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OFFICE OF  
THE CLERK OF THE HOUSE OF DELEGATES  
STATE OF WEST VIRGINIA

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1975

— ● —

# ENROLLED

HOUSE BILL No. 1339

*Originating in the House Committee on*  
(BY ~~MR.~~ *the Judiciary*)

— ● —

PASSED March 8, 1975

In Effect July 1, 1975 ~~Passage~~



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**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

16 licensed to transact insurance in this state, thus presenting to  
17 such residents the often insuperable obstacle of resorting to  
18 distant forums for the purpose of asserting legal rights under  
19 such policies. In furtherance of such state interest, the Legis-  
20 lature herein provides a method of substituted service of pro-  
21 cess upon such insurers and declares that in so doing it exer-  
22 cises its powers to protect its residents and to define, for the  
23 purpose of this section, what constitutes transacting insurance  
24 in this state, and also exercises powers and privileges avail-  
25 able to the state by virtue of public law number fifteen, seven-  
26 ty-ninth Congress of the United States, chapter twenty, first  
27 session, senate number three hundred forty, as amended, which  
28 declares that the business of insurance and every person en-  
29 gaged therein shall be subject to the laws of the several states.

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

49 (2) Such service of process upon any such insurer in any  
50 such action or proceeding in any court of competent juris-  
51 diction of this state, may be made by serving the secretary of  
52 state or his chief clerk with two copies thereof and the pay-  
53 ment to him of a fee of two dollars. The secretary of state  
54 shall forward a copy of such process by registered mail to the

55 defendant at its last known principal place of business, and  
56 shall keep a record of all process so served upon him. Such  
57 service of process is sufficient, provided notice of such ser-  
58 vice and a copy of the process are sent within ten days there-  
59 after by or on behalf of the plaintiff to the defendant at its  
60 last known principal place of business by registered mail with  
61 return receipt requested. The plaintiff shall file with the clerk  
62 of the court in which the action is pending, or with the judge  
63 or justice of such court, in case there be no clerk, an affidavit  
64 of compliance herewith, a copy of the process, and either a re-  
65 turn receipt purporting to be signed by the defendant or a per-  
66 son qualified to receive its registered mail in accordance with  
67 the rules and customs of the post office department; or, if  
68 acceptance was refused by the defendant or its agent, the orig-  
69 inal envelope bearing a notation by the postal authorities that  
70 receipt was refused. Service of process so made shall be  
71 deemed to have been made within the territorial jurisdiction  
72 of any court in this state.

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

78 A. Soliciting insurance, or

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

81 C. Collecting or receiving any premium, membership fee,  
82 assessment or other consideration for insurance; provided  
83 notice of such service and a copy of such process are sent  
84 within ten days thereafter, by or on behalf of the plaintiff  
85 to the defendant at the last known principal place of business  
86 of the defendant, by registered mail with return receipt re-  
87 quested. The plaintiff shall file with the clerk of the court  
88 in which the action is pending, or with the judge or justice  
89 of such court in case there be no clerk, an affidavit of  
90 compliance herewith, a copy of the process, and either a  
91 return receipt purporting to be signed by the defendant or  
92 a person qualified to receive its registered mail in accordance  
93 with the rules and customs of the post office department; or,

94 if acceptance was refused by the defendant or its agent the  
95 original envelope bearing a notation by the postal authorities  
96 that receipt was refused.

97 (4) The papers referred to in subdivisions (2) and (3) of  
98 this subsection (b) shall be filed within thirty days after the  
99 return receipt or other official proof of delivery or the  
100 original envelope bearing a notation of refusal, as the case  
101 may be, is received by the plaintiff. Service of process shall  
102 be complete ten days after such process and the accom-  
103 panying papers are filed in accordance with this section.

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

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

125 (2) The court in any action, suit or proceeding, in which  
126 service is made in the manner provided in subdivisions (2)  
127 or (3) of subsection (b) of this section may, in its discretion,  
128 order such postponement as may be necessary to afford the  
129 defendant reasonable opportunity to comply with the pro-  
130 visions of subdivision (1) of this subsection (c) and to defend  
131 such action.

