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LEGISLATIVE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1975



ENROLLED

Committee Substitute for

HOUSE BILL No. 1186

(By Mr. Pomphrey)



PASSED March 8, 1975

In Effect July 1, 1975 Passage



1186

ENROLLED
COMMITTEE SUBSTITUTE
FOR

H. B. 1186

(By MR. TOMPKINS)

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

AN ACT to amend and reenact section thirty-one, article three, chapter fifty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to appointment of secretary of state of this state as true and lawful attorney for a nonresident motorist or if a natural person for his administrator, administratrix, executor or executrix for the service of process in any action or proceeding arising out of a motor vehicle accident in this state; requiring a bond and fee in connection therewith; specifying procedural details with respect to service under such section; relating to disposition of fee; defining words and phrases; and specifying that the provisions of such section are cumulative.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. WRITS, PROCESS AND ORDER OF PUBLICATION.

§56-3-31. Actions by or against nonresident operators of motor vehicles involved in highway accidents or their administrators, etc.

1 The operation by a nonresident, or by his duly authorized

2 agent, of a motor vehicle upon a public street, road or highway
3 of this state, shall be deemed equivalent to an appointment by
4 such nonresident of the secretary of state, or his successor in
5 office, to be his true and lawful attorney, or the true and law-
6 ful attorney of his administrator, administratrix, executor or
7 executrix in the event said nonresident is a natural person and
8 dies, upon whom may be served all lawful process in any action
9 or proceeding against him or if a natural person against his ad-
10 ministrator, administratrix, executor or executrix, in any court
11 of record in this state, including an action or proceeding brought
12 by a nonresident plaintiff or plaintiffs, growing out of any acci-
13 dent or collision in which such nonresident may be involved
14 while so operating or so permitting to be operated a motor
15 vehicle on any such street, road or highway, and such operation
16 shall be a signification of his agreement that any such process
17 against him, or if a natural person against his administrator, ad-
18 ministratrix, executor or executrix, which is served in the man-
19 ner hereinafter provided, shall be of the same legal force and
20 validity as though said nonresident or if a natural person his ad-
21 ministrator, administratrix, executor or executrix were personal-
22 ly served with a summons and complaint within this state.

23 Any such action or proceeding may be instituted, continued
24 or maintained on behalf of or against the administrator,
25 administratrix, executor or executrix of said nonresident who
26 dies during or subsequent to said operation of a motor vehicle
27 by such nonresident or his duly authorized agent.

28 (a) At the time of filing a complaint and before a sum-
29 mons is issued thereon, the plaintiff, or someone for him,
30 shall execute a bond in the sum of one hundred dollars before
31 the clerk of the court, with surety to be approved by said
32 clerk, conditioned that on failure of the plaintiff to prevail in
33 the action that he will reimburse the defendant, or cause
34 him to be reimbursed, the necessary expense incurred by
35 him in and about the defense of the action in this state,
36 and upon the issue of a summons the clerk will certify
37 thereon that said bond has been given and approved. Service
38 shall be made by leaving the original and two copies of
39 both the summons and complaint with the certificate afore-
40 said of the clerk thereon, and a fee of two dollars with said
41 secretary of state, or in his office, and said service shall be

42 sufficient upon said nonresident or if a natural person his ad-
43 ministrator, administratrix, executor or executrix: *Provided*,
44 That notice of such service and a copy of the summons and
45 complaint shall forthwith be sent by registered mail, return re-
46 ceipt requested, by said secretary of state to the defendant, and
47 the defendant's return receipt signed by himself or his duly
48 authorized agent or the registered mail so sent by said secretary
49 of state is refused by the addressee and the registered mail is re-
50 turned to said secretary of state, or to his office, showing there-
51 on the stamp of the post office department that delivery has
52 been refused, is appended to the original summons and com-
53 plaint, and filed therewith in the clerk's office of the court from
54 which process issued. The court may order such continuances
55 as may be reasonable to afford the defendant opportunity to de-
56 fend the action.

57 (b) The fee of two dollars, remitted to the said secretary of
58 state at the time of service, shall be taxed in the costs of the
59 proceeding and said secretary of state shall pay into the state
60 treasury all funds so coming into his hands from such service.
61 The secretary of state shall keep a record in his office of all
62 such process and the day and hour of service thereof.

63 (c) The following words and phrases, when used in this
64 article, shall, for the purpose of this article and unless a differ-
65 ent intent on the part of the Legislature be apparent from the
66 context, have the following meanings:

67 (1) "Duly authorized agent" means and includes among
68 others a person who operates a motor vehicle in this state for a
69 nonresident as defined in this section and chapter, in pursuit of
70 business, pleasure, or otherwise, or who comes into this state
71 and operates a motor vehicle therein for, or with the knowledge
72 or acquiescence of, such nonresident; and shall include among
73 others a member of the family of such nonresident or a person
74 who, at the residence, place of business or post office of such
75 nonresident, usually recives and receipts for mail addressed to
76 such nonresident.

77 (2) "Motor vehicle" means and includes any self-propelled
78 vehicle, including motorcycle, tractor, and trailer, not operated
79 exclusively upon stationary tracks.

80 (3) "Nonresident" means any person who is not a resident
81 of this state or resident who has moved from the state subse-
82 quent to said accident or collision, and among others includes a
83 nonresident firm, partnership, corporation or voluntary associa-
84 tion, or a firm, partnership, corporation or voluntary associa-
85 tion that has moved from the state subsequent to said accident
86 or collision.

86 (4) "Nonresident plaintiff or plaintiffs" means a nonresident
88 who institutes an action in a court in this state having jurisdic-
89 tion against a nonresident in pursuance of the provisions of this
90 article.

91 (5) "Street," "road" or "highway" means the entire width
92 between property lines of every way or place of whatever
93 nature when any part thereof is open to the use of the public,
94 as a matter of right, for purposes of vehicular traffic.

95 (d) The provision for service of process herein is cumula-
96 tive and nothing herein contained shall be construed as a bar
97 to the plaintiff in any action from having process in such
98 action served in any other mode and manner provided by law.

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

James L. Davis
Chairman Senate Committee

Laurence C. Johnston, Jr.
Chairman House Committee

Originated in the House.

Takes effect July 1, 1975.

J. Miller, Jr.
Clerk of the Senate

W. Blankenship
Clerk of the House of Delegates

W. C. C. [Signature]
President of the Senate

Lewis F. McNamee
Speaker House of Delegates

The within approved this the 25th
March day of _____, 1975.

Anna. [Signature]
Governor

PRESENTED TO THE
GOVERNOR

Date 3/20/25

Time 4:30 p.m.