WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 1992

ENROLLED

HOUSE BILL No. 4704

(By Delegate Mr. Speaker, Mr. Chambers and Delegate Barak)

Passed March 7, 1992

In Effect July 1, 1992
ENROLLED

H. B. 4704

(By Mr. Speaker, Mr. Chambers, and Delegate Burk)

[By Request]

[Passed March 7, 1992; in effect July 1, 1992.]

AN ACT to amend article one, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty; to amend and reenact sections one and two, article three of said chapter; to further amend said article by adding thereto fifteen new sections, designated sections eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one and thirty-two; and to amend and reenact section thirteen, article four of said chapter, all relating to insurance; defining “authorized insurer” and “unauthorized insurer”; requiring licenses; providing a criminal penalty for noncompliance with licensing requirements; designating certain provisions as the unauthorized insurers act; requiring insurer to be authorized in state or country of domicile; prohibiting transaction of kinds of insurance not defined in section ten, article one of said chapter; designating other unlawful insurance transactions; providing for injunctive relief; creating means of service of process on an unauthorized insurer; providing for enforcement of foreign decrees; establishing a penalty for transacting unauthorized acts of insurance; making persons providing specified coverage subject to regulation by the insurance commissioner; requiring proof of regulation
by the federal government; insurers required to submit to examination by the insurance commissioner; setting forth information to be provided to agents, brokers and others; establishing requirements for the statement of charges; providing for notice of hearing and orders after hearings; administrative fines and modification and review of orders; authorizing administrative fines for violations; and providing for substitute service of process on unlicensed insurers in proceedings before the insurance commissioner.

Be it enacted by the Legislature of West Virginia:

That article one, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section twenty; that sections one and two, article three of said chapter be amended and reenacted; that said article be further amended by adding thereto fifteen new sections, designated sections eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one and thirty-two; and that section thirteen, article four of said chapter be amended and reenacted, all to read as follows:

ARTICLE 1. DEFINITIONS.

§33-1-20. Authorized and unauthorized insurers.

(a) An "authorized insurer" is one authorized to transact insurance or reinsurance in this state under a subsisting license issued by the commissioner;

(b) An "unauthorized insurer" is one not so authorized.

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

§33-3-1. License required.

(a) No person may act as an insurer and no insurer may transact insurance in West Virginia except as authorized by a valid license issued by the commissioner, except as to such transactions as are expressly otherwise provided for in this chapter.

(b) No such license may be required for an insurer, formerly holding a valid license, to enable it to inves-
tigate and settle losses under its policies lawfully written in West Virginia while such license was in effect, or to liquidate such assets and liabilities of the insurer (other than the collection of new premiums) as may have resulted from its former authorized operations in West Virginia.

(c) An insurer not transacting new insurance business in West Virginia but continuing collection of premiums on and servicing of policies remaining in force as to residents of or risks located in West Virginia, is transacting insurance in West Virginia for the purpose of premium and annuity tax requirements but is not required to have a license therefor.

(d) A domestic insurer or a foreign insurer from offices or by personnel or facilities located in this state shall not solicit insurance applications or otherwise transact insurance in another state or country unless it holds a subsisting license granted to it by the commissioner authorizing it to transact the same kind or kinds of insurance in this state.

(e) Any officer, director, agent, representative or employee of any insurer who willfully authorizes, negotiates, makes or issues any insurance contract in violation of this section is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than ten thousand dollars, or imprisoned in the county jail not more than one year, or both fined and imprisoned.

§33-3-2. Qualifications for license.

(a) To qualify for a license to transact insurance in West Virginia an insurer must be otherwise in compliance with the provisions of this chapter and with its charter, and must be an incorporated stock insurer, or an incorporated mutual insurer or a reciprocal insurer.

(b) No license to transact insurance in this state may be issued, renewed or continued in effect to any domestic, foreign or alien insurer which is owned, or financially controlled, in whole or in part, by any state, or by a foreign government, or any political subdivision, instrumentality or agency of either, or which is an
agency of any such state, government or subdivision, unless such insurer was so owned, controlled or consti-
tuted prior to the first day of January, one thousand nine hundred fifty-five, and licensed to transact insurance in this state prior to the first day of January, one thousand nine hundred fifty-five.

(c) No foreign insurer may be authorized to transact insurance in this state if it is domiciled in a state that does not have reserve requirements that are equal to or greater than those required by article seven of this chapter, as applicable to the kind or kinds of insurance transacted by such insurer, wherever transacted in the United States of America, or which transacts business anywhere in the United States of America on the assessment plan, the stipulated premium plan or any similar plan.

