-seven, article two, chapter forty-six-a; sections eleven and sixteen, article three, chapter fifty; and section thirteen, article three, chapter fifty-six, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

CHAPTER 33. INSURANCE.

ARTICLE 4. GENERAL PROVISIONS.

§33-4-12. Service of process on licensed insurers.
1 The secretary of state shall be, and is hereby constituted, 2 the attorney in fact of every licensed insurer, domestic, foreign, 3 or alien, transacting insurance in this state, upon whom all 4 legal process in any action, suit or proceeding against it shall 5 be served, and he may accept service of such process. Such 6 process shall be served upon the secretary of state, or ac- 7 cepted by him, in the same manner as provided for service of 8 process upon unlicensed insurers under subdivisions (2) and 9 (3) of subsection (b) of section thirteen of this article. Each 10 licensed insurer shall pay to the secretary of state an annual 11 fee of ten dollars for services as authorized agent for service 12 of process.

§33-4-13. Service of process on unlicensed insurers.
1 (a) The purpose of this section is to subject certain insurers 2 to the jurisdiction of the courts of this state in suits by or on 3 behalf of insureds or beneficiaries under certain insurance 4 contracts and to subject said insurers to the jurisdiction of the 5 courts of this state in suits by or on behalf of the insurance 6 commissioner of West Virginia. The Legislature declares that 7 it is a subject of concern that certain insurers, while not licens- 8 ed to transact insurance in this state, are soliciting the sale of 9 insurance and selling insurance to residents of this state, thus 10 presenting the insurance commissioner with the problem of 11 resorting to courts of foreign jurisdictions for the purpose of 12 enforcing the insurance laws of this state for the protection of 13 our citizens. The Legislature declares that it is also a subject 14 of concern that many residents of this state hold policies of 15 insurance issued or delivered in this state by insurers while not
licensed to transact insurance in this state, thus presenting to
such residents the often insuperable obstacle of resorting to
distant forums for the purpose of asserting legal rights under
such policies. In furtherance of such state interest, the Legis-
lature herein provides a method of substituted service of pro-
cess upon such insurers and declares that in so doing it exer-
cises its powers to protect its residents and to define, for the
purpose of this section, what constitutes transacting insurance
in this state, and also exercises powers and privileges avail-
able to the state by virtue of public law number fifteen, seventy-
inth Congress of the United States, chapter twenty, first
session, senate number three hundred forty, as amended, which
declares that the business of insurance and every person en-
gaged therein shall be subject to the laws of the several states.

(b) (1) Any of the following acts in this state, effected by
mail or otherwise, by an unlicensed foreign or alien insurer:
(1) The issuance or delivery of contracts of insurance to resi-
dents of this state or to corporations authorized to do business
therein, (2) the solicitation of applications for such contracts,
(3) the collection of premiums, membership fees, assessments
or other considerations for such contracts, or (4) any other
transaction of business, is equivalent to and shall constitute an
appointment by such insurer of the secretary of state and his
successor in office, to be its true and lawful attorney, upon
whom may be served all lawful process in any action, suit, or
proceeding instituted by or on behalf of an insured or benefi-
ciary arising out of any such contract of insurance, and in any
action, suit, or proceeding which may be instituted by the in-
surance commissioner in the name of any such insured or bene-
ficiary or in the name of the state of West Virginia, and any
such act shall be signification of its agreement that such ser-
vice of process is of the same legal force and validity as per-
sonal service of process in this state upon such insurer.

