

No. 1479

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# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1984



# ENROLLED

HOUSE BILL No. 1479

(By ~~MR.~~ Del. Murensky & Del. Smith)



Passed March 10, 1984

In Effect Ninety Days from Passage



ENROLLED

# H. B. 1479

(By DELEGATE MURENSKY and DELEGATE SMITH)

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[Passed March 10, 1984; in effect ninety days from passage.]

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AN ACT to amend and reenact section fifteen, article one, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section thirteen, article four, chapter thirty-three of said code; to amend and reenact section twenty-six-a, article nine, chapter forty-seven of said code; and to amend and reenact sections thirty-one and thirty-three, article three, chapter fifty-six of said code, all relating to fees charged by the secretary of state for acceptance of service of legal process upon resident corporations, certain non-resident corporations, unlicensed insurers, limited partnerships, nonresident motorists and other nonresidents having certain contacts with this state.

*Be it enacted by the Legislature of West Virginia:*

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

**CHAPTER 31. CORPORATIONS.****ARTICLE 1. BUSINESS AND NONPROFIT CORPORATIONS.****§31-1-15. Secretary of state constituted attorney-in-fact for all corporations; manner of acceptance or service of notices and process upon secretary of state; what constitutes conducting affairs or doing or transacting business in this state for purposes of this section.**

1       The secretary of state is hereby constituted the attorney-in-  
2 fact for and on behalf of every corporation created by virtue of  
3 the laws of this state and every foreign corporation authorized  
4 to conduct affairs or do or transact business herein pursuant  
5 to the provisions of this article, with authority to accept  
6 service of notice and process on behalf of every such corpora-  
7 tion and upon whom service of notice and process may be  
8 made in this state for and upon every such corporation. No  
9 act of such corporation appointing the secretary of state such  
10 attorney-in-fact shall be necessary. Immediately after being  
11 served with or accepting any such process or notice, of which  
12 process or notice two copies for each defendant shall be fur-  
13 nished the secretary of state with the original notice or process,  
14 together with a fee of five dollars, the secretary of state shall  
15 file in his office a copy of such process or notice, with a note  
16 thereon endorsed of the time of service, or acceptance, as the  
17 case may be, and transmit one copy of such process or notice  
18 by registered or certified mail, return receipt requested, to the  
19 person to whom notice and process shall be sent, whose name  
20 and address were last furnished to the state officer at the time  
21 authorized by statute to accept service of notice and process  
22 and upon whom notice and process may be served; and if no  
23 such person has been named, to the principal office of the  
24 corporation at the address last furnished to the state officer  
25 at the time authorized by statute to accept service of pro-  
26 cess and upon whom process may be served, as required by  
27 law. No process or notice shall be served on the secretary of  
28 state or accepted by him less than ten days before the return  
29 day thereof. Such corporation shall pay the annual fee pre-  
30 scribed by article twelve, chapter eleven of this code for the  
31 services of the secretary of state as its attorney-in-fact.

32 Any foreign corporation which shall conduct affairs or  
33 do or transact business in this state without having been  
34 authorized so to do pursuant to the provisions of this article  
35 shall be conclusively presumed to have appointed the secre-  
36 tary of state as its attorney-in-fact with authority to accept  
37 service of notice and process on behalf of such corporation  
38 and upon whom service of notice and process may be made  
39 in this state for and upon every such corporation in any action  
40 or proceeding described in the next following paragraph of  
41 this section. No act of such corporation appointing the sec-  
42 retary of state as such attorney-in-fact shall be necessary.  
43 Immediately after being served with or accepting any such  
44 process or notice, of which process or notice two copies for  
45 each defendant shall be furnished the secretary of state with  
46 the original notice or process, together with a fee of five dollars,  
47 the secretary of state shall file in his office a copy of such  
48 process or notice, with a ncte thereon endorsed of the time  
49 of service or acceptance, as the case may be, and transmit  
50 one copy of such process or notice by registered or certified  
51 mail, return receipt requested, to such corporation at the  
52 address of its principal office, which address shall be stated  
53 in such process or notice. Such service or acceptance of such  
54 process or notice shall be sufficient if such return receipt shall  
55 be signed by an agent or employee of such corporation, or the  
56 registered or certified mail so sent by the secretary of state is  
57 refused by the addressee and the registered or certified mail  
58 is returned to the secretary of state, or to his office, showing  
59 thereon the stamp of the United States postal service that  
60 delivery thereof has been refused, and such return receipt or  
61 registered or certified mail is appended to the original process  
62 or notice and filed therewith in the clerk's office of the court  
63 from which such process or notice was issued. No process or  
64 notice shall be served on the secretary of state or accepted by  
65 him less than ten days before the return date thereof. The court  
66 may order such continuances as may be reasonable to afford  
67 each defendant opportunity to defend the action or proceed-  
68 ings.

