

**WEST VIRGINIA LEGISLATURE**  
**REGULAR SESSION, 1990**

RECEIVED  
1990 MAR 27 AM 11:35  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

—●—  
**ENROLLED**

**SENATE BILL NO.** 134

(By Senators Jackson and Chafin)

—●—  
**PASSED** March 10, 1990  
In Effect 90 days from Passage

**ENROLLED**  
**Senate Bill No. 136**

(BY SENATORS JACKSON AND CHAFIN)

[Passed March 10, 1990; in effect ninety days from passage.]

AN ACT to amend and reenact section thirty-one, article three, chapter fifty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to writs, process and orders of publication; authorizing the service of process upon nonresident motorists involved in accidents or collisions while in the state of West Virginia; appointing the secretary of state as agent or attorney-in-fact for purposes of service of process upon such nonresident motorists; appointing such nonresident defendant's insurance company as agent or attorney-in-fact for purposes of service of process upon failure of secretary of state to effect service; actions by or against nonresident's estate; bond requirements; notice of service, summons and complaint to be sent by registered or certified mail, return receipt requested, by secretary of state to nonresident defendant; fees for service; requirements for service upon nonresident defendant's insurance company upon affidavit of defendant's nonresidency and failure to obtain service by secretary of state; and definitions of terms.

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

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

**ARTICLE 3. WRITS, PROCESS AND ORDER OF PUBLICATION.****§56-3-31. Actions by or against nonresident operators of motor vehicles involved in highway accidents; appointment of secretary of state, insurance company, as agents; service of process.**

1 (a) Every nonresident, for the privilege of operating  
2 a motor vehicle on a public street, road or highway of  
3 this state, either personally or through an agent,  
4 appoints the secretary of state, or his or her successor  
5 in office, to be his or her agent or attorney-in-fact  
6 upon whom may be served all lawful process in any  
7 action or proceeding against him or her in any court  
8 of record in this state arising out of any accident or  
9 collision occurring in the state of West Virginia in  
10 which such nonresident may be involved: *Provided*,  
11 That in the event process against a nonresident  
12 defendant cannot be effected through the secretary of  
13 state, as provided by this section, for the purpose only  
14 of service of process, such nonresident motorist shall  
15 be deemed to have appointed as his or her agent or  
16 attorney-in-fact any insurance company which has a  
17 contract of automobile or liability insurance with said  
18 nonresident defendant.

19 (b) For purposes of service of process as provided in  
20 this section, every insurance company shall be deemed  
21 the agent or attorney-in-fact of every nonresident  
22 motorist insured by such company if the insured  
23 nonresident motorist is involved in any accident or  
24 collision in this state and service of process cannot be  
25 effected upon said nonresident through the office of  
26 the secretary of state. Upon receipt of process as  
27 hereinafter provided, the insurance company may,  
28 within thirty days, file an answer or other pleading or  
29 take any action allowed by law on behalf of the  
30 defendant.

31 (c) A nonresident operating a motor vehicle in this  
32 state, either personally or through an agent, is deemed  
33 to acknowledge the appointment of the secretary of  
34 state, or, as the case may be, his or her automobile

35 insurance company, as his or her agent or attorney-in-  
36 fact, or the agent or attorney-in-fact of his or her  
37 administrator, administratrix, executor or executrix in  
38 the event the nonresident dies, and furthermore is  
39 deemed to agree that any process against him or her  
40 or against his or her administrator, administratrix,  
41 executor or executrix, which is served in the manner  
42 hereinafter provided, shall be of the same legal force  
43 and validity as though said nonresident or his or her  
44 administrator, administratrix, executor or executrix  
45 were personally served with a summons and com-  
46 plaint within this state.

47 Any action or proceeding may be instituted, con-  
48 tinued or maintained on behalf of or against the  
49 administrator, administratrix, executor or executrix of  
50 any nonresident who dies during or subsequent to an  
51 accident or collision resulting from the operation of a  
52 motor vehicle in this state by the nonresident or his or  
53 her duly authorized agent.

54 (d) At the time of filing a complaint against a  
55 nonresident motorist who has been involved in an  
56 accident or collision in the state of West Virginia and  
57 before a summons is issued thereon, the plaintiff, or  
58 someone for him or her, shall execute a bond in the  
59 sum of one hundred dollars before the clerk of the  
60 court in which the action is filed, with surety to be  
61 approved by said clerk, conditioned that on failure of  
62 the plaintiff to prevail in the action he or she will  
63 reimburse the defendant, or cause the defendant to be  
64 reimbursed, the necessary expense incurred in the  
65 defense of the action in this state. Upon the issue of a  
66 summons the clerk will certify thereon that the bond  
67 has been given and approved.