(2) Such service of process upon any such insurer in any
such action or proceeding in any court of competent juris-
diction of this state, may be made by serving the secretary of
state or his chief clerk with two copies thereof and the pay-
ment to him of a fee of two dollars. The secretary of state
shall forward a copy of such process by registered mail to the
defendant at its last known principal place of business, and
shall keep a record of all process so served upon him. Such
service of process is sufficient, provided notice of such ser-
vice and a copy of the process are sent within ten days there-
after by or on behalf of the plaintiff to the defendant at its
last known principal place of business by registered mail with
return receipt requested. The plaintiff shall file with the clerk
of the court in which the action is pending, or with the judge
or justice of such court, in case there be no clerk, an affidavat
of compliance herewith, a copy of the process, and either a re-
turn receipt purporting to be signed by the defendant or a per-
son qualified to receive its registered mail in accordance with
the rules and customs of the post office department; or, if
acceptance was refused by the defendant or its agent, the orig-
inal envelope bearing a notation by the postal authorities that
receipt was refused. Service of process so made shall be
deemed to have been made within the territorial jurisdiction
of any court in this state.

(3) Service of process in any such action, suit or proceed-
ing shall in addition to the manner provided in subdivision
(2) of this subsection (b) be valid if served upon any person
within this state who, in this state on behalf of such insurer,
is

A. Soliciting insurance, or

B. Making, issuing or delivering any contract of insurance,
or

C. Collecting or receiving any premium, membership fee,
assessment or other consideration for insurance; provided
notice of such service and a copy of such process are sent
within ten days thereafter, by or on behalf of the plaintiff
to the defendant at the last known principal place of business
of the defendant, by registered mail with return receipt re-
quested. The plaintiff shall file with the clerk of the court
in which the action is pending, or with the judge or justice
of such court in case there be no clerk, an affidavit of
compliance herewith, a copy of the process, and either a
return receipt purporting to be signed by the defendant or
a person qualified to receive its registered mail in accordance
with the rules and customs of the post office department; or,
if acceptance was refused by the defendant or its agent the
original envelope bearing a notation by the postal authorities
that receipt was refused.

(4) The papers referred to in subdivisions (2) and (3) of
this subsection (b) 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 plaintiff. Service of process shall
be complete ten days after such process and the accom-
panying papers are filed in accordance with this section.

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

(c) (1) Before any unlicensed foreign or alien insurer shall
file or cause to be filed any pleading in any action, suit
or proceeding instituted against it, such unlicensed insurer
shall either (1) deposit with the clerk of the court in which
such action, suit or proceeding is pending, cash or securities
or file with such clerk a bond with good and sufficient
sureties, to be approved by the court, in an amount to be
fixed by the court sufficient to secure the payment of any
final judgment which may be rendered in such action:
Provided, however, That the court may in its discretion make
an order dispensing with such deposit or bond where the
auditor of the state shall have certified to such court that such
insurer maintains within this state funds or securities in trust
or otherwise sufficient and available to satisfy any final
judgment which may be entered in such action, suit or pro-
ceeding; or (2) procure a license to transact insurance in this
state.

(2) The court in any action, suit or proceeding, in which
service is made in the manner provided in subdivisions (2)
or (3) of subsection (b) of this section may, in its discretion,
order such postponement as may be necessary to afford the
defendant reasonable opportunity to comply with the pro-
visions of subdivision (1) of this subsection (c) and to defend
such action.
(3) Nothing in subdivision (1) of this subsection (c) is to be construed to prevent an unlicensed foreign or alien insurer from filing a motion to set aside service thereof made in the manner provided in subdivisions (2) or (3) of subsection (b) of this section on the grounds either (1) that such unlicensed insurer has not done any of the acts enumerated in subdivision (1) of subsection (b) of this section, or (2) that the person on whom service was made pursuant to subdivision (3) of subsection (b) of this section was not doing any of the acts therein enumerated.

(d) In any action against an unlicensed foreign or alien insurer upon a contract of insurance issued or delivered in this state to a resident thereof or to a corporation authorized to do business therein, if the insurer has failed for thirty days after demand prior to the commencement of the action to make payment in accordance with the terms of the contract, and it appears to the court that such refusal was vexatious and without reasonable cause, the court may allow to the plaintiff a reasonable attorney’s fee and include such fee in any judgment that may be rendered in such action. Such fee shall not exceed twelve and one-half percent of the amount which the court finds the plaintiff is entitled to recover against the insurer, but in no event shall such fee be less than twenty-five dollars. Failure of an insurer to defend any such action shall be deemed prima facie evidence that its failure to make payment was vexatious and without reasonable cause.