(d) No insurer may be authorized to transact a kind of insurance in this state unless duly authorized or qualified to transact such insurance in the state or country of its domicile.

(e) No insurer may be authorized to transact in this state any kind of insurance which is not defined in section ten, article one of this chapter.

(f) No authority to transact such insurance may be granted or continued to any insurer that is in arrears to the state for fees, licenses, taxes, assessments, fines or penalties accrued on insurance previously transacted in this state.

§33-3-18. Purpose of enactment of provisions regarding unauthorized insurers.

The purpose of the enactment of this section and sections nineteen through thirty-two, inclusive, of this article in the regular session of the Legislature during the year one thousand nine hundred ninety-two, is to subject certain persons and insurers to the jurisdiction of the commissioner and the courts of this state in suits by or on behalf of the state. The Legislature declares that it is concerned with the protection of residents of this state against acts by insurers not authorized to
transact an insurance business in this state, by the
maintenance of fair and honest insurance markets, by
protecting authorized insurers which are subject to
regulation from unfair competition by unauthorized
insurers, and by protecting against the evasion of the
insurance regulatory laws of this state. In furtherance
of such state interest, the Legislature provides methods
in this article for substituted service of process upon
such insurers in any proceeding, suit or action in any
court and substituted service of any notice, order,
pleading or process upon such insurers in any proceed-
ing by the commissioner to enforce or effect full
compliance with the insurance laws of this state.

§33-3-19. Short title.

Sections eighteen through thirty-two, inclusive, of this
article constitute and may be cited as the “Unauthorized
Insurers Act.”

§33-3-20. Unlawful transaction of business; exceptions.

(a) As used in this section unless otherwise indicated,
“insurer” includes:

(1) All corporations, associations, trusts, partnerships,
natural persons and other legal entities engaged as
principals in the business of insurance, including a
fraternal benefit society, a nonprofit corporation
offering dental, hospital and medical services, a health
maintenance organization and an organization for
dental care; and

(2) Interinsurance exchanges and mutual benefit
societies.

(b) It is unlawful for any insurer to transact an
insurance business in this state as set forth in subsection
(c) of this section, without a license from the commis-
sioner. This section does not apply to:

(1) Any transaction for which a license is not required
pursuant to section one of this article including, but not
limited to, the lawful transaction of surplus lines
insurance and reinsurance by insurers;

(2) Attorneys at law acting in the ordinary relation of
attorney and client in the adjustment of claims or losses;

and

(3) Transactions in this state relative to a policy issued
or to be issued outside this state involving insurance on
cargo vessels, their craft or hulls, their cargoes, marine
builder's risk, commercial marine protection and
indemnity or other risk, including strikes and war risks
commonly insured under ocean marine forms of policy.

Transactions in this state involving group life insurance,
group accident and sickness insurance or group annui-
ties providing coverage under policies that are recog-
nized under articles fourteen and sixteen, respectively,
of this chapter where (1) the master policy of such
groups was lawfully issued and delivered in and
pursuant to the laws of a state in which the insurer was
authorized to do an insurance business, to a group
organized for purposes other than the procurement of
insurance, and where the policyholder is domiciled or
otherwise has a bona fide situs, and (2) except for group
annuities, the insurer complies with article six, section
thirty-five of this chapter. The commissioner may
require the insurer which has issued such master policy
to submit such information as the commissioner re-
quires in order to determine if probable cause exists to
convene a hearing to determine whether the total
charges for the insurance to the persons insured are
reasonable in relation to the benefits provided under
such policy.

c) Any of the following acts in this state effected by
mail or otherwise by or on behalf of an unauthorized
insurer constitutes the transaction of an insurance
business in this state:

(1) The making of or proposing to make, as an insurer,
an insurance contract;

(2) The making of or proposing to make, as guarantor
or surety, any contract of guaranty or suretyship as a
vocation and not merely incidental to any other legiti-
mate business or activity of the guarantor or surety;

(3) The taking or receiving of any application for
insurance;
(4) The receiving or collection of any premium, commission, membership fees, assessments, dues or other consideration for any insurance or any part thereof;

(5) The issuance or delivery of contracts of insurance to residents of this state or to persons authorized to do business in this state;

