

Date 3-28-79

Time 9:15 p.m.

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1979



ENROLLED

Committee Substitute for
SENATE BILL NO. 125

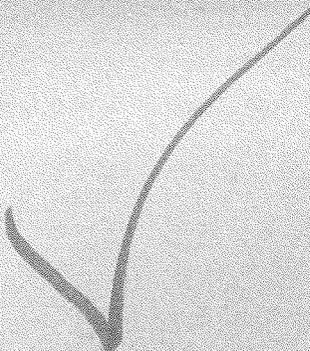
(By Mr. Stepoe)



PASSED March 10, 1979

In Effect ninety days from Passage

No. 125



ENROLLED
COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 125
(Mr. STEPTOE, *original sponsor*)

[Passed March 10, 1979; in effect ninety days from passage.]

AN ACT to amend and reenact section seventeen-c, article five, chapter twenty-one-a; to amend and reenact section thirty-eight, article six, chapter thirty-one; to amend and reenact section four hundred fourteen, article four, chapter thirty-two; to amend and reenact section thirteen, article four, chapter thirty-three; to amend and reenact section nine, article one-a, chapter thirty-eight; to amend and reenact section one hundred thirty-seven, article two, chapter forty-six-a; to amend and reenact section thirty-one, article three, chapter fifty-six; and to amend and reenact section thirty-three, article three, chapter fifty-six, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to service of process on certain non-residents; changing certain references to "auditor" to "secretary of state"; and providing that where service of notices or process is made on nonresidents, such service may be made by registered or certified mail.

Be it enacted by the Legislature of West Virginia:

That section seventeen-c, article five, chapter twenty-one-a; section thirty-eight, article six, chapter thirty-one; section four hundred fourteen, article four, chapter thirty-two; section thirteen, article four, chapter thirty-three; section nine, article one-a, chapter thirty-eight; section one hundred thirty-seven, article two, chapter forty-six-a; section thirty-one, article three, chapter fifty-six, and section thirty-three, 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 21A. UNEMPLOYMENT COMPENSATION.

ARTICLE 5. EMPLOYER COVERAGE AND RESPONSIBILITY.

§21A-5-17c. Service of process on nonresident employer.

1 If an employer is not a resident of West Virginia, was
2 a resident but has left the state of West Virginia, or is a
3 corporation not authorized to do business in this state and
4 for which employer services are performed in insured
5 work within the state of West Virginia and liability for
6 payment of unemployment compensation contributions
7 is due and payable to this state under the provisions of
8 the West Virginia unemployment compensation law, such
9 employer shall be deemed to appoint the secretary of
10 state of West Virginia, or his successor in office, to be
11 the employer's true and lawful attorney upon whom may
12 be served all lawful process in any action or any pro-
13 ceeding for all purposes under this chapter and when
14 served as hereinafter provided such service shall have the
15 same force, effect and validity as if said nonresident em-
16 ployer were personally served with summons and com-
17 plaint in this state.

18 Service shall be made by leaving the original and two
19 copies of both the summons and complaint, and a fee of
20 two dollars, with the secretary of state, or in his office,
21 and said service shall be sufficient upon said nonresident.
22 In the event any such summons and complaint is so
23 served on the secretary of state he shall immediately
24 cause one of the copies of the summons and complaint to
25 be sent by registered or certified mail, return receipt
26 requested, to the employer at the latter's last known or
27 reasonably ascertainable address. The employer's return
28 receipt or, if such registered or certified mail is returned
29 to the secretary of state refused by the addressee or for
30 any other reason is undelivered, such mail showing there-
31 on the stamp of the post-office department that delivery
32 has been refused, or other reason for nondelivery, shall
33 be appended to the original summons and complaint, and
34 filed by the secretary of state in the clerk's office of the
35 court from which said process issued.

CHAPTER 31. CORPORATIONS.

ARTICLE 6. BUILDING AND LOAN ASSOCIATIONS.

§31-6-38. License tax on domestic and foreign associations.