(e) The provisions of this section shall not apply to any suit, action or proceeding against any unlicensed foreign or alien insurer arising out of any contract of excess line insurance effected in accordance with article twelve of this chapter where any such contract contains a provision designating the auditor or secretary of state its true and lawful attorney upon whom may be served all lawful process in any action, suit or proceeding instituted by or on behalf of an insured or beneficiary arising out of such contract of insurance.

ARTICLE 12. AGENTS, BROKERS, SOLICITORS AND EXCESS LINE.

§33-12-4. Requirements and restrictions as to brokers.

(a) Broker's licenses shall be issued only to nonresidents as
provided in section two of this article and only to such applicants as are licensed agents or brokers in a state other than West Virginia and furnish to the commissioner satisfactory proof thereof.

(b) No license shall be issued to any such broker unless he shall file with the commissioner a power of attorney appointing the secretary of state and his successors in office the agent of such broker for the service of process in any suit or proceeding arising in this state out of or in connection with the exercise of such license, and such service of process shall be of the same legal force and validity as personal service of process in this state upon such broker.

(c) No such license shall be issued to any person who is an employer, employee or partner of a licensed agent of this state, nor shall such license be issued to any person who is a salaried employee of any insurer.

(d) No such broker shall solicit, negotiate, make or procure within this state, or aid in any manner in soliciting, negotiating, making or procuring within this state, any insurance contracts covering subjects of insurance resident, located, or to be performed in this state, either on account of any person desiring to procure insurance or on account of any insurer.

(e) A licensed broker lawfully soliciting, negotiating, making or procuring outside this state, or aiding in soliciting, negotiating, making or procuring outside this state, insurance contracts covering subjects of insurance resident, located, or to be performed in this state, shall place all such contracts only with licensed resident agents of this state for insurers licensed in this state.

§33-12-17. Service of process on excess line insurers and brokers.

As to every unlicensed insurer issuing or delivering an excess line policy through an excess line broker in this state, the secretary of state shall be, and is hereby constituted the attorney in fact of each such insurer and broker for service of process in the same manner as for licensed insurers as provided in section twelve, article four of this chapter.
ARTICLE 21. RECIPROCAL INSURERS.

§33-21-12. Process and venue; annual fee.

(a) Concurrently with the filing of the application provided for by the terms of section six of this article, the attorney shall file with the commissioner an instrument in writing, executed by him for said subscribers, conditioned that upon the issuance of the license provided for in section seven of this article any action, suit or other proceeding arising out of any insurance contract or policy issued under such license, may be brought in the county of this state wherein the property insured was situated either at the date of the policy or at the time when the right of action accrued, or in the county of this state wherein the person insured had a legal residence at the date of his death or at the time the right of action accrued, and that service of any process or notice may be had upon the secretary of state in all actions, suits or other proceedings in this state arising out of such policies, contracts, agreements or other business of insurance transacted under such license, and that said secretary of state may accept service of any such process or notice.

(b) Such service or acceptance of service shall be valid and binding upon such attorney and upon all subscribers exchanging at any time reciprocal or interinsurance contracts through such attorney. Two copies of such process or notice, in addition to the original, shall be furnished the secretary of state, and he shall file one copy, forward one copy to said attorney and return the original with his acceptance of service or for return of service. But no process or notice shall be served on the secretary of state or accepted by him less than ten days before the return day thereof. Where the principal office of the attorney is located in this state, service of process may be had upon all subscribers by serving same upon the attorney at said office. Service of process shall not be had upon said subscribers or any of them in any suit or other proceeding in this state except in the manner provided in this section, and any action, suit, or other proceeding may be begun and prosecuted against or defended by them under the name or designation adopted by them.
(c) The attorney shall pay to the secretary of state an annual fee of ten dollars.