(6) The acting, directly or indirectly, as an agent for or otherwise representing or aiding on behalf of another any person or insurer in the solicitation, negotiation, procurement or effectuation of insurance or renewals thereof or in the dissemination of information as to coverage or rates, forwarding of applications, delivery of policies or contracts, inspection of risks, fixing of rates, investigating or adjusting of claims or losses, transacting of matters after effectuation of the contract and arising out of it, or in any other manner representing or assisting a person or insurer in the transaction of insurance with respect to subjects of insurance that are resident, located or to be performed in this state. The provisions of this paragraph do not prohibit full-time salaried employees of a corporate insured from acting in the capacity of an insurance manager or buyer in placing insurance on behalf of such an insured;

(7) The transacting of any kind of insurance business specifically recognized as transacting an insurance business or transacting insurance within the meaning of provisions of this chapter;

(8) The transacting of or proposing to transact any insurance business in substance equivalent to any of the activities described in this subsection, in a manner designed to evade the provisions of this chapter.

(d) The venue of an act committed by mail is at the point where the matter transmitted by mail is delivered and takes effect, or in any action filed on behalf of the commissioner is at such point as above described or, at the election of the commissioner, in the circuit court of Kanawha County.

(e) The failure of an insurer transacting insurance
business in this state to obtain a license does not impair
the validity of any act or contract of the insurer and does
not prevent the insurer from defending any action at
law or suit in equity in any court of this state: Provided,
That no insurer transacting insurance business in this
state without a license may maintain an action in any
court of this state to enforce any right, claim or demand
arising out of the transaction of such business until the
insurer has obtained a license. In the event of a failure
by an unauthorized insurer to pay any claim or loss
within the provisions of an insurance contract, any
person who assisted or in any manner aided directly or
indirectly in the procurement of the insurance contract
is liable to the insured for the full amount of the claim
or loss in the manner provided by the provisions of the
insurance contract.

§33-3-21. Injunctive relief.

(a) Whenever the commissioner believes, from evi-
dence satisfactory to him or her, that any insurer is
violating or is about to violate the provisions of sections
eighteen through thirty-two, inclusive, of this article, the
commissioner may cause a complaint to be filed in any
appropriate circuit court of this state seeking to enjoin
and restrain such insurer from continuing such violation
or engaging therein or doing any act in furtherance
thereof.

(b) The circuit court shall have jurisdiction of the
proceeding and have the power to make and enter an
order or judgment awarding such preliminary or final
injunctive relief as in its judgment is proper. The
commissioner may elect to file such complaint in any
circuit where transactions have occurred or in the
circuit court of Kanawha County.

§33-3-22. Service of process on unauthorized insurer.

(a) Any act of transacting an insurance business as set
forth in section twenty of this article by any unautho-
rized insurer is equivalent to and constitutes an
irrevocable appointment by such an insurer, binding
upon him or her, his or her executor or administrator,
or successor in interest, of the secretary of state or his
or her successor in office, to be the true and lawful attorney of such an insurer upon whom may be served all lawful process in any action, suit or proceeding in any court by the commissioner or by the state and upon whom may be served any notice, order, pleading or process in any proceeding before the commissioner and which arises out of transacting an insurance business in this state by such an insurer. Any act of transacting an insurance business in this state by any unauthorized insurer is signification of its agreement that any such lawful process in such a court action, suit or proceeding any such notice, order, pleading or process in such an administrative proceeding before the commissioner so served is of the same legal force and validity as personal service or process in this state upon such an insurer.

(b) Service of process in such an action must be made by delivering to and leaving with the secretary of state, or some person in apparent charge of his or her office, two copies thereof and by payment to the secretary of state the fees prescribed by law. Service upon the secretary of state as attorney is service upon the principal.

(c) Upon receipt by the secretary of state of two copies of the process to be served, as set forth in subsection (b) of this section and the payment of all relevant fees, the secretary of state shall cause such process to be served in the manner dictated by section thirteen, article four of this chapter, for service of process on unauthorized or unlicensed insurers.

(d) For the purposes of this section, “process” in an action in a court includes only a summons or the initial documents served in such an action. The secretary of state is not required to serve any documents in such an action after the initial service of process.

(e) Nothing in this section limits or affects the right to serve any process, notice, order or demand upon any person or insurer in any other manner permitted by law.

§33-3-23. Enforcement of foreign decrees.

(a) As used in this section:
(1) "Foreign decree" means any decree or order of a court located in a reciprocal state or other state including a court of the United States located therein, against any insurer incorporated or authorized to do business in this state.

(2) "Qualified party" means a state regulatory agency acting in its capacity to enforce the insurance laws of its state.