1 All domestic and foreign building and loan associations
2 shall pay annually to the secretary of state a state license
3 tax for the privilege of doing business in this state in an
4 amount based upon the amount of money loaned by such
5 associations in this state instead of upon the proportion
6 of capital stock represented by the property owned and
7 used in this state, and in computing such tax the same
8 rate shall be used for foreign associations as is used for
9 domestic associations: *Provided*, That the amount of
10 money loaned by such associations shall be taken to be
11 the amount shown upon the face of the document evi-
12 dencing the loan without deduction of credits therefrom.

CHAPTER 32. UNIFORM SECURITIES ACT.

ARTICLE 4. GENERAL PROVISIONS.

§32-4-414. Scope of the chapter and service of process.

1 (a) Sections 101, 201(a), 301, 405 and 410 apply to
2 persons who sell or offer to sell when (1) an offer to sell
3 is made in this state, or (2) an offer to buy is made and
4 accepted in this state.

5 (b) Sections 101, 201(a) and 405 apply to persons who
6 buy or offer to buy when (1) an offer to buy is made in
7 this state, or (2) an offer to sell is made and accepted in
8 this state.

9 (c) For the purpose of this section, an offer to sell
10 or to buy is made in this state, whether or not either
11 party is then present in this state, when the offer (1)
12 originates from this state or (2) is directed by the offeror
13 to this state and received at the place to which it is di-
14 rected (or at any post office in this state in the case of a
15 mailed offer).

16 (d) For the purpose of this section, an offer to buy
17 or to sell is accepted in this state when acceptance (1) is
18 communicated to the offeror in this state and (2) has not
19 previously been communicated to the offeror, orally or in
20 writing, outside this state; and acceptance is communi-

21 cated to the offeror in this state, whether or not either
22 party is then present in this state, when the offeree di-
23 rects it to the offeror in this state reasonably believing
24 the offeror to be in this state and it is received at the
25 place to which it is directed (or at any post office in this
26 state in the case of a mailed acceptance).

27 (e) An offer to sell or to buy is not made in this
28 state when (1) the publisher circulates or there is circu-
29 lated on his behalf in this state any bona fide newspaper
30 or other publication of general, regular and paid circula-
31 tion which is not published in this state, or which is
32 published in this state but has had more than two thirds
33 of its circulation outside this state during the past twelve
34 months, or (2) a radio or television program originating
35 outside this state is received in this state.

36 (f) Sections 102 and 201 (c), as well as section 405 so
37 far as investment advisors are concerned, apply when any
38 act instrumental in effecting prohibited conduct is done in
39 this state, whether or not either party is then present in
40 this state.

41 (g) Every applicant for registration under this chapter
42 and every issuer which proposes to offer a security in this
43 state through any person acting on an agency basis in the
44 common-law sense shall file with the commissioner, in
45 such form as he by rule prescribes, an irrevocable consent
46 appointing the commissioner or his successor in office to
47 be his attorney to receive service of any lawful process in
48 any noncriminal suit, action or proceeding against him or
49 his successor, executor or administrator which arises un-
50 der this chapter or any rule or order hereunder after the
51 consent has been filed, with the same force and validity
52 as if served personally on the person filing the consent. A
53 person who has filed such a consent in connection with a
54 previous registration need not file another. Service may
55 be made by leaving a copy of the process in the office of
56 the commissioner, but it is not effective unless (1) the
57 plaintiff, who may be the commissioner in a suit, action or
58 proceeding instituted by him, forthwith sends notice of the
59 service and a copy of the process by registered or certified
60 mail to the defendant or respondent at his last address on
61 file with the commissioner, and (2) the plaintiff's affidavit

62 of compliance with this subsection is filed in the case on
63 or before the return day of the process, if any, or within
64 such further time as the court allows.