132 (3) Nothing in subdivision (1) of this subsection (c) is to  
133 be construed to prevent an unlicensed foreign or alien insurer  
134 from filing a motion to set aside service thereof made in the  
135 manner provided in subdivisions (2) or (3) of subsection (b)  
136 of this section on the grounds either (1) that such unlicensed  
137 insurer has not done any of the acts enumerated in sub-  
138 division (1) of subsection (b) of this section, or (2) that the  
139 person on whom service was made pursuant to subdivision  
140 (3) of subsection (b) of this section was not doing any of the  
141 acts therein enumerated.

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

158 (e) The provisions of this section shall not apply to any  
159 suit, action or proceeding against any unlicensed foreign or  
160 alien insurer arising out of any contract of excess line insur-  
161 ance effected in accordance with article twelve of this chapter  
162 where any such contract contains a provision designating the  
163 auditor or secretary of state its true and lawful attorney upon  
164 whom may be served all lawful process in any action, suit or  
165 proceeding instituted by or on behalf of an insured or  
166 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.**

1 (a) Broker's licenses shall be issued only to nonresidents as

2 provided in section two of this article and only to such appli-  
3 cants as are licensed agents or brokers in a state other than  
4 West Virginia and furnish to the commissioner satisfactory  
5 proof thereof.

6 (b) No license shall be issued to any such broker unless he  
7 shall file with the commissioner a power of attorney appoint-  
8 ing the secretary of state and his successors in office the agent  
9 of such broker for the service of process in any suit or pro-  
10 ceeding arising in this state out of or in connection with the  
11 exercise of such license, and such service of process shall be  
12 of the same legal force and validity as personal service of pro-  
13 cess in this state upon such broker.

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

18 (d) No such broker shall solicit, negotiate, make or pro-  
19 cure within this state, or aid in any manner in soliciting, nego-  
20 tiating, making or procuring within this state, any insurance  
21 contracts covering subjects of insurance resident, located, or  
22 to be performed in this state, either on account of any person  
23 desiring to procure insurance or on account of any insurer.

24 (e) A licensed broker lawfully soliciting, negotiating, making  
25 or procuring outside this state, or aiding in soliciting, nego-  
26 tiating, making or procuring outside this state, insurance con-  
27 tracts covering subjects of insurance resident, located, or to be  
28 performed in this state, shall place all such contracts only with  
29 licensed resident agents of this state for insurers licensed in  
30 this state.

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

1 As to every unlicensed insurer issuing or delivering an excess  
2 line policy through an excess line broker in this state, the  
3 secretary of state shall be, and is hereby constituted the  
4 attorney in fact of each such insurer and broker for service of  
5 process in the same manner as for licensed insurers as pro-  
6 vided in section twelve, article four of this chapter.



**ARTICLE 21. RECIPROCAL INSURERS.****§33-21-12. Process and venue; annual fee.**

1 (a) Concurrently with the filing of the application provided  
2 for by the terms of section six of this article, the attorney shall  
3 file with the commissioner an instrument in writing, executed  
4 by him for said subscribers, conditioned that upon the issuance  
5 of the license provided for in section seven of this article any  
6 action, suit or other proceeding arising out of any insurance  
7 contract or policy issued under such license, may be brought in  
8 the county of this state wherein the property insured was  
9 situated either at the date of the policy or at the time when the  
10 right of action accrued, or in the county of this state wherein  
11 the person insured had a legal residence at the date of his  
12 death or at the time the right of action accrued, and that ser-  
13 vice of any process or notice may be had upon the secretary of  
14 state in all actions, suits or other proceedings in this state  
15 arising out of such policies, contracts, agreements or other bus-  
16 iness of insurance transacted under such license, and that said  
17 secretary of state may accept service of any such process or  
18 notice.

19 (b) Such service or acceptance of service shall be valid and  
20 binding upon such attorney and upon all subscribers exchange-  
21 ing at any time reciprocal or interinsurance contracts through  
22 such attorney. Two copies of such process or notice, in addi-  
23 tion to the original, shall be furnished the secretary of state,  
24 and he shall file one copy, forward one copy to said attorney  
25 and return the original with his acceptance of service or for  
26 return of service. But no process or notice shall be served on  
27 the secretary of state or accepted by him less than ten days be-  
28 fore the return day thereof. Where the principal office of the  
29 attorney is located in this state, service of process may be had  
30 upon all subscribers by serving same upon the attorney at  
31 said office. Service of process shall not be had upon said sub-  
32 scribers or any of them in any suit or other proceeding in this  
33 state except in the manner provided in this section, and any  
34 action, suit, or other proceeding may be begun and prosecuted  
35 against or defended by them under the name or designation  
36 adopted by them.