(3) "Reciprocal state" means any state or territory of the United States the laws of which contain procedures substantially similar to those specified in this section for the enforcement of decrees or orders issued by courts located in other states or territories of the United States, against any insurer incorporated or authorized to do business in such state or territory.

(b) The commissioner may proceed in the courts of this state, any reciprocal state, or any other state to enforce an order or decision in any court proceeding or in any administrative proceeding before the commissioner.

(c) The commissioner shall determine which states and territories qualify as reciprocal states and shall maintain at all times an up-to-date list of such states.

(d) A copy of any foreign decree authenticated in accordance with federal statutes may be filed in the office of the clerk of any circuit court of this state. The clerk of the circuit court, upon verifying with the commissioner that the decree or order qualified as a foreign decree, shall treat the foreign decree in the same manner as a decree of a circuit court of this state. A foreign decree, so filed, has the same effect and shall be deemed as a decree of a circuit court of this state, and is subject to the same procedures, defenses and proceedings for reopening, vacating or staying as a decree of a circuit court of this state and may be enforced or satisfied in like manner.

(e) At the time of the filing of the foreign decree, counsel for the commissioner shall make and file with the clerk of the circuit court an affidavit setting forth the name and last known post office address of the
defendant. Promptly upon the filing of the foreign decree and the affidavit, the clerk of the circuit court shall mail notice of the filing of the foreign decree to the defendant at the address given and to the commissioner and shall make a note of the mailing in the docket. In addition, counsel for the commissioner may mail a notice of the filing of the foreign decree to the defendant and to the commissioner and may file proof of mailing with the clerk of the circuit court. Lack of mailing notice of filing by the clerk of the circuit court shall not affect the enforcement proceedings if proof of mailing by the counsel for the commissioner has been filed. No execution or other process for enforcement of a foreign decree filing under this section may issue until thirty days after the date the decree is filed.

(f) If the defendant shows the circuit court:

(1) That an appeal from the foreign decree is pending or will be taken, or that a stay of execution has been granted, the court shall stay enforcement of the foreign decree until the appeal is concluded, the time for appeal expires or the stay of execution expires or is vacated upon proof that the defendant has furnished the security for the satisfaction of the decree required by the state in which it was rendered.

(2) Any ground upon which enforcement of a decree of any circuit court of this state would be stayed, the court may stay enforcement of the foreign decree which is required in this state.

(g) Any person filing a foreign decree shall pay to the clerk of the circuit court such fees as are otherwise authorized by this code.

§33-3-24. Penalty.

Any unauthorized insurer who transacts any unauthorized act of an insurance business as set forth in sections eighteen through thirty-two of this article, inclusive, may be fined by the commissioner, after notice and hearing, pursuant to section thirteen, article two of this chapter, such fine not to exceed twenty thousand dollars.
§33-3-25. Person providing specified coverage.

Any person who transacts insurance, transacts an insurance business or provides insurance coverage in this state for the cost of:

(a) Medical care;
(b) Surgery;
(c) Chiropractic;
(d) Physical therapy;
(e) Speech pathology;
(f) Audiology;
(g) Professional care of mental health;
(h) Dental care;
(i) Hospital care; or
(j) Ophthalmic care, whether the coverage provides for direct payment, reimbursement or any other method of payment, is subject to regulation by the commissioner and to the provisions of this code unless he or she shows that while transacting insurance, or transacting an insurance business or providing such coverage he or she is subject to regulation by an agency of federal government.

§33-3-26. Proof of regulation by a federal government agency.

A person may show that he or she is subject to regulation by an agency of the federal government by providing the commissioner with the appropriate certificate or other document which permits the person to provide those services.

§33-3-27. Submission to examination by commissioner.

Any such person who is unable to show, upon request by the commissioner, that he or she is subject to regulation by an agency of the federal government shall submit to an examination by the commissioner to determine the organization and solvency of the person and to determine whether he or she is in compliance
§33-3-28. Information to be provided to agents, brokers and others.

An administrator who advertises or administers coverage in this state which is:

(a) Of a kind described in section twenty-five of this article; and

(b) Provided by a person described in section twenty-seven of this article shall inform each agent, broker or other person who advertises, procures, renews, continues, sells or negotiates or solicits the sale of such coverage, of the elements of the coverage, including the amount of excess insurance or reinsurance in effect.

§33-3-29. Statement of charges; notice of hearing.

(a) If the commissioner has reason to believe that a person described in section twenty-seven of this article is providing any type of coverage described in section twenty-five of this article, the commissioner may:

(1) Issue a statement of charges and a notice of a hearing to be held on those charges; and

(2) Serve the statement and notice upon the person so charged.