69 For the purpose of this section, a foreign corporation not  
70 authorized to conduct affairs or do or transact business in this  
71 state pursuant to the provisions of this article shall neverthe-

72 less be deemed to be conducting affairs or doing or trans-  
73 acting business herein (a) if such corporation makes a contract  
74 to be performed, in whole or in part, by any party thereto, in  
75 this state, (b) if such corporation commits a tort in whole or  
76 in part in this state, or (c) if such corporation manufactures,  
77 sells, offers for sale or supplies any product in a defective  
78 condition and such product causes injury to any person or  
79 property within this state notwithstanding the fact that such  
80 corporation had no agents, servants or employees or con-  
81 tacts within this state at the time of said injury. The making  
82 of such contract, the committing of such tort or the manu-  
83 facture or sale, offer of sale or supply of such defective product  
84 as hereinabove described shall be deemed to be the agree-  
85 ment of such corporation that any notice or process served  
86 upon, or accepted by, the secretary of state pursuant to the  
87 next preceding paragraph of this section in any action or  
88 proceeding against such corporation arising from, or growing  
89 out of, such contract, tort, or manufacture or sale, offer of  
90 sale or supply of such defective product shall be of the same  
91 legal force and validity as process duly served on such cor-  
92 poration in this state.

### 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 in-  
2 surers to the jurisdiction of the courts of this state in suits  
3 by or on behalf of insureds or beneficiaries under certain  
4 insurance contracts and to subject said insurers to the juris-  
5 diction of the courts of this state in suits by or on behalf of  
6 the insurance commissioner of West Virginia. The Legislature  
7 declares that it is a subject of concern that certain insurers,  
8 while not licensed to transact insurance in this state, are solicit-  
9 ing the sale of insurance and selling insurance to residents of  
10 this state, thus presenting the insurance commissioner with  
11 the problem of resorting to courts of foreign jurisdictions for  
12 the purpose of enforcing the insurance laws of this state for  
13 the protection of our citizens. The Legislature declares that  
14 it is also a subject of concern that many residents of this state

15 hold policies of insurance issued or delivered in this state by  
16 insurers while not licensed to transact insurance in this state,  
17 thus presenting to such residents the often insuperable ob-  
18 stacle of resorting to distant fora for the purpose of asserting  
19 legal rights under such policies. In furtherance of such state  
20 interest, the Legislature herein provides a method of sub-  
21 stituted service of process upon such insurers and declares  
22 that in so doing it exercises its powers to protect its residents  
23 and to define, for the purpose of this section, what constitutes  
24 transacting insurance in this state, and also exercises powers  
25 and privileges available to the state by virtue of public law  
26 number fifteen, seventy-ninth Congress of the United States,  
27 chapter twenty, first session, Senate number three hundred  
28 forty, as amended, which declares that the business of in-  
29 surance and every person engaged therein shall be subject to  
30 the laws of the several states.

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

50 (2) Such service of process upon any such insurer in any  
51 such action or proceeding in any court of competent jurisdic-  
52 tion of this state may be made by serving the secretary of  
53 state or his chief clerk with two copies and an original thereof

54 and the payment to him of a fee of five dollars. The secretary  
55 of state shall forward a copy of such process by registered or  
56 certified mail to the defendant at its last-known principal  
57 place of business and shall keep a record of all process so  
58 served upon him. Such service of process is sufficient,  
59 provided notice of such service and a copy of the process are  
60 sent within ten days thereafter by or on behalf of the plain-  
61 tiff to the defendant at its last-known principal place of busi-  
62 ness by registered or certified mail with return receipt re-  
63 quested. The plaintiff shall file with the clerk of the court in  
64 which the action is pending, or with the judge or justice of  
65 such court in case there be no clerk, an affidavit of com-  
66 pliance herewith, a copy of the process and either a return  
67 receipt purporting to be signed by the defendant or a person  
68 qualified to receive its registered or certified mail in accord-  
69 ance with the rules and customs of the post-office department;  
70 or, if acceptance was refused by the defendant or its agent,  
71 the original envelope bearing a notation by the postal author-  
72 ities that receipt was refused. Service of process so made shall  
73 be deemed to have been made within the territorial jurisdic-  
74 tion of any court in this state.

