

RECEIVED  
97 MAY -7 PM 5:01  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1997



# ENROLLED

HOUSE BILL No. 2671

(By Delegate Michael )



Passed April 12, 1997

In Effect July 1, 1997 Passage

RECEIVED

97 JUL -7 PM 5:01

OFFICE OF THE CLERK  
SENATE OF WEST VIRGINIA

## ENROLLED

COMMITTEE SUBSTITUTE

FOR

# H. B. 2671

(BY DELEGATE MICHAEL)

---

[Passed April 12, 1997; in effect July 1, 1997.]

---

AN ACT to amend and reenact section eight, article five, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section five, article twelve-c, chapter eleven of said code; to amend and reenact section seventeen-c, article five, chapter twenty-one-a of said code; to amend and reenact sections nine and fourteen, article nineteen, chapter twenty-nine of said code; to amend and reenact section seven, article two, chapter twenty-nine-a of said code; to amend and reenact sections three and six, article eighteen, chapter thirty of said code; to amend and reenact sections fifteen and fifty-six, article one, chapter thirty-one of said code; to amend and reenact section one hundred eleven, article one, chapter thirty-one-b of said code; to amend and reenact sections twelve and thirteen, article four, chapter thirty-three of said code; to amend and reenact section eight, article one-a, chapter thirty-eight of said code; to amend and reenact section five, article five-a of said chapter; to amend and reenact sections four hundred three, four hundred four, four hundred five, four hundred six and four hundred seven, article nine, chapter forty-six of said code; to amend and reenact section one hundred thirty-seven, article two, chapter forty-six-a of said code; to amend and reenact section four,

article nine, chapter forty-seven of said code; to amend and reenact sections thirty-one and thirty-three, article three, chapter fifty-six of said code; and to amend and reenact section two, article one, chapter fifty-nine of said code, relating generally to the secretary of state; fees and charges for services of the secretary of state, filing a change of officers for a corporation or other business entity and designation of the secretary of state as attorney in fact for service of process; providing for distribution of the rule monitor to subscribers of the code of state rules; and providing for an increase in fees.

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

That section eight, article five, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended be amended and reenacted; that section five, article twelve-c, chapter eleven of said code be amended and reenacted; that section seventeen-c, article five, chapter twenty-one-a of said code be amended and reenacted; that sections nine and fourteen, article nineteen, chapter twenty-nine of said code be amended and reenacted; that section seven, article two, chapter twenty-nine-a of said code be amended and reenacted; that sections three and six, article eighteen, chapter thirty of said code be amended and reenacted; that sections fifteen and fifty-six, article one, chapter thirty-one of said code be amended and reenacted; to amend and reenact section one hundred eleven, article one, chapter thirty-one-b of said code; that sections twelve and thirteen, article four, chapter thirty-three of said code be amended and reenacted; that section eight, article one-a, chapter thirty-eight of said code be amended and reenacted; that section five, article five-a of said chapter be amended and reenacted; that sections four hundred three, four hundred four, four hundred five, four hundred six and four hundred seven, article nine, chapter forty-six of said code be amended and reenacted; that section one hundred thirty-seven, article two, chapter forty-six-a of said code be amended and reenacted; that section four, article nine, chapter forty-seven of said code be amended and reenacted; that sections thirty-one and thirty-three, article three, chapter fifty-six of said code be amended and reenacted; and that section two, article one, chapter fifty-nine of said code be amended and reenacted, all to read as follows:

**CHAPTER 3. ELECTIONS.**

**ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.**

**§3-5-8. Filing fees and their disposition.**

1 Every person who becomes a candidate for  
2 nomination for or election to office in any primary  
3 election, shall, at the time of filing the certificate of  
4 announcement as required in this article, pay a filing fee  
5 as follows:

6 (a) A candidate for president of the United States, for  
7 vice-president of the United States, for United States  
8 senator, for member of the United States House of  
9 Representatives, for governor and for all other state  
10 elective offices shall pay a fee equivalent to one percent of  
11 the annual salary of the office for which the candidate  
12 announces;

13 (b) A candidate for the office of judge of a circuit  
14 court and judge of any court of record of limited  
15 jurisdiction shall pay a fee equivalent to one percent of the  
16 total annual salary of the office for which the candidate  
17 announces;

18 (c) A candidate for member of the House of  
19 Delegates shall pay a fee of one-half percent of the total  
20 annual salary of the office, and a candidate for state  
21 senator shall pay a fee of one percent of the total annual  
22 salary of the office;

23 (d) A candidate for sheriff, prosecuting attorney,  
24 circuit clerk, county clerk, assessor, member of the county  
25 commission and magistrate shall pay a fee equivalent to  
26 one percent of the annual salary of the office for which  
27 the candidate announces. A candidate for county board  
28 of education shall pay a fee of twenty-five dollars. A  
29 candidate for any other county office shall pay a fee of  
30 ten dollars;