65 (h) When any person, including any nonresident of
66 this state, engages in conduct prohibited or made action-
67 able by this chapter or any rule or order hereunder, and
68 he has not filed a consent to service of process under sub-
69 section (g) and personal jurisdiction over him cannot
70 otherwise be obtained in this state, that conduct shall be
71 considered equivalent to his appointment of the commis-
72 sioner or his successor in office to be his attorney to
73 receive service of any lawful process in any noncriminal
74 suit, action or proceeding against him or his successor,
75 executor or administrator which grows out of that con-
76 duct and which is brought under this chapter or any rule
77 or order hereunder, with the same force and validity
78 as if served on him personally. Service may be made by
79 leaving a copy of the process in the office of the commis-
80 sioner, and it is not effective unless (1) the plaintiff, who
81 may be the commissioner in a suit, action or proceeding
82 instituted by him, forthwith sends notice of the service
83 and a copy of the process by registered or certified mail
84 to the defendant or respondent at his last known address
85 or takes other steps which are reasonably calculated to
86 give actual notice, and (2) the plaintiff's affidavit of com-
87 pliance with this subsection is filed in the case on or be-
88 fore the return day of the process, if any, or within such
89 further time as the court allows.

90 (i) When process is served under this section, the
91 court, or the commissioner in a proceeding before him,
92 shall order such continuance as may be necessary to
93 afford the defendant or respondent reasonable opportu-
94 nity to defend.

CHAPTER 33. INSURANCE.

ARTICLE 4. GENERAL PROVISIONS.

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

1 (a) The purpose of this section is to subject certain
2 insurers to the jurisdiction of the courts of this state in
3 suits by or on behalf of insureds or beneficiaries under

4 certain insurance contracts and to subject said insurers
5 to the jurisdiction of the courts of this state in suits by
6 or on behalf of the insurance commissioner of West Vir-
7 ginia. The Legislature declares that it is a subject of
8 concern that certain insurers, while not licensed to trans-
9 act insurance in this state, are soliciting the sale of in-
10 surance and selling insurance to residents of this state,
11 thus presenting the insurance commissioner with the
12 problem of resorting to courts of foreign jurisdictions for
13 the purpose of enforcing the insurance laws of this state
14 for the protection of our citizens. The Legislature de-
15 clares that it is also a subject of concern that many
16 residents of this state hold policies of insurance issued or
17 delivered in this state by insurers while not licensed to
18 transact insurance in this state, thus presenting to such
19 residents the often insuperable obstacle of resorting to
20 distant fora for the purpose of asserting legal rights
21 under such policies. In furtherance of such state interest,
22 the Legislature herein provides a method of substituted
23 service of process upon such insurers and declares that
24 in so doing it exercises its powers to protect its residents
25 and to define, for the purpose of this section, what con-
26 stitutes transacting insurance in this state, and also
27 exercises powers and privileges available to the state by
28 virtue of public law number fifteen, seventy-ninth Con-
29 gress of the United States, chapter twenty, first session,
30 Senate number three hundred forty, as amended, which
31 declares that the business of insurance and every person
32 engaged therein shall be subject to the laws of the several
33 states.

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

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

56 (2) Such service of process upon any such insurer in
57 any such action or proceeding in any court of competent
58 jurisdiction of this state, may be made by serving the
59 secretary of state or his chief clerk with two copies
60 thereof and the payment to him of a fee of two dollars.
61 The secretary of state shall forward a copy of such
62 process by registered or certified mail to the defendant
63 at its last known principal place of business, and shall
64 keep a record of all process so served upon him. Such
65 service of process is sufficient, provided notice of such
66 service and a copy of the process are sent within ten
67 days thereafter by or on behalf of the plaintiff to the
68 defendant at its last known principal place of business
69 by registered or certified mail with return receipt re-
70 quested. The plaintiff shall file with the clerk of the
71 court in which the action is pending, or with the judge
72 or justice of such court, in case there be no clerk, an
73 affidavit of compliance herewith, a copy of the process,
74 and either a return receipt purporting to be signed by
75 the defendant or a person qualified to receive its regis-
76 tered or certified mail in accordance with the rules and
77 customs of the post-office department; or, if acceptance
78 was refused by the defendant or its agent, the original
79 envelope bearing a notation by the postal authorities
80 that receipt was refused. Service of process so made shall
81 be deemed to have been made within the territorial
82 jurisdiction of any court in this state.