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

79 (A) Soliciting insurance, or

80 (B) Making, issuing or delivering any contract of insur-  
81 ance, or

82 (C) Collecting or receiving any premium, membership fee,  
83 assessment or other consideration for insurance: *Provided,*  
84 That notice of such service and a copy of such process are  
85 sent within ten days thereafter, by or on behalf of the plain-  
86 tiff to the defendant at the last-known principal place of  
87 business of the defendant, by registered or certified mail  
88 with return receipt requested. The plaintiff shall file with the  
89 clerk of the court in which the action is pending, or with the  
90 judge or justice of such court in case there be no clerk, an  
91 affidavit of compliance herewith, a copy of the process and

92 either a return receipt purporting to be signed by the defen-  
93 dant or a person qualified to receive its registered or certified  
94 mail in accordance with the rules and customs of the post-  
95 office department; or, if acceptance was refused by the defen-  
96 dant or its agent, the original envelope bearing a notation by  
97 the postal authorities that receipt was refused.

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

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

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

125 (2) The court in any action, suit or proceeding in which  
126 service is made in the manner provided in subdivision (2) or  
127 (3), subsection (b) of this section may, in its discretion, order  
128 such postponement as may be necessary to afford the defen-

129 dant reasonable opportunity to comply with the provisions of  
130 subdivision (1) of this subsection (c) and to defend such action.

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

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

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

**CHAPTER 47. REGULATION OF TRADE.****ARTICLE 9. UNIFORM LIMITED PARTNERSHIP ACT.**

**§47-9-26a. Secretary of state constituted attorney-in-fact for all limited partnerships; manner of acceptance or service of notice and process upon secretary of state; what constitutes conducting affairs or doing or transacting business in this state for purposes of this section.**

1 The secretary of state is hereby constituted the attorney-in-  
2 fact for and on behalf of every limited partnership created by  
3 virtue of the laws of this state and every foreign limited part-  
4 nership authorized to conduct affairs or do or transact busi-  
5 ness herein pursuant to the provisions of this article, with  
6 authority to accept service of notice and process on behalf of  
7 every such limited partnership and upon whom service of  
8 notice and process may be made in this state for and upon  
9 every such limited partnership. No act of such limited part-  
10 nership appointing the secretary of state such attorney-in-fact  
11 shall be necessary. Immediately after being served with or  
12 accepting any such process or notice, of which process or  
13 notice two copies for each defendant shall be furnished the  
14 secretary of state with the original notice or process, together  
15 with a fee of five dollars, the secretary of state shall file in  
16 his office a copy of such process or notice, with a note there-  
17 on endorsed of the time of service or acceptance, as the case  
18 may be, and transmit one copy of such process or notice by  
19 registered or certified mail, return receipt requested, to the  
20 person to whom notice and process shall be sent, whose name  
21 and address were last furnished to the state officer at the time  
22 authorized by statute to accept service of notice and process  
23 and upon whom notice and process may be served; and if no  
24 such person has been named, to the principal office of the  
25 limited partnership at the address last furnished to the state  
26 officer at the time authorized by statute to accept service of  
27 process and upon whom process may be served, as required  
28 by law. No process or notice shall be served on the secretary  
29 of state or accepted by him less than ten days before the  
30 return day thereof. Such limited partnership shall pay the  
31 annual fee prescribed by article twelve, chapter eleven of this

32 code for the services of the secretary of state as its attorney-  
33 in-fact.

