

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)

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

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 Edelman
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. Deane
Governor

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OFFICE
SECY. OF STATE