83 (3) Service of process in any such action, suit or

84 proceeding shall in addition to the manner provided in
85 subdivision (2) of this subsection (b) be valid if served
86 upon any person within this state who, in this state on
87 behalf of such insurer, is

88 A. Soliciting insurance, or

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

91 C. Collecting or receiving any premium, membership
92 fee, assessment or other consideration for insurance; pro-
93 vided notice of such service and a copy of such process
94 are sent within ten days thereafter, by or on behalf of
95 the plaintiff to the defendant at the last known principal
96 place of business of the defendant, by registered or
97 certified mail with return receipt requested. The plaintiff
98 shall file with the clerk of the court in which the action
99 is pending, or with the judge or justice of such court in
100 case there be no clerk, an affidavit of compliance here-
101 with, a copy of the process, and either a return receipt
102 purporting to be signed by the defendant or a person
103 qualified to receive its registered or certified mail in
104 accordance with the rules and customs of the post-office
105 department; or, if acceptance was refused by the de-
106 fendant or its agent the original envelope bearing a
107 notation by the postal authorities that receipt was
108 refused.

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

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

121 (c) (1) Before any unlicensed foreign or alien insurer
122 shall file or cause to be filed any pleading in any action,

123 suit or proceeding instituted against it, such unlicensed
124 insurer shall either (1) deposit with the clerk of the
125 court in which such action, suit or proceeding is pending,
126 cash or securities or file with such clerk a bond with good
127 and sufficient sureties, to be approved by the court, in an
128 amount to be fixed by the court sufficient to secure the
129 payment of any final judgment which may be rendered
130 in such action: *Provided*, That the court may in its
131 discretion make an order dispensing with such deposit or
132 bond where the auditor of the state shall have certified to
133 such court that such insurer maintains within this state
134 funds or securities in trust or otherwise sufficient and
135 available to satisfy any final judgment which may be
136 entered in such action, suit or proceeding; or (2) procure
137 a license to transact insurance in this state.

138 (2) The court in any action, suit or proceeding, in
139 which service is made in the manner provided in sub-
140 division (2) or (3) of subsection (b) of this section may,
141 in its discretion, order such postponement as may be
142 necessary to afford the defendant reasonable opportunity
143 to comply with the provisions of subdivision (1) of this
144 subsection (c) and to defend such action.

145 (3) Nothing in subdivision (1) of this subsection (c)
146 is to be construed to prevent an unlicensed foreign or
147 alien insurer from filing a motion to set aside service
148 thereof made in the manner provided in subdivision (2)
149 or (3) of subsection (b) of this section on the grounds
150 either (1) that such unlicensed insurer has not done any
151 of the acts enumerated in subdivision (1) of subsection
152 (b) of this section, or (2) that the person on whom
153 service was made pursuant to subdivision (3) of sub-
154 section (b) of this section was not doing any of the acts
155 therein enumerated.

156 (d) In any action against an unlicensed foreign or
157 alien insurer upon a contract of insurance issued or
158 delivered in this state to a resident thereof or to a
159 corporation authorized to do business therein, if the
160 insurer has failed for thirty days after demand prior to
161 the commencement of the action to make payment in

162 accordance with the terms of the contract, and it appears
163 to the court that such refusal was vexatious and without
164 reasonable cause, the court may allow to the plaintiff a
165 reasonable attorney's fee and include such fee in any
166 judgment that may be rendered in such action. Such fee
167 shall not exceed twelve and one-half percent of the
168 amount which the court finds the plaintiff is entitled to
169 recover against the insurer, but in no event shall such
170 fee be less than twenty-five dollars. Failure of an insurer
171 to defend any such action shall be deemed prima facie
172 evidence that its failure to make payment was vexatious
173 and without reasonable cause.

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

CHAPTER 38. LIENS.