31 (e) Delegates to the national convention of any  
32 political party shall pay the following filing fees:

33 A candidate for delegate-at-large shall pay a fee of  
34 twenty dollars; and a candidate for delegate from a  
35 congressional district shall pay a fee of ten dollars;

36 (f) Candidates for members of political executive  
37 committees and other political committees shall pay the  
38 following filing fees:

39 A candidate for member of a state executive  
40 committee of any political party shall pay a fee of twenty  
41 dollars; a candidate for member of a county executive  
42 committee of any political party shall pay a fee of ten  
43 dollars; and a candidate for member of a congressional,  
44 senatorial or delegate district committee of any political  
45 party shall pay a fee of five dollars.

46 Candidates filing for an office to be filled by the  
47 voters of one county shall pay the filing fee to the clerk of  
48 the circuit court, and candidates filing for an office to be  
49 filled by the voters of more than one county shall pay the  
50 filing fee to the secretary of state at the time of filing their  
51 certificates of announcement, and no certificate of  
52 announcement shall be received until the filing fee is paid.

53 All moneys received by such clerk from such fees  
54 shall be credited to the general county fund. Moneys  
55 received by the secretary of state from fees paid by  
56 candidates for offices to be filled by all the voters of the  
57 state shall be deposited in a special fund for that purpose  
58 and shall be apportioned and paid by him to the several  
59 counties on the basis of population, and that received from  
60 candidates from a district or judicial circuit of more than  
61 one county shall be apportioned to the counties  
62 comprising the district or judicial circuit in like manner.  
63 When such moneys are received by sheriffs, it shall be  
64 credited to the general county fund.

## **CHAPTER 11. TAXATION.**

### **ARTICLE 12C. CORPORATE LICENSE TAX.**

#### **§11-12C-5. Annual fee of secretary of state as attorney-in-fact.**

1 Every domestic and foreign corporation, and every  
2 domestic and foreign limited partnership shall pay an

3 annual fee of ten dollars for the services of the secretary  
4 of state as attorney-in-fact for such corporation or limited  
5 partnership, which fee shall be due and payable at the  
6 same time and with the same return, collected by the same  
7 officers, and accounted for in the same way, as the annual  
8 license tax imposed on corporations under this article.  
9 The tax commissioner shall pay over to the secretary of  
10 state all attorney-in-fact fees collected under this section,  
11 and such fees shall be used to offset the costs of the  
12 secretary of state for his or her services as attorney-in-fact.

### **CHAPTER 21A. UNEMPLOYMENT COMPENSATION.**

#### **ARTICLE 5. EMPLOYER COVERAGE AND RESPONSIBILITY.**

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

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

18 Service shall be made by leaving the original and two  
19 copies of both the summons and complaint, and the fee  
20 required by section two, article one, chapter fifty-nine of  
21 this code, with the secretary of state, or in his office, and  
22 said service shall be sufficient upon said nonresident. In  
23 the event any such summons and complaint is so served  
24 on the secretary of state he shall immediately cause one of  
25 the copies of the summons and complaint to be sent by  
26 registered or certified mail, return receipt requested, to the

27 employer at the latter's last known or reasonably  
28 ascertainable address. The employer's return receipt or, if  
29 such registered or certified mail is returned to the  
30 secretary of state refused by the addressee or for any other  
31 reason is undelivered, such mail showing thereon the  
32 stamp of the post-office department that delivery has been  
33 refused, or other reason for nondelivery, shall be  
34 appended to the original summons and complaint, and  
35 filed by the secretary of state in the clerk's office of the  
36 court from which said process issued.

## **CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.**

### **ARTICLE 19. SOLICITATION OF CHARITABLE FUNDS ACT.**

#### **§29-19-9. Registration of professional fund-raising counsel and professional solicitor; bonds; records; books.**

1 (a) No person may act as a professional fund-raising  
2 counsel or professional solicitor for a charitable  
3 organization subject to the provisions of this article, unless  
4 he or she has first registered with the secretary of state.  
5 Applications for such registration shall be in writing under  
6 oath or affirmation in the form prescribed by the secretary  
7 of state and contain such information as he or she may  
8 require. The application for registration by professional  
9 fund-raising counsel or professional solicitor shall be  
10 accompanied by an annual fee in the sum of one hundred  
11 dollars. A partnership or corporation, which is a  
12 professional fund-raising counsel or professional solicitor,  
13 may register for and pay a single fee on behalf of all its  
14 members, officers, agents and employees. However, the  
15 names and addresses of all officers, agents and employees  
16 of professional fund-raising counsel and all professional  
17 solicitors, their officers, agents, servants or employees  
18 employed to work under the direction of a professional  
19 solicitor shall be listed in the application.