37 (c) The attorney shall pay to the secretary of state an an-  
38 nual fee of ten dollars.

**ARTICLE 27. INSURANCE HOLDING COMPANY SYSTEMS.**

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

1 (a) *Filing requirements.*—No person other than the issuer  
2 shall make a tender offer for or a request or invitation for ten-  
3 ders of, or enter into any agreement to exchange securities for,  
4 seek to acquire or acquire, in the open market or otherwise, any  
5 voting security of a domestic insurer if, after the consummation  
6 thereof, such person would, directly or indirectly (or by conver-  
7 sion or by exercise of any right to acquire) be in control of such  
8 insurer, and no person shall enter into an agreement to merge  
9 with or otherwise to acquire control of a domestic insurer  
10 unless, at the time any such offer, request or invitation is  
11 made or any such agreement is entered into, or prior to the  
12 acquisition of such securities if no offer or agreement is in-  
13 volved, such person has filed with the commissioner and has  
14 sent to such insurer, and, to the extent permitted by applicable  
15 federal laws, rules and regulations, such insurer has sent to  
16 its shareholders a statement containing the information re-  
17 quired by this section and such offer, request, invitation, agree-  
18 ment or acquisition has been approved by the commissioner in  
19 the manner hereinafter prescribed.

20 For purposes of this section: A domestic insurer shall in-  
21 clude any other person controlling a domestic insurer unless  
22 such other person is either directly or through its affiliates  
23 primarily engaged in business other than the business of in-  
24 surance.

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

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

32 (i) If such person is an individual, his principal occupation

33 and all offices and positions held during the past five years, and  
34 any conviction of crimes other than minor traffic violations  
35 during the past ten years;

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

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

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

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

67 (5) The number of shares of any security referred to in  
68 subsection (a) which each acquiring party proposes to acquire,  
69 and the terms of the offer, request, invitation, agreement or  
70 acquisition referred to in subsection (a), and a statement as

71 to the method by which the fairness of the proposal was ar-  
72 rived at.

73 (6) The amount of each class of any security referred to in  
74 subsection (a) which is beneficially owned or concerning which  
75 there is a right to acquire beneficial ownership by each  
76 acquiring party.

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

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

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

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

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

106 (12) Such additional information as the commissioner may  
107 by rule or regulation prescribe as necessary or appropriate

108 for the protection of policyholders and security holders of the  
109 insurer or in the public interest.

110 If the person required to file the statement referred to in  
111 subsection (a) is a partnership, limited partnership, syndicate  
112 or other group, the commissioner may require that the in-  
113 formation called for by subdivisions (1) through (12) of  
114 this subsection shall be given with respect to each partner  
115 of such partnership or limited partnership, each member of  
116 such syndicate or group, and each person who controls such  
117 partner or member. If any partner, member or person is a  
118 corporation or the person required to file the statement re-  
119 ferred to in subsection (a) is a corporation, the commissioner  
120 may require that the information called for by subdivisions  
121 (1) through (12) shall be given with respect to such corpora-  
122 tion, and each person who is directly or indirectly the beneficial  
123 owner of more than ten percent of the outstanding voting  
124 securities of such corporation.

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

133 (c) *Alternative filing materials.*—If any offer, request, in-  
134 vitation, agreement or acquisition referred to in subsection (a)  
135 is proposed to be made by means of a registration statement  
136 under the Securities Act of 1933 or in circumstances requiring  
137 the disclosure of similar information under the Securities  
138 Exchange Act of 1934, or under a state law requiring similar  
139 registration or disclosure, the person required to file the state-  
140 ment referred to in subsection (a) may utilize such documents  
141 in furnishing the information called for by that statement.