ARTICLE 1A. TRUSTEES OF SECURITY TRUSTS.

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

1 Forthwith upon such service, said secretary of state
2 shall send to such trustee the second copy of such process
3 or notice, by registered or certified mail, return receipt
4 requested, to the address stated in such notation. The
5 third copy of such process or notice, bearing the acknowl-
6 edgement of the secretary of state of the fact of service
7 on him, with his notation of the mailing of the second
8 copy as above provided, shall be transmitted by the
9 secretary of state to the clerk of the court issuing the
10 process or to the person giving the notice, as the case may
11 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 cor-
2 poration authorized to do business in this state pursuant
3 to the provisions of chapter thirty-one of this code, who
4 takes or holds any negotiable instrument, nonnegotiable
5 instrument, or contract or other writing, arising from a
6 consumer credit sale or consumer lease which is subject
7 to the provisions of this article, other than a sale or lease
8 primarily for an agricultural purpose, or who is a lender
9 subject to the provisions of section one hundred three of
10 this article, shall be conclusively presumed to have ap-
11 pointed the secretary of state as his attorney-in-fact with
12 authority to accept service of notice and process in any
13 action or proceeding brought against him arising out of
14 such consumer credit sale, consumer lease or consumer
15 loan. A person shall be considered a nonresident hereunder
16 if he is a nonresident at the time such service of notice and
17 process is sought. No act of such person appointing the
18 secretary of state shall be necessary. Immediately after
19 being served with or accepting any such process or notice,
20 of which process or notice two copies for each defendant
21 shall be furnished the secretary of state with the original
22 notice or process, together with a fee of two dollars, the
23 secretary of state shall file in his office a copy of such
24 process or notice, with a note thereon endorsed of the
25 time of service or acceptance, as the case may be, and
26 transmit one copy of such process or notice by registered
27 or certified mail, return receipt requested, to such person
28 at his address, which address shall be stated in such
29 process or notice: *Provided*, That such return receipt shall
30 be signed by such person or an agent or employee of such
31 person if a corporation, or the registered or certified mail
32 so sent by said secretary of state is refused by the ad-
33 dressee and the registered or certified mail is returned to
34 said secretary of state, or to his office, showing thereon
35 the stamp of the U. S. postal service that delivery thereof
36 has been refused, and such return receipt or registered or

37 certified mail is appended to the original process or notice
38 and filed therewith in the clerk's office of the court from
39 which such process or notice was issued. But no process
40 or notice shall be served on the secretary of state or
41 accepted fewer than ten days before the return date
42 thereof. The court may order such continuances as may
43 be reasonable to afford each defendant opportunity to
44 defend the action or proceeding.

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

CHAPTER 56. PLEADING AND PRACTICE.

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 autho-
2 rized agent, of a motor vehicle upon a public street, road
3 or highway of this state, shall be deemed equivalent to
4 an appointment by such nonresident of the secretary of
5 state, or his successor in office, to be his true and lawful
6 attorney, or the true and lawful attorney of his adminis-
7 trator, administratrix, executor or executrix in the event
8 said nonresident is a natural person and dies, upon whom
9 may be served all lawful process in any action or pro-
10 ceeding against him or if a natural person against his
11 administrator, administratrix, executor or executrix, in
12 any court of record in this state, including an action or
13 proceeding brought by a nonresident plaintiff or plaintiffs,
14 growing out of any accident or collision in which such
15 nonresident may be involved while so operating or so
16 permitting to be operated a motor vehicle on any such
17 street, road or highway, and such operation shall be a
18 signification of his agreement that any such process
19 against him, or if a natural person against his adminis-
20 trator, administratrix, executor or executrix, which is
21 served in the manner hereinafter provided, shall be of

22 the same legal force and validity as though said non-
23 resident or if a natural person his administrator, admin-
24 istratrix, executor or executrix were personally served
25 with a summons and complaint within this state.