ARTICLE 27. INSURANCE HOLDING COMPANY SYSTEMS.

§33-27-3. Acquisition of control of or merger with domestic insurer.

(a) Filing requirements.—No person other than the issuer shall make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities for, seek to acquire or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation thereof, such person would, directly or indirectly (or by conversion or by exercise of any right to acquire) be in control of such insurer, and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic insurer unless, at the time any such offer, request or invitation is made or any such agreement is entered into, or prior to the acquisition of such securities if no offer or agreement is involved, such person has filed with the commissioner and has sent to such insurer, and, to the extent permitted by applicable federal laws, rules and regulations, such insurer has sent to its shareholders a statement containing the information required by this section and such offer, request, invitation, agreement or acquisition has been approved by the commissioner in the manner hereinafter prescribed.

For purposes of this section: A domestic insurer shall include any other person controlling a domestic insurer unless such other person is either directly or through its affiliates primarily engaged in business other than the business of insurance.

(b) Content of statement.—The statement to be filed with the commissioner hereunder shall be made under oath or affirmation and shall contain the following information:

(1) The name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in subsection (a) is to be effected (hereinafter called “acquiring party”), and

(i) If such person is an individual, his principal occupation
and all offices and positions held during the past five years, and
any conviction of crimes other than minor traffic violations
during the past ten years;

(ii) If such person is not an individual, a report of the
nature of its business operations during the past five years
or for such lesser period as such person and any predecessors
thereof shall have been in existence; an informative description
of the business intended to be done by such person and such
person's subsidiaries; and a list of all individuals who are or
who have been selected to become directors or executive
officers of such person, or who perform or will perform
functions appropriate to such positions. Such list shall include
for each such individual the information required by paragraph,
(i) of this subsection.

(2) The source, nature and amount of the consideration
used or to be used in effecting the merger or other acquisition
of control, a description of any transaction wherein funds were
or are to be obtained for any such purpose, and the identity
of persons furnishing such consideration: Provided, That
where a source of such consideration is a loan made in the
lender's ordinary course of business, the identity of the lender
shall remain confidential, if the person filing such statement so
requests.

(3) Fully audited financial information as to the earnings
and financial condition of each acquiring party for the pre-
ceding five fiscal years of each such acquiring party (or for such
lesser period as such acquiring party and any predecessors
thereof shall have been in existence), and similar unaudited
information as of a date not earlier than ninety days prior to the
filing of the statement.

(4) Any plans or proposals which each acquiring party may
have to liquidate such insurer, to sell its assets or merge or
consolidate it with any person, or to make any other material
change in its business or corporate structure or management.

(5) The number of shares of any security referred to in
subsection (a) which each acquiring party proposes to acquire,
and the terms of the offer, request, invitation, agreement or
acquisition referred to in subsection (a), and a statement as
(6) The amount of each class of any security referred to in subsection (a) which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party.

(7) A full description of any contracts, arrangements or understanding with respect to any security referred to in subsection (a) in which any acquiring party is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. Such description shall identify the persons with whom such contracts, arrangements or understandings have been entered into.

(8) A description of the purchase of any security referred to in subsection (a) during the twelve calendar months preceding the filing of the statement, by any acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid therefor.

(9) A description of any recommendations to purchase any security referred to in subsection (a) made during the twelve calendar months preceding the filing of the statement, by an acquiring party, or by anyone based upon interviews or at the suggestion of such acquiring party.

(10) Copies of all tender offers for, requests or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in subsection (a), and (if distributed) of additional soliciting material relating thereto.

(11) The terms of any agreement, contract or understanding made with any broker-dealer as to solicitation of securities referred to in subsection (a) for tender, and the amount of any fees, commissions or other compensation to be paid to broker-dealers with regard thereto.