34 Any foreign limited partnership which shall conduct affairs  
35 or do or transact business in this state without having been  
36 authorized so to do pursuant to the provisions of this article  
37 shall be conclusively presumed to have appointed the secretary  
38 of state as its attorney-in-fact with authority to accept service  
39 of notice and process on behalf of such limited partnership  
40 and upon whom service of notice and process may be made in  
41 this state for and upon every such limited partnership in any  
42 action or proceeding described in the next following paragraph  
43 of this section. No act of such limited partnership appointing  
44 the secretary of state as such attorney-in-fact shall be neces-  
45 sary. Immediately after being served with or accepting any  
46 such process or notice, of which process or notice two copies  
47 for each defendant shall be furnished the secretary of state  
48 with the original notice or process, together with a fee of five  
49 dollars, the secretary of state shall file in his office a copy of  
50 such process or notice, with a note thereon endorsed of the  
51 time of service or acceptance, as the case may be, and trans-  
52 mit one copy of such process or notice by registered or certi-  
53 fied mail, return receipt requested, to such limited partnership  
54 at the address of its principal office, which address shall be  
55 stated in such process or notice. Such service or acceptance of  
56 such process or notice shall be sufficient if such return receipt  
57 shall be signed by an agent or employee of such limited part-  
58 nership, or the registered or certified mail so sent by the secre-  
59 tary of state is refused by the addressee and the registered or  
60 certified mail is returned to the secretary of state, or to his  
61 office, showing thereon the stamp of the United States postal  
62 service that delivery thereof has been refused, and such return  
63 receipt or registered or certified mail is appended to the  
64 original process or notice and filed therewith in the clerk's  
65 office of the court from which such process or notice was  
66 issued. No process or notice shall be served on the secretary  
67 of state or accepted by him less than ten days before the re-  
68 turn date thereof. The court may order such continuances as  
69 may be reasonable to afford each defendant opportunity to  
70 defend the action or proceedings.

71 For the purpose of this section, a foreign limited partner-  
72 ship not authorized to conduct affairs or do or transact busi-  
73 ness in this state pursuant to the provisions of this article shall  
74 nevertheless be deemed to be conducting affairs or doing or  
75 transacting business herein (a) if such limited partnership  
76 makes a contract to be performed, in whole or in part, by any  
77 party thereto in this state, (b) if such limited partnership  
78 commits a tort in whole or in part in this state, or (c) if such  
79 limited partnership manufactures, sells, offers for sale or sup-  
80 plies any product in a defective condition and such product  
81 causes injury to any person or property within this state not-  
82 withstanding the fact that such limited partnership had no  
83 agents, servants or employees or contacts within this state at  
84 the time of said injury. The making of such contract, the  
85 committing of such tort or the manufacture or sale, offer of  
86 sale or supply of such defective product as hereinabove de-  
87 scribed shall be deemed to be the agreement of such limited  
88 partnership that any notice or process served upon, or accepted  
89 by, the secretary of state pursuant to the next preceding para-  
90 graph of this section in any action or proceeding against such  
91 limited partnership arising from or growing out of such con-  
92 tract, tort or manufacture or sale, offer of sale or supply of  
93 such defective product shall be of the same legal force and  
94 validity as process duly served on such limited partnership in  
95 this state.

## 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 authorized  
2 agent, of a motor vehicle upon a public street, road or high-  
3 way of this state shall be deemed equivalent to an appoint-  
4 ment by such nonresident of the secretary of state, or his  
5 successor in office, to be his true and lawful attorney, or the  
6 true and lawful attorney of his administrator, administratrix,  
7 executor or executrix in the event said nonresident is a  
8 natural person and dies, upon whom may be served all law-

9 ful process in any action or proceeding against him or if a  
10 natural person against his administrator, administratrix, exe-  
11 cutor or executrix, in any court of record in this state, includ-  
12 ing an action or proceeding brought by a nonresident plaintiff  
13 or plaintiffs, growing out of any accident or collision in which  
14 such nonresident may be involved while so operating or so  
15 permitting to be operated a motor vehicle on any such street,  
16 road or highway, and such operation shall be a signification  
17 of his agreement that any such process against him, or if a  
18 natural person against his administrator, administratrix, execu-  
19 tor or executrix, which is served in the manner hereinafter pro-  
20 vided, shall be of the same legal force and validity as though  
21 said nonresident or if a natural person his administrator, ad-  
22 ministratrix, executor or executrix were personally served with  
23 a summons and complaint within this state.