26 Any such action or proceeding may be instituted, con-
27 tinued or maintained on behalf of or against the adminis-
28 trator, administratrix, executor or executrix of said non-
29 resident who dies during or subsequent to said operation
30 of a motor vehicle by such nonresident or his duly au-
31 thorized agent.

32 (a) At the time of filing a complaint and before a sum-
33 mons is issued thereon, the plaintiff, or someone for him,
34 shall execute a bond in the sum of one hundred dollars
35 before the clerk of the court, with surety to be approved
36 by said clerk, conditioned that on failure of the plaintiff
37 to prevail in the action that he will reimburse the de-
38 fendant, or cause him to be reimbursed, the necessary
39 expense incurred by him in and about the defense of the
40 action in this state, and upon the issue of a summons the
41 clerk will certify thereon that said bond has been given
42 and approved. Service shall be made by leaving the
43 original and two copies of both the summons and com-
44 plaint with the certificate aforesaid of the clerk thereon,
45 and a fee of two dollars with said secretary of state, or
46 in his office, and said service shall be sufficient upon said
47 nonresident or if a natural person his administrator,
48 administratrix, executor or executrix: *Provided*, That
49 notice of such service and a copy of the summons
50 and complaint shall forthwith be sent by regis-
51 tered or certified mail, return receipt requested, by said
52 secretary of state to the defendant, and the defendant's
53 return receipt signed by himself or his duly authorized
54 agent or the registered or certified mail so sent by said
55 secretary of state is refused by the addressee and the
56 registered or certified mail is returned to said secretary
57 of state, or to his office, showing thereon the stamp of
58 the post-office department that delivery has been refused,
59 is appended to the original summons and complaint, and
60 filed therewith in the clerk's office of the court from
61 which process issued. The court may order such continu-

62 ances as may be reasonable to afford the defendant oppor-
63 tunity to defend the action.

64 (b) The fee of two dollars, remitted to the said secre-
65 tary of state at the time of service, shall be taxed in the
66 costs of the proceeding and said secretary of state shall
67 pay into the state treasury all funds so coming into his
68 hands from such service. The secretary of state shall
69 keep a record in his office of all such process and the day
70 and hour of service thereof.

71 (c) The following words and phrases, when used in
72 this article, shall, for the purpose of this article and unless
73 a different intent on the part of the Legislature be ap-
74 parent from the context, have the following meanings:

75 (1) "Duly authorized agent" means and includes
76 among others a person who operates a motor vehicle in
77 this state for a nonresident as defined in this section and
78 chapter, in pursuit of business, pleasure, or otherwise, or
79 who comes into this state and operates a motor vehicle
80 therein for, or with the knowledge or acquiescence of,
81 such nonresident; and shall include among others a mem-
82 ber of the family of such nonresident or a person who,
83 at the residence, place of business or post office of such
84 nonresident, usually receives and receipts for mail ad-
85 dressed to such nonresident.

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

89 (3) "Nonresident" means any person who is not a resi-
90 dent of this state or resident who has moved from the
91 state subsequent to said accident or collision, and among
92 others includes a nonresident firm, partnership, corpora-
93 tion or voluntary association, or a firm, partnership, cor-
94 poration or voluntary association that has moved from
95 the state subsequent to said accident or collision.

96 (4) "Nonresident plaintiff or plaintiffs" means a non-
97 resident who institutes an action in a court in this state
98 having jurisdiction against a nonresident in pursuance of
99 the provisions of this article.

100 (5) "Street," "road" or "highway" means the entire
101 width between property lines of every way or place of

102 whatever nature when any part thereof is open to the
103 use of the public, as a matter of right, for purposes of
104 vehicular traffic.

105 (d) The provision for service of process herein is
106 cumulative and nothing herein contained shall be con-
107 strued as a bar to the plaintiff in any action from having
108 process in such action served in any other mode and
109 manner provided by law.