(b) The statement and notice must be:

(1) Issued pursuant to section thirteen, article two of this chapter; and

(2) Served personally, or by certified or registered mail at the last known address of such person, or in compliance with section twenty-two of this article.

§33-3-30. Order after hearing; administrative fines; modification of order.

(a) After the commissioner conducts a hearing pursuant to section twenty-nine of this article, he or she shall issue an order pursuant to section thirteen, article two of this chapter. If the commissioner determines that the person being charged has engaged in a practice prohibited by this chapter, the commissioner shall order
7 him or her to cease and desist from that practice.
8 (b) If the person knew or reasonably should have
9 known that he or she was in violation of this chapter,
10 the commissioner may order him or her to pay an
11 administrative fine of not more than one thousand
12 dollars for each act or violation up to an aggregate
13 penalty of twenty thousand dollars.
14 (c) The commissioner may modify or set aside, in
15 whole or in part, any order issued by him or her
16 pursuant to this section, but any such action must be
17 made before the expiration of the period for appeal or
18 before the official record in the proceeding has been
19 filed with the court pursuant to section fourteen, article
20 two of this chapter.

§33-3-31. Review of order.

1 An order issued pursuant to section thirty of this
2 article may be reviewed pursuant to section fourteen,
3 article two of this chapter.

§33-3-32. Administrative fine for violation.

1 If a person violates an order issued pursuant to section
2 thirty of this article, the commissioner may impose an
3 administrative fine after giving notice and a hearing
4 pursuant to section thirteen, article two of this chapter.
5 Such fine may not exceed five thousand dollars for each
6 violation.

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
7 Virginia. The Legislature declares that it is a subject
8 of concern that certain insurers, while not licensed to
9 transact insurance in this state, are soliciting the sale
10 of insurance and selling insurance to residents of this
11 state, thus presenting the insurance commissioner with
the problem of resorting to courts of foreign jurisdictions for the purpose of enforcing the insurance laws of this state for the protection of our citizens. The Legislature declares that it is also a subject of concern that many residents of this state hold policies of insurance issued or delivered in this state by insurers not licensed to transact insurance in this state, thus presenting to such residents the often insuperable obstacle of resorting to distant fora for the purpose of asserting legal rights under such policies. In furtherance of such state interest, the Legislature herein provides a method of substituted service of process upon such insurers and declares that in so doing it exercises its powers to protect its residents and to define, for the purpose of this section, what constitutes transacting insurance in this state, and also exercises powers and privileges available to the state by virtue of public law number fifteen, seventy-ninth Congress of the United States, chapter twenty, first session, Senate number three hundred forty, as amended, which declares that the business of insurance and every person engaged therein shall be subject to the laws of the several states.

(b) (1) Any of the following acts in this state, effected by mail or otherwise, by an unlicensed foreign or alien insurer: (i) The issuance or delivery of contracts of insurance to residents of this state or to corporations authorized to do business therein, (ii) the solicitation of applications for such contracts, (iii) the collection of premiums, membership fees, assessments or other considerations for such contracts, or (iv) any other transaction of business, is equivalent to and shall constitute an appointment by such insurer of the secretary of state and his or her successor in office, to be its true and lawful attorney, upon whom may be served all lawful process in any action, suit or proceeding instituted by or on behalf of an insured or beneficiary arising out of any such contract of insurance, and in any action, suit or proceeding which may be instituted by the insurance commissioner in the name of any such insured or beneficiary or in the name of the state of West Virginia, and in any administrative proceeding before the commissioner, and any such act shall be
signification of its agreement that such service of
process is of the same legal force and validity as
personal service of process in this state upon such
insurer.

(2) Such service of process upon any such insurer or
upon an insurer pursuant to section twenty-two, article
three of this chapter in any such action or proceeding
in any court of competent jurisdiction of this state, or
in any administrative proceeding before the commis­sioner, may be made by serving the secretary of state
or his or her chief clerk with two copies and an original
thereof and the payment to him or her of a fee of five
dollars. The secretary of state shall forward a copy of
such process by registered or certified mail to the
defendant at its last-known principal place of business
and shall keep a record of all process so served upon him
or her. Such service of process is sufficient, provided
notice of such service and a copy of the process are sent
within ten days thereafter by or on behalf of the plaintiff
or moving party to the defendant, or responding party,
at its last-known principal place of business by regis­tered or certified mail with return receipt requested.
The plaintiff or moving party shall file with the clerk
of the court in which the action is pending, or with the
judge or justice magistrate of such court in case there
be no clerk, or in the official records of the commissioner
if an administrative proceeding before the commis­sioner, an affidavit of compliance herewith, a copy of the
process and either a return receipt purporting to be
signed by the defendant or responding party or a person
qualified to receive its registered or certified mail in
accordance with the rules and customs of the post-office
department; or, if acceptance was refused by the
defendant or responding party or an agent thereof, the
original envelope bearing a notation by the postal
authorities that receipt was refused. Service of process
so made shall be deemed to have been made within the
territorial jurisdiction of any court in this state.

