

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1978

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ENROLLED

Committee Substitute for
HOUSE BILL No. 932

(By Mr. Satter + Mr. Albright)

— ● —

PASSED March 9, 1978

In Effect ninety days from Passage

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 932

(By MR. SATTES and MR. ALBRIGHT)

[Passed March 9, 1978; in effect ninety days from passage.]

AN ACT to amend and reenact section twenty-five, article three, chapter fifty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section designated section thirty-three, all relating to the enactment of an additional "long-arm" statute; providing that the engaging by a non-resident or his duly authorized agent in any one or more of certain specified acts in this state shall be deemed equivalent to the appointment by such nonresident of the secretary of state to be his true and lawful attorney upon whom may be served all lawful process in any action or proceeding for a cause of action arising from or giving out of any one or more of specified acts; requiring a bond to be furnished; establishing requirements for the service of process; relating to continuances; relating to fees, the disposition thereof and records with respect thereto; defining words and phrases; providing that provisions are cumulative; and specifying that the section shall not be considered as retroactive.

Be it enacted by the Legislature of West Virginia:

That section twenty-five, article three, chapter fifty-six of the code of West Virginia, one thousand nine hundred thirty-one, as

amended, be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section thirty-three, all to read as follows:

ARTICLE 3. WRITS, PROCESS AND ORDER OF PUBLICATION.

§56-3-25. Failure to appear in response to publication; trial or hearing.

1 When such order shall have been so published, if the
2 defendants against whom it is entered, or the known parties,
3 shall not appear within the time specified in such order, the
4 case may be tried or heard as to them at the next term of the
5 court commencing not less than one month after the date of
6 the first publication. Upon any trial or hearing under this
7 section, such judgment, decree or order shall be entered as
8 may appear just.

§56-3-33. Actions by or against nonresident persons having certain contacts with this state; authorizing secretary of state to receive process; bond and fees; service of process; definitions; retroactive application.

1 (a) The engaging by a nonresident, or by his duly autho-
2 rized agent, in any one or more of the acts specified in
3 subdivisions (1) through (7) of this subsection, shall be
4 deemed equivalent to an appointment by such nonresident of
5 the secretary of state, or his successor in office, to be
6 his true and lawful attorney upon whom may be served all
7 lawful process in any action or proceeding against him, in
8 any circuit court in this state, including an action or
9 proceeding brought by a nonresident plaintiff or plaintiffs,
10 for a cause of action arising from or growing out of such
11 act or acts, and the engaging in such act or acts shall be a
12 signification of such nonresident's agreement that any such
13 process against him, which is served in the manner herein-
14 after provided, shall be of the same legal force and validity
15 as though such nonresident were personally served with a
16 summons and complaint within this state:

17 (1) Transacting any business in this state;

18 (2) Contracting to supply services or things in this state;

19 (3) Causing tortious injury by an act or omission in this
20 state;

21 (4) Causing tortious injury in this state by an act or
22 omission outside this state if he regularly does or solicits
23 business, or engages in any other persistent course of con-
24 duct, or derives substantial revenue from goods used or
25 consumed or services rendered in this state;

26 (5) Causing injury in this state to any person by breach
27 of warranty expressly or impliedly made in the sale of goods
28 outside this state when he might reasonably have expected
29 such person to use, consume or be affected by the goods in
30 this state: *Provided, That* he also regularly does or solicits
31 business, or engages in any other persistent course of conduct,
32 or derived substantial revenue from goods used or consumed
33 or services rendered in this state;

34 (6) Having an interest in, using or possessing real property
35 in this state; or

36 (7) Contracting to insure any person, property or risk
37 located within this state at the time of contracting.

38 (b) When jurisdiction over a nonresident is based solely
39 upon the provisions of this section, only a cause of action
40 arising from or growing out of one or more of the acts
41 specified in subdivisions (1) through (7), subsection (a) of
42 this section, may be asserted against him.