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

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

18 (1) Transacting any business in this state;

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

21 (3) Causing tortious injury by an act or omission in
22 this state;

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

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

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

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

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

46 (c) At the time of filing a complaint and before a
47 summons is issued thereon, the plaintiff, or someone for
48 him, shall execute a bond in the sum of one hundred
49 dollars before the clerk of the court, with surety to be
50 approved by said clerk, conditioned that on failure of
51 the plaintiff to prevail in the action or proceeding that he
52 will reimburse the defendant, or cause him to be re-
53 imburged, the necessary taxable costs incurred by him
54 in and about the defense of the action or proceeding in
55 this state, and upon the issuance of a summons, the
56 clerk shall certify thereon that such bond has been
57 given and approved. Service shall be made by leaving
58 the original and two copies of both the summons and
59 the complaint with the certificate aforesaid of the clerk
60 thereon, and a fee of two dollars with the secretary of
61 state, or in his office, and such service shall be sufficient
62 upon such nonresident: *Provided*, That notice of such
63 service and a copy of the summons and complaint shall
64 forthwith be sent by registered or certified mail, return
65 receipt requested, by the secretary of state to the defend-
66 ant and the defendant's return receipt signed by himself
67 or his duly authorized agent or the registered or certified
68 mail so sent by the secretary of state which is refused by

69 the addressee and which registered or certified mail is re-
70 turned to the secretary of state, or to his office, showing
71 thereon the stamp of the post-office department that
72 delivery has been refused, shall be appended to the
73 original summons and complaint, and filed therewith
74 in the clerk's office of the court from which process is-
75 sued. If any defendant served with summons and com-
76 plaint fails to appear and defend within thirty days of
77 service, judgment by default may be rendered against
78 him at any time thereafter. The court may order such
79 continuances as may be reasonable to afford the defendant
80 opportunity to defend the action or proceeding.

81 (d) The fee of two dollars, remitted to the secretary
82 of state at the time of service, shall be taxed in the costs
83 of the action or proceeding and the secretary of state
84 shall pay into the state treasury all funds so coming
85 into his hands from such service. The secretary of state
86 shall keep a record in his office of all such process and the
87 day and hour of service thereof.

88 (e) The following words and phrases, when used in
89 this section, shall for the purpose of this section and
90 unless a different intent be apparent from the context,
91 have the following meanings:

92 (1) "Duly authorized agent" means and includes
93 among others a person who, at the direction of or with
94 the knowledge or acquiescence of a nonresident, engages
95 in such act or acts and shall include among others a
96 member of the family of such nonresident or person
97 who, at the residence, place of business or post office of
98 such nonresident, usually receives and receipts for mail
99 addressed to such nonresident.

100 (2) "Nonresident" means any person, other than
101 voluntary unincorporated associations, who is not a
102 resident of this state or a resident who has moved from
103 this state subsequent to engaging in such act or acts,
104 and among others includes a nonresident firm, partner-
105 ship, or corporation or a firm, partnership, or corpora-
106 tion which has moved from this state subsequent to any
107 of said such act or acts.

108 (3) "Nonresident plaintiff or plaintiffs" means a non-
109 resident of this state who institutes an action or proceed-

110 ing in a circuit court in this state having jurisdiction
111 against a nonresident of this state pursuant to the provi-
112 sions of this section.

113 (f) The provision for service of process herein is
114 cumulative and nothing herein contained shall be con-
115 strued as a bar to the plaintiff in any action or proceeding
116 from having process in such action served in any other
117 mode or manner provided by the law of this state or by
118 the law of the place in which the service is made for
119 service in that place in an action in any of its courts of
120 general jurisdiction.

121 (g) This section shall not be retroactive and the
122 provisions hereof shall not be available to a plaintiff in
123 a cause of action arising from or growing out of any of
124 said acts occurring prior to the effective date of this
125 section.

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

James L. Davis
Chairman Senate Committee

Clarence C. Chestnut Jr.
Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

J. D. Hillson Jr.
Clerk of the Senate

W. Blankenship
Clerk of the House of Delegates

M. J. [Signature]
President of the Senate

[Signature]
Speaker House of Delegates

The within *is approved* this the *20*
day of *March*, 1979.

[Signature]
Governor



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