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

29 (a) At the time of filing a complaint and before a summons  
30 is issued thereon, the plaintiff, or someone for him, shall  
31 execute a bond in the sum of one hundred dollars before the  
32 clerk of the court, with surety to be approved by said clerk,  
33 conditioned that on failure of the plaintiff to prevail in the  
34 action that he will reimburse the defendant, or cause him to be  
35 reimbursed, the necessary expense incurred by him in and  
36 about the defense of the action in this state, and upon the issue  
37 of a summons the clerk will certify thereon that said bond has  
38 been given and approved. Service shall be made by leaving the  
39 original and two copies of both the summons and complaint  
40 with the certificate aforesaid of the clerk thereon, and a fee of  
41 five dollars with said secretary of state, or in his office, and  
42 said service shall be sufficient upon said nonresident or if a  
43 natural person his administrator, administratrix, executor or  
44 executrix: *Provided*, That notice of such service and a copy of  
45 the summons and complaint shall forthwith be sent by regist-  
46 ered or certified mail, return receipt requested, by said secre-  
47 tary of state to the defendant, and the defendant's return re-

48 ceipt signed by himself or his duly authorized agent or the  
49 registered or certified mail so sent by said secretary of state is  
50 refused by the addressee and the registered or certified mail  
51 is returned to said secretary of state, or to his office, showing  
52 thereon the stamp of the post-office department that delivery  
53 has been refused, is appended to the original summons and  
54 complaint and filed therewith in the clerk's office of the court  
55 from which process issued. The court may order such con-  
56 tinuances as may be reasonable to afford the defendant op-  
57 portunity to defend the action.

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

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

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

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

81 (3) "Nonresident" means any person who is not a resident  
82 of this state or resident who has moved from the state sub-  
83 sequent to said accident or collision, and among others in-  
84 cludes a nonresident firm, partnership, corporation or volun-  
85 tary association, or a firm, partnership, corporation or volun-

86 tary association that has moved from the state subsequent to  
87 said accident or collision.

88 (4) "Nonresident plaintiff or plaintiffs" means a nonresi-  
89 dent who institutes an action in a court in this state having  
90 jurisdiction against a nonresident in pursuance of the pro-  
91 visions of this article.

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

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

**§56-3-33. Actions by or against nonresident persons having certain  
contracts 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 sub-  
3 divisions (1) through (7) of this subsection shall be deemed  
4 equivalent to an appointment by such nonresident of the  
5 secretary of state, or his successor in office, to be his true and  
6 lawful attorney upon whom may be served all lawful process  
7 in any action or proceeding against him, in any circuit court  
8 in this state, including an action or proceeding brought by a  
9 nonresident plaintiff or plaintiffs, for a cause of action arising  
10 from or growing out of such act or acts, and the engaging in  
11 such act or acts shall be a signification of such nonresident's  
12 agreement that any such process against him, which is served  
13 in the manner hereinafter provided, shall be of the same legal  
14 force and validity as though such nonresident were personally  
15 served with a summons and complaint within this state:

16 (1) Transacting any business in this state;

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

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

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

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

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

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

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

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

58 complaint shall forthwith be sent by registered or certified  
59 mail, return receipt requested, by the secretary of state to the  
60 defendant and the defendant's return receipt signed by himself  
61 or his duly authorized agent or the registered or certified mail  
62 so sent by the secretary of state which is refused by the ad-  
63 dressee and which registered or certified mail is returned to  
64 the secretary of state, or to his office, showing thereon the  
65 stamp of the post-office department that delivery has been  
66 refused, shall be appended to the original summons and com-  
67 plaint and filed therewith in the clerk's office of the court  
68 from which process issued. If any defendant served with sum-  
69 mons and complaint fails to appear and defend within thirty  
70 days of service, judgment by default may be rendered against  
71 him at any time thereafter. The court may order such contin-  
72 uances as may be reasonable to afford the defendant oppor-  
73 tunity to defend the action or proceeding.

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

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

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

92 (2) "Nonresident" means any person, other than voluntary  
93 unincorporated associations, who is not a resident of this state  
94 or a resident who has moved from this state subsequent to  
95 engaging in such act or acts, and among others includes a

96 nonresident firm, partnership or corporation or a firm, part-  
97 nership or corporation which has moved from this state sub-  
98 sequent to any of said such act or acts.

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

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

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

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

*Harrell Edblum*  
Chairman Senate Committee

*Donald Anello*  
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

*Todd C. Willis*  
Clerk of the Senate

*Donald L. Kopp*  
Clerk of the House of Delegates

*Walter R. Anderson*  
President of the Senate

*W. M. Lee, Jr.*  
Speaker House of Delegates

The within is approved this the 30  
day of March, 1984.

*John R. DeLoach*  
Governor

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OFFICE  
SECY. OF STATE