142 (d) *Approval by commissioner; hearings.*—The commis-  
143 sioner shall approve any merger or other acquisition of  
144 control referred to in subsection (a) unless, after a public  
145 hearing thereon, he finds that any of the following conditions  
146 exist:

147 (i) After the change of control the domestic insurer re-  
148ferred to in subsection (a) would not be able to satisfy the  
149requirements for the issuance of a license to write the line or  
150lines of insurance for which it is presently authorized;

151 (ii) The effect of the merger or other acquisition of control  
152would be substantially to lessen competition in insurance in this  
153state or tend to create a monopoly therein;

154 (iii) The financial condition of any acquiring party is such  
155as might jeopardize the financial stability of the insurer, or  
156prejudice the interest of its policyholders or the interests of any  
157remaining security holders who are unaffiliated with such  
158acquiring party;

159 (iv) The terms of the offer, request, invitation, agreement  
160or acquisition referred to in subsection (a) are unfair and un-  
161reasonable to the security holders of the insurer;

162 (v) The plans or proposals which the acquiring party has to  
163liquidate the insurer, sell its assets or consolidate or merge it  
164with any person, or to make any other material change in its  
165business or corporate structure or management, are unfair and  
166unreasonable to policyholders of the insurer and not in the  
167public interest; or

168 (vi) The competence, experience and integrity of those  
169persons who would control the operation of the insurer are  
170such that it would not be in the interest of policyholders of the  
171insurer and of the public to permit the merger or other acqui-  
172sition of control.

173 (2) The public hearing referred to in subdivision (1), sub-  
174section (d) of this section shall be held within sixty days after  
175the statement required by subsection (a) is filed, and at least  
176fifteen days' notice thereof shall be given by the commissioner  
177to the person filing the statement. Not less than seven days'  
178notice of such public hearing shall be given by the person  
179filing the statement to the insurer and to such other persons as  
180may be designated by the commissioner. The insurer shall  
181give such notice to its security holders. The commissioner  
182shall make a determination within forty-five days after the  
183conclusion of such hearing.

184 (e) *Mailings to shareholders; payment of expenses.*—To  
185 the extent permitted by applicable federal laws, rules and  
186 regulations, all statements, amendments, or other material  
187 filed pursuant to subsection (a) or (b) of this section, and all  
188 notices of public hearings held pursuant to subsection (d) of  
189 this section, shall be mailed by the insurer to its shareholders  
190 within five business days after the insurer has received such  
191 statements, amendments, other material, or notices. The ex-  
192 penses of mailing shall be borne by the person making the  
193 filing. As security for the payment of such expenses, such  
194 person shall file with the commissioner an acceptable bond or  
195 other deposit in an amount to be determined by the com-  
196 missioner.

197 (f) *Exemptions.*—The provisions of this section shall not  
198 apply to:

199 (i) Any offers, requests, invitations, agreements or acqui-  
200 sitions by the person referred to in subsection (a) of this section  
201 of any voting security referred to in said subsection (a) which,  
202 immediately prior to the consummation of such offer, request,  
203 invitation, agreement or acquisition, was not issued and out-  
204 standing;

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

211 (g) *Violations.*—The following shall be violations of this  
212 section:

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

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

219 (h) *Jurisdiction; consent to service of process.*—The courts  
220 of this state are hereby vested with jurisdiction over every

221 person not resident, domiciled or authorized to do business  
222 in this state who files a statement with the commissioner under  
223 this section, and over all actions involving such person arising  
224 out of violations of this section, and each such person shall  
225 be deemed to have performed acts equivalent to and con-  
226 stituting an appointment by such a person of the secretary of  
227 state to be his true and lawful attorney upon whom may be  
228 served all lawful process in any action, suit or proceeding  
229 arising out of violations of this section. Copies of all such  
230 lawful process shall be served on the secretary of state and  
231 transmitted by registered or certified mail by the secretary of  
232 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.**

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

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

1 Service of such process or notice shall be made by mailing or  
2 delivering to the office of said secretary of state three copies  
3 of such process or notice, with a notation thereon of the resi-  
4 dence address of the trustee upon whom service is being had,  
5 as stated in the security trust; if the address of the trustee be  
6 not stated in the security trust, the notation shall state the  
7 address of the beneficiary of such trust as given in the security  
8 trust; and service thereof shall be complete upon the receipt  
9 in said office of such notice or process bearing such notation  
10 and accompanied by a fee of two dollars, which shall be taxed  
11 as costs in the suit, action or proceeding. The secretary of state



12 shall pay into the state treasury all funds so coming into his  
13 hands, and shall keep one copy of all such process and notices,  
14 with a record of the day and hour of service thereof.