43 (c) At the time of filing a complaint and before a sum-
44 mons is issued thereon, the plaintiff, or someone for him,
45 shall execute a bond in the sum of one hundred dollars
46 before the clerk of the court, with surety to be approved by
47 said clerk, conditioned that on failure of the plaintiff to
48 prevail in the action or proceeding that he will reimburse
49 the defendant, or cause him to be reimbursed, the necessary
50 taxable costs incurred by him in and about the defense of the
51 action or proceeding in this state, and upon the issuance of
52 a summons, the clerk shall certify thereon that such bond
53 has been given and approved. Service shall be made by
54 leaving the original and two copies of both the summons and
55 the complaint with the certificate aforesaid of the clerk

56 thereon, and a fee of two dollars with the secretary of
57 state, or in his office, and such service shall be sufficient
58 upon such nonresident: *Provided*, That notice of such service
59 and a copy of the summons and complaint shall forthwith
60 be sent by registered mail, return receipt requested, by the
61 secretary of state to the defendant, and the defendant's
62 return receipt signed by himself or his duly authorized agent
63 or the registered mail so sent by the secretary of state which
64 is refused by the addressee and which registered mail is
65 returned to the secretary of state, or to his office, showing
66 thereon the stamp of the post office department that delivery
67 has been refused, shall be appended to the original summons
68 and complaint, and filed therewith in the clerk's office of
69 the court from which process issued. If any defendant served
70 with summons and complaint fails to appear and defend
71 within thirty days of service, judgment by default may be
72 rendered against him at any time thereafter. The court may
73 order such continuances as may be reasonable to afford the
74 defendant opportunity to defend the action or proceeding.

75 (d) The fee of two dollars, remitted to the secretary of
76 state at the time of service, shall be taxed in the costs of
77 the action or proceeding and the secretary of state shall
78 pay into the state treasury all funds so coming into his
79 hands from such service. The secretary of state shall keep
80 a record in his office of all such process and the day and
81 hour of service thereof.

82 (e) The following words and phrases, when used in this
83 section, shall for the purpose of this section and unless a
84 different intent be apparent from the context, have the follow-
85 ing meanings:

86 (1) "Duly authorized agent" means and includes among
87 others a person who, at the direction of or with the knowledge
88 or acquiescence of a nonresident, engages in such act or
89 acts and shall include among others a member of the family
90 of such nonresident or a person who, at the residence, place
91 or business or post office of such nonresident, usually receives
92 and receipts for mail addressed to such nonresident.

93 (2) "Nonresident" means any person, other than voluntary
94 unincorporated associations, who is not a resident of this state
95 or a resident who has moved from this state subsequent to
96 engaging in such act or acts, and among others includes a
97 nonresident firm, partnership, or corporation or a firm, part-
98 nership, or corporation which has moved from this state
99 subsequent to any of said such act or acts.

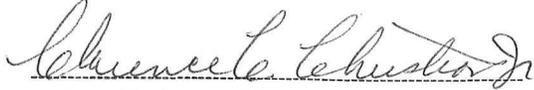
100 (3) "Nonresident plaintiff or plaintiffs" means a non-
101 resident of this state who institutes an action or proceeding
102 in a circuit court in this state having jurisdiction against a
103 nonresident of this state pursuant to the provisions of this
104 section.

105 (f) The provision for service of process herein is cumulative
106 and nothing herein contained shall be construed as a bar to
107 the plaintiff in any action or proceeding from having process
108 in such action served in any other mode and manner provided
109 by the law of this state or by the law of the place in which
110 the service is made for service in that place in an action
111 in any of its courts of general jurisdiction.

112 (g) This section shall not be retroactive and the provisions
113 hereof shall not be available to a plaintiff in a cause of
114 action arising from or growing out of any of said acts
115 occurring prior to the effective date of this section.

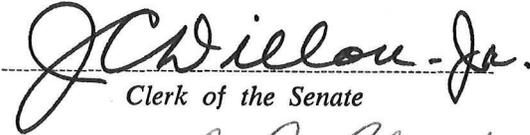
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


Chairman Senate Committee


Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.


Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker House of Delegates

The within is approved this the 30
day of March, 1978.


Governor

RECEIVED

MAR 17 10 39 AM '78
OFFICE OF THE GOVERNOR

APPROVED AND SIGNED BY THE GOVERNOR

Date Mar. 30, 1978
Time 9:15 A.M.

RECEIVED

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OFFICE
GOV. OF STATE