(12) Such additional information as the commissioner may by rule or regulation prescribe as necessary or appropriate
for the protection of policyholders and security holders of the insurer or in the public interest.

If the person required to file the statement referred to in subsection (a) is a partnership, limited partnership, syndicate or other group, the commissioner may require that the information called for by subdivisions (1) through (12) of this subsection shall be given with respect to each partner of such partnership or limited partnership, each member of such syndicate or group, and each person who controls such partner or member. If any partner, member or person is a corporation or the person required to file the statement referred to in subsection (a) is a corporation, the commissioner may require that the information called for by subdivisions (1) through (12) shall be given with respect to such corporation, and each person who is directly or indirectly the beneficial owner of more than ten percent of the outstanding voting securities of such corporation.

If any material change occurs in the facts set forth in the statement filed with the commissioner and sent to such insurer pursuant to this section, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the commissioner and sent to such insurer within two business days after the person learns of such change. Such insurer shall send such amendment to its shareholders.

(c) Alternative filing materials.—If any offer, request, invitation, agreement or acquisition referred to in subsection (a) is proposed to be made by means of a registration statement under the Securities Act of 1933 or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934, or under a state law requiring similar registration or disclosure, the person required to file the statement referred to in subsection (a) may utilize such documents in furnishing the information called for by that statement.

(d) Approval by commissioner; hearings.—The commissioner shall approve any merger or other acquisition of control referred to in subsection (a) unless, after a public hearing thereon, he finds that any of the following conditions exist:
(i) After the change of control the domestic insurer referred to in subsection (a) would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently authorized;

(ii) The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly therein;

(iii) The financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders or the interests of any remaining security holders who are unaffiliated with such acquiring party;

(iv) The terms of the offer, request, invitation, agreement or acquisition referred to in subsection (a) are unfair and unreasonable to the security holders of the insurer;

(v) The plans or proposals which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the insurer and not in the public interest; or

(vi) The competence, experience and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control.

(2) The public hearing referred to in subdivision (1), subsection (d) of this section shall be held within sixty days after the statement required by subsection (a) is filed, and at least fifteen days' notice thereof shall be given by the commissioner to the person filing the statement. Not less than seven days' notice of such public hearing shall be given by the person filing the statement to the insurer and to such other persons as may be designated by the commissioner. The insurer shall give such notice to its security holders. The commissioner shall make a determination within forty-five days after the conclusion of such hearing.
Mailings to shareholders; payment of expenses.—To the extent permitted by applicable federal laws, rules and regulations, all statements, amendments, or other material filed pursuant to subsection (a) or (b) of this section, and all notices of public hearings held pursuant to subsection (d) of this section, shall be mailed by the insurer to its shareholders within five business days after the insurer has received such statements, amendments, other material, or notices. The expenses of mailing shall be borne by the person making the filing. As security for the payment of such expenses, such person shall file with the commissioner an acceptable bond or other deposit in an amount to be determined by the commissioner.

Exemptions.—The provisions of this section shall not apply to:

Any offers, requests, invitations, agreements or acquisitions by the person referred to in subsection (a) of this section of any voting security referred to in said subsection (a) which, immediately prior to the consummation of such offer, request, invitation, agreement or acquisition, was not issued and outstanding;

Any offer, request, invitation, agreement or acquisition which the commissioner by order shall exempt therefrom as (1) not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer, or (2) as otherwise not comprehended within the purposes of this section.

Violations.—The following shall be violations of this section:

The failure to file any statement, amendment or other material required to be filed pursuant to subsections (a) or (b) of this section; or

The effectuation or any attempt to effectuate an acquisition of control of, or merger with, a domestic insurer unless the commissioner has given his approval thereto.