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

1 Forthwith upon such service, said secretary of state shall  
2 send to such trustee the second copy of such process or notice,  
3 by registered mail, return receipt requested, to the address  
4 stated in such notation. The third copy of such process or  
5 notice, bearing the acknowledgment of the secretary of state  
6 of the fact of service on him, with his notation of the mailing  
7 of the second copy as above provided, shall be transmitted by  
8 the secretary of state to the clerk of the court issuing the  
9 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.**

1 Any nonresident person, except a nonresident corporation  
2 authorized to do business in this state pursuant to the provisions  
3 of chapter thirty-one of this code, who takes or holds any  
4 negotiable instrument, nonnegotiable instrument, or contract or  
5 other writing, arising from a consumer credit sale or consumer  
6 lease which is subject to the provisions of this article, other  
7 than a sale or lease primarily for an agricultural purpose, or  
8 who is a lender subject to the provisions of section one  
9 hundred three of this article, shall be conclusively presumed  
10 to have appointed the secretary of state as his attorney in  
11 fact with authority to accept service of notice and process in  
12 any action or proceeding brought against him arising out of  
13 such consumer credit sale, consumer lease or consumer loan.  
14 A person shall be considered a nonresident hereunder if he is  
15 a nonresident at the time such service of notice and process  
16 is sought. No act of such person appointing the secretary of  
17 state shall be necessary. Immediately after being served with  
18 or accepting any such process or notice, of which process or  
19 notice two copies for each defendant shall be furnished the  
20 secretary of state with the original notice or process, together

21 with a fee of two dollars, the secretary of state shall file in his  
22 office a copy of such process or notice, with a note thereon  
23 endorsed of the time of service or acceptance, as the case may  
24 be, and transmit one copy of such process or notice by  
25 registered mail, return receipt requested, to such person at  
26 his address, which address shall be stated in such process or  
27 notice: *Provided*, That such return receipt shall be signed by  
28 such person or an agent or employee of such person if a  
29 corporation, or the registered mail so sent by said secretary  
30 of state is refused by the addressee and the registered mail is  
31 returned to said secretary of state, or to his office, showing  
32 thereon the stamp of the U. S. postal service that delivery  
33 thereof has been refused, and such return receipt or registered  
34 mail is appended to the original process or notice and filed  
35 therewith in the clerk's office of the court from which such  
36 process or notice was issued. But no process or notice shall  
37 be served on the secretary of state or accepted by him less than  
38 ten days before the return date thereof. The court may order  
39 such continuances as may be reasonable to afford each de-  
40 fendant opportunity to defend the action or proceeding.

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

## **CHAPTER 50. JUSTICES AND CONSTABLES.**

### **ARTICLE 3. COMMENCEMENT OF ACTIONS AND PROCESS.**

#### **§50-3-11. Service on domestic corporation.**

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;

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 trea-  
19 surer, secretary, or any member of its board of directors, or,  
20 if 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), if any such attorney, officer or agent, be found in the  
24 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.**

1 The secretary of state of the state of West Virginia shall  
2 accept service of any process against, or any order or notice to,  
3 any corporation for which he is statutory attorney in fact, as  
4 provided in section fifteen, article one, chapter thirty-one of  
5 this code, when such process, order or notice is issued by any  
6 justice in this state, or in any proceeding pending in any jus-  
7 tice'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.**

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 commis-  
8 sioner or the clerk thereof, or if they be absent, on the prose-  
9 cuting 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.

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

James L. Davis  
Chairman Senate Committee

Clarence C. Christian Jr.  
Chairman House Committee

Originated in the House.

Takes effect July 1, 1975.

Joel Sices Jr.  
Clerk of the Senate

W. Blankenship  
Clerk of the House of Delegates

W. J. Bratherton Jr.  
President of the Senate

Louis H. M. Mennis  
Speaker House of Delegates

The within approved this the 26th  
March day of \_\_\_\_\_, 1975.

Reuben H. Hargis  
Governor

PRESENTED TO THE  
GOVERNOR

Date 3/21/75

Time 2:50 p.m.