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

(A) Soliciting insurance, or

(B) Making, issuing or delivering any contract of
insurance, or

(C) Collecting or receiving any premium, membership
fee, assessment or other consideration for insurance:
Provided, That notice of such service and a copy of such
process are sent within ten days thereafter, by or on
behalf of the plaintiff or moving party to the defendant
or responding party at the last-known principal place of
business of the defendant or responding party, by
registered or certified mail with return receipt re-
quested. The plaintiff or moving party shall file with the
clerk of the court in which the action is pending, or with
the judge or magistrate of such court in case there be
no clerk, or in the official records of the commissioner
if an administrative proceeding before the commis-
sioner, an affidavit of compliance herewith, a copy of the
process and either a return receipt purporting to be
signed by the defendant or responding party, or a person
qualified to receive its registered or certified mail in
accordance with the rules and customs of the post-office
department; or, if acceptance was refused by the
defendant or responding party, or an agent thereof, the
original envelope bearing a notation by the postal
authorities that receipt was refused.

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

(5) Nothing in this section contained shall limit or
abridge the right to serve any process, notice or demand
upon any insurer in any other manner now or hereafter
permitted by law.
(c) (1) Before any unauthorized or unlicensed foreign
or alien insurer shall file or cause to be filed any
pleading in any action, suit or proceeding instituted
against it, or any notice, order, pleading or process in
an administrative proceeding before the commissioner
instituted against such insurer, such unauthorized or
unlicensed insurer shall either (i) deposit with the clerk
of the court in which such action, suit or proceeding is
pending, or with the commissioner in an administrative
proceeding before the commissioner, cash or securities
or file with such clerk or the commissioner a bond with
good and sufficient sureties, to be approved by the court
or the commissioner, in an amount to be fixed by the
court or commissioner sufficient to secure the payment
of any final judgment which may be rendered in such
action or administrative proceeding: Provided, That the
court or the commissioner may in its, his or her
respective discretion make an order dispensing with
such deposit or bond where the auditor of the state shall
have certified to such court or commissioner that such
insurer maintains within this state funds or securities
in trust or otherwise sufficient and available to satisfy
any final judgment which may be entered in such action,
suit or proceeding; or (ii) procure a license to transact
insurance in this state.

(2) The court or the commissioner in any action, suit
or proceeding in which service is made in the manner
provided in subdivision (2) or (3), subsection (b) of this
section may, in its, his or her respective discretion, order
such postponement as may be necessary to afford the
defendant or responding party reasonable opportunity to
comply with the provisions of subdivision (1) of this
subsection (c) and to defend such action or proceeding.

(3) Nothing in subdivision (1) of this subsection (c) is
to be construed to prevent an unauthorized or unlicensed
foreign or alien insurer from filing a motion to set aside
service thereof made in the manner provided in
subdivision (2) or (3), subsection (b) of this section on the
grounds that such insurer has not done any of the acts
enumerated in subdivision (1), subsection (b) of this
section, or in section twenty-two, article three of this
chapter.

(d) In any action against an unauthorized or unlicensed foreign or alien insurer upon a contract of insurance issued or delivered in this state to a resident thereof or to a corporation authorized to do business therein, if the insurer has failed for thirty days after demand prior to the commencement of the action to make payment in accordance with the terms of the contract, and it appears to the court that such refusal was vexatious and without reasonable cause, the court may allow to the plaintiff a reasonable attorney's fee and include such fee in any judgment that may be rendered in such action. Such fee shall not exceed twelve and one-half percent of the amount which the court finds the plaintiff is entitled to recover against the insurer, but in no event shall such fee be less than twenty-five dollars. Failure of an insurer to defend any such action shall be deemed prima facie evidence that its failure to make payment was vexatious and without reasonable cause.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect July 1, 1992.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 31st

day of March, 1992.

Governor