Jurisdiction; consent to service of process.—The courts of this state are hereby vested with jurisdiction over every
person not resident, domiciled or authorized to do business in this state who files a statement with the commissioner under this section, and over all actions involving such person arising out of violations of this section, and each such person shall be deemed to have performed acts equivalent to and constituting an appointment by such a person of the secretary of state to be his true and lawful attorney upon whom may be served all lawful process in any action, suit or proceeding arising out of violations of this section. Copies of all such lawful process shall be served on the secretary of state and transmitted by registered or certified mail by the secretary of state to such person at his last known address.

CHAPTER 38. LIENS.

ARTICLE 1A. TRUSTEES OF SECURITY TRUSTS.

§36-1A-7. Secretary of state attorney in fact for service on non-resident trustees.

The naming in a security trust of a person not a resident of this state as a trustee, or as one of several trustees thereof, shall be deemed equivalent to an appointment by such non-resident of the secretary of state as attorney in fact of such nonresident trustee upon whom may be served all process and notices in any suit, action, motion or proceeding in any court of record in this state, and such service shall have the same effect as process or notice duly served in person upon such person in this state.

§38-1A-8. How service of process or notice made.

Service of such process or notice shall be made by mailing or delivering to the office of said secretary of state three copies of such process or notice, with a notation thereon of the residence address of the trustee upon whom service is being had, as stated in the security trust; if the address of the trustee be not stated in the security trust, the notation shall state the address of the beneficiary of such trust as given in the security trust; and service thereof shall be complete upon the receipt in said office of such notice or process bearing such notation and accompanied by a fee of two dollars, which shall be taxed as costs in the suit, action or proceeding. The secretary of state
shall pay into the state treasury all funds so coming into his
hands, and shall keep one copy of all such process and notices,
with a record of the day and hour of service thereof.

§38-1A-9. Action by secretary of state following service.

Forthwith upon such service, said secretary of state shall
send to such trustee the second copy of such process or notice,
by registered mail, return receipt requested, to the address
stated in such notation. The third copy of such process or
notice, bearing the acknowledgment of the secretary of state
of the fact of service on him, with his notation of the mailing
of the second copy as above provided, shall be transmitted by
the secretary of state to the clerk of the court issuing the
process or to the person giving the notice, as the case may be.

CHAPTER 46A. WEST VIRGINIA CONSUMER
CREDIT AND PROTECTION ACT.

ARTICLE 2. CONSUMER CREDIT PROTECTION.

§46A-2-137. Service of process on certain nonresidents.

Any nonresident person, except a nonresident corporation
authorized to do business in this state pursuant to the provisions
of chapter thirty-one of this code, who takes or holds any
negotiable instrument, nonnegotiable instrument, or contract or
other writing, arising from a consumer credit sale or consumer
lease which is subject to the provisions of this article, other
than a sale or lease primarily for an agricultural purpose, or
who is a lender subject to the provisions of section one
hundred three of this article, shall be conclusively presumed
to have appointed the secretary of state as his attorney in
fact with authority to accept service of notice and process in
any action or proceeding brought against him arising out of
such consumer credit sale, consumer lease or consumer loan.
A person shall be considered a nonresident hereunder if he is
a nonresident at the time such service of notice and process
is sought. No act of such person appointing the secretary of
state shall be necessary. Immediately after being served with
or accepting any such process or notice, of which process or
notice two copies for each defendant shall be furnished the
secretary of state with the original notice or process, together
with a fee of two dollars, the secretary of state shall file in his
office a copy of such process or notice, with a note thereon
endorsed of the time of service or acceptance, as the case may
be, and transmit one copy of such process or notice by
registered mail, return receipt requested, to such person at
his address, which address shall be stated in such process or
notice: Provided, That such return receipt shall be signed by
such person or an agent or employee of such person if a
corporation, or the registered mail so sent by said secretary
of state is refused by the addressee and the registered mail is
returned to said secretary of state, or to his office, showing
thereon the stamp of the U. S. postal service that delivery
thereof has been refused, and such return receipt or registered
mail is appended to the original process or notice and filed
therewith in the clerk's office of the court from which such
process or notice was issued. But no process or notice shall
be served on the secretary of state or accepted by him less than
ten days before the return date thereof. The court may order
such continuances as may be reasonable to afford each de-
fendant opportunity to defend the action or proceeding.