68 (e) Service of process upon a nonresident defendant  
69 shall be made by leaving the original and two copies  
70 of both the summons and complaint, together with the  
71 bond certificate of the clerk, and a fee of five dollars  
72 with the secretary of state, or in his or her office, and  
73 said service shall be sufficient upon the nonresident  
74 defendant or, if a natural person, his or her adminis-  
75 trator, administratrix, executor or executrix: *Provided,*

76 That notice of service and a copy of the summons and  
77 complaint shall be sent by registered or certified mail,  
78 return receipt requested, by the secretary of state to  
79 the nonresident defendant. The return receipt signed  
80 by the defendant or his or her duly authorized agent  
81 shall be attached to the original summons and com-  
82 plaint and filed in the office of the clerk of the court  
83 from which process is issued. In the event the regis-  
84 tered or certified mail sent by the secretary of state is  
85 refused or unclaimed by the addressee or if the  
86 addressee has moved without any forwarding address,  
87 the registered or certified mail returned to the secre-  
88 tary of state, or to his or her office, showing thereon  
89 the stamp of the post office department that delivery  
90 has been refused or not claimed or that the addressee  
91 has moved without any forwarding address, shall be  
92 appended to the original summons and complaint and  
93 filed in the clerk's office of the court from which  
94 process issued. The court may order such continuances  
95 as may be reasonable to afford the defendant opportu-  
96 nity to defend the action.

97 (f) The fee of five dollars, remitted to the secretary  
98 of state at the time of service, shall be taxed in the  
99 costs of the proceeding and the secretary of state shall  
100 pay into the state treasury all funds so coming into his  
101 or her hands from such service. The secretary of state  
102 shall keep a record in his or her office of all service of  
103 process and the day and hour of service thereof.

104 (g) In the event service of process upon a nonresi-  
105 dent defendant cannot be effected through the secre-  
106 tary of state as provided by this section, service may  
107 be made upon the defendant's insurance company.  
108 The plaintiff must file with the clerk of the circuit  
109 court an affidavit alleging that the defendant is not a  
110 resident of this state; that process directed to the  
111 secretary of state was sent by registered or certified  
112 mail, return receipt requested; that the registered or  
113 certified mail was returned to the office of the  
114 secretary of state showing the stamp of the post office  
115 department that delivery was refused or that the  
116 notice was unclaimed or that the defendant addressee

117 moved without any forwarding address; and that the  
118 secretary of state has complied with the provisions of  
119 subsection (e) herein. Upon receipt of process the  
120 insurance company may, within thirty days, file an  
121 answer or other pleading and take any action allowed  
122 by law in the name of the defendant.

123 (h) The following words and phrases, when used in  
124 this article, shall, for the purpose of this article and  
125 unless a different intent on the part of the Legislature  
126 is apparent from the context, have the following  
127 meanings:

128 (1) "Duly authorized agent" means and includes,  
129 among others, a person who operates a motor vehicle  
130 in this state for a nonresident as defined in this section  
131 and chapter, in pursuit of business, pleasure or  
132 otherwise, or who comes into this state and operates a  
133 motor vehicle for, or with the knowledge or acquies-  
134 cence of, a nonresident; and includes, among others, a  
135 member of the family of such nonresident or a person  
136 who, at the residence, place of business or post office  
137 of such nonresident, usually receives and acknowl-  
138 edges receipt for mail addressed to the nonresident.

139 (2) "Motor vehicle" means and includes any self-  
140 propelled vehicle, including motorcycle, tractor and  
141 trailer, not operated exclusively upon stationary  
142 tracks.

143 (3) "Nonresident" means any person who is not a  
144 resident of this state or a resident who has moved  
145 from the state subsequent to an accident or collision,  
146 and among others includes a nonresident firm, part-  
147 nership, corporation or voluntary association, or a  
148 firm, partnership, corporation or voluntary association  
149 that has moved from the state subsequent to an  
150 accident or collision.

151 (4) "Nonresident plaintiff or plaintiffs" means a  
152 nonresident who institutes an action in a court in this  
153 state having jurisdiction against a nonresident in  
154 pursuance of the provisions of this article.

155 (5) "Nonresident defendant or defendants" means a

156 nonresident motorist who, either personally or  
157 through his or her agent, operated a motor vehicle on  
158 a public street, highway or road in this state and was  
159 involved in an accident or collision which has given  
160 rise to a civil action filed in any court in this state.

161 (6) "Street", "road" or "highway" means the entire  
162 width between property lines of every way or place of  
163 whatever nature when any part thereof is open to the  
164 use of the public, as a matter of right, for purposes of  
165 vehicular traffic.

166 (7) "Insurance company" means any firm, corpora-  
167 tion, partnership or other organization which issues  
168 automobile insurance.

169 (i) The provision for service of process herein is  
170 cumulative and nothing herein contained shall be  
171 construed as a bar to the plaintiff in any action from  
172 having process in such action served in any other  
173 mode and manner provided by law.

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

*Frederick L. Perse*  
.....  
Chairman Senate Committee

*Bernard V. Kelly*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*Garrett E. Kelma*  
.....  
Clerk of the Senate

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

*Keith Huntley*  
.....  
President of the Senate

*Robert A. O'Connell*  
.....  
Speaker House of Delegates

The within *is approved* this the *27<sup>th</sup>*  
day of *March* ....., 1990.

*Gaston Caperton*  
.....  
Governor



GOVERNOR

Date 3/20/90

Time 10:12 am