The provisions for service of process or notice herein are
cumulative and nothing herein contained shall be construed
as a bar to the plaintiff in any action from having process or
notice in such action served in any other mode and manner
provided by law.

CHAPTER 50. JUSTICES AND CONSTABLES.

ARTICLE 3. COMMENCEMENT OF ACTIONS AND PROCESS.


1 Unless otherwise specially provided, process against, or
2 notice to, a corporation created by virtue of the laws of this
3 state may be served as follows:

4 (a) If a city, town or village, on its mayor, city manager,
5 recorder, clerk, treasurer or any member of its council or
6 board of commissioners;

7 (b) If a county commission of any county, on any com-
8 missioner or the clerk thereof, or if they be absent, on the
9 prosecuting attorney of the county;
(c) If a board of education of any district or independent school district, on the president or any commissioner thereof, or if they be absent, on the prosecuting attorney of the county;

(d) If any other corporation, on the secretary of state as statutory attorney in fact of such corporation, as provided in section fifteen, article one, chapter thirty-one of this code, or on any person appointed by it to accept service of process in its behalf, or on its president or other chief officer, or its vice president, cashier, assistant cashier, treasurer, assistant treasurer, secretary, or any member of its board of directors, or, if no such officer or director be found, on any agent of such corporation (including in the case of a railroad company a depot or station agent in the actual employment of the company), if any such attorney, officer or agent, be found in the county in which the action, suit or proceeding is instituted.

§50-3-16. Acceptance of service by secretary of state as statutory attorney in fact.

The secretary of state of the state of West Virginia shall accept service of any process against, or any order or notice to, any corporation for which he is statutory attorney in fact, as provided in section fifteen, article one, chapter thirty-one of this code, when such process, order or notice is issued by any justice in this state, or in any proceeding pending in any justice's court of this state.

CHAPTER 56. PLEADING AND PRACTICE.

ARTICLE 3. WRITS, PROCESS AND ORDER OF PUBLICATION.

§56-3-13. Service of process or notice on domestic corporations.

Unless otherwise specially provided, process against, or notice to, a corporation created by virtue of the laws of this state may be served as follows:

(a) If a city, town or village, on its mayor, city manager, recorder, clerk, treasurer, or any member of its council or board of commissioners;

(b) If a county commission of any county, on any commissioner or the clerk thereof, or if they be absent, on the prosecuting attorney of the county;
10  (c) If a board of education of any district or independent
11 school district, on the president or any commissioner thereof,
12 or if they be absent, on the prosecuting attorney of the county;
13  (d) If any other corporation, on the secretary of state as
14 statutory attorney in fact of such corporation, as provided in
15 section fifteen, article one, chapter thirty-one of this code, or
16 on any person appointed by it to accept service of process in
17 its behalf, or on its president or other chief officer, or its vice
18 president, cashier, assistant cashier, treasurer, assistant treas-
19 urer, secretary, or any member of its board of directors, or, if
20 no such officer or director be found, on any agent of such
21 corporation, including in the case of a railroad company a
22 depot or station agent in the actual employment of the com-
23 pany.
Enr. H. B. 1339] 20

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

James Addy
Chairman Senate Committee

Claude & Virtue
Chairman House Committee

Originated in the House.

Takes effect July 1, 1975.

J. B. Gullion
Clerk of the Senate

Clerk of the House of Delegates

W. J. Gwin
President of the Senate

Lewis H. M. Mann
Speaker House of Delegates

The within appeared this the 26th day of March, 1975.

Andrea Shank
Governor
PRESENTED TO THE
GOVERNOR

Date 3/21/75
Time 2:50 p.m.