20 (b) The applicant shall, at the time of the making of  
21 an application, file with and have approved by the  
22 secretary of state a bond in which the applicant shall be  
23 the principal obligor in the sum of ten thousand dollars

24 and which shall have one or more sureties satisfactory to  
25 the secretary of state, whose liability in the aggregate as  
26 such sureties will at least equal the said sum and maintain  
27 said bond in effect so long as a registration is in effect.  
28 The bond shall run to the state for the use of the secretary  
29 of state and any person who may have a cause of action  
30 against the obligor of said bonds for any losses resulting  
31 from malfeasance, nonfeasance or misfeasance in the  
32 conduct of solicitation activities. A partnership or  
33 corporation which is a professional fund-raising counsel  
34 or professional solicitor may file a consolidated bond on  
35 behalf of all its members, officers and employees.

36 (c) Each registration shall be valid throughout the  
37 state for a period of one year and may be renewed for  
38 additional one-year periods upon written application  
39 under oath in the form prescribed by the secretary of state  
40 and the payment of the fee prescribed herein.

41 (d) The secretary of state or his or her designate shall  
42 examine each application, and if he or she finds it to be in  
43 conformity with the requirements of this article and all  
44 relevant rules and regulations and the registrant has  
45 complied with the requirements of this article and all  
46 relevant rules and regulations, he or she shall approve the  
47 registration.

**§29-19-14. Nonresident charitable organizations, professional fund-raising counsel and solicitors; designation of secretary of state as agent for service of process; notice of such service by attorney general.**

1 Any charitable organization or professional fund-  
2 raising counsel or professional solicitor having its or his or  
3 her principal place of business without the state, or  
4 organized under and by virtue of the laws of a foreign  
5 state, which or who shall solicit contributions from people  
6 in this state, is subject to the provisions of this article and  
7 shall be deemed to have irrevocably appointed the  
8 secretary of state as its or his or her agent upon whom  
9 may be served any summons, subpoena, subpoena duces  
10 tecum or other process directed to such charitable  
11 organization, professional fund-raising counsel or



12 professional solicitor or any partner, principal officer or  
13 director thereof in any action or proceeding brought  
14 under the provisions of this article. Service of such process  
15 upon the secretary of state shall be made by personally  
16 delivering to and leaving with him a copy thereof along  
17 with the fee required by section two, article one, chapter  
18 fifty-nine of this code, and such service shall be sufficient  
19 service: *Provided*, That notice of such service and a copy  
20 of such process are forthwith sent by the secretary of state  
21 to such charitable organization or professional fund-  
22 raising counsel or professional solicitor by registered or  
23 certified mail with return receipt requested at its or his or  
24 her office, as set forth in the registration form required to  
25 be filed with the secretary of state pursuant to this article  
26 or in default of the filing of such form, at the last address  
27 known to the the secretary of state.

## CHAPTER 29A. STATE ADMINISTRATIVE PROCEDURES ACT.

### ARTICLE 2. STATE REGISTER.

#### §29A-2-7. Publication of state register.

1 (a) The Legislature intends that the secretary of state  
2 offer to the public convenient and efficient access to  
3 copies of the state register or parts thereof desired by the  
4 citizens. The provisions of this section are enacted in order  
5 to provide a means of doing so pending any other means  
6 provided by law or legislative rule.

7 (b) All materials filed in the state register shall be  
8 indexed daily in chronological order of filing with a brief  
9 description of the item filed and a columnar cross index to  
10 (1) agency and (2) section, article and chapter of the code  
11 to which it relates and by which it is filed in the state  
12 register and (3) such other information in the description  
13 or cross index as the secretary of state believes will aid a  
14 citizen in using the chronological index.

15 (c) To give users of the code of state rules a means to  
16 know whether the rule is being superseded by a version of  
17 the rule that has become effective, but not yet been final-  
18 filed, prepared, proofed and distributed, or may be

19 superseded by a rule which is being proposed and  
20 promulgated pursuant to article three but not yet become  
21 final, the secretary of state shall provide with each update  
22 of the code of state rules, a copy of the rule monitor and  
23 its cross index which shows the rules that have become  
24 effective but not yet distributed and the rules which may  
25 be superseded by a rule which is being proposed. The  
26 copy of the rule monitor distributed with the updates of  
27 the code of state rules shall state plainly that this version of  
28 the rule monitor only shows the status of the promulgation  
29 of rules as of the date of distribution of the update of the  
30 code of state rules, and that to obtain the most recent status  
31 of the rules, the user should consult the rule monitor in the  
32 most recent publication of the state register. With the first  
33 distribution to the loose leaf version of the code of state  
34 rules the secretary of state shall also distribute a divider  
35 where the current rule monitor shall be maintained. With  
36 the first distribution, the secretary of state shall also  
37 include instructions, with a copy for insertion in or on the  
38 front of each volume of the loose-leaf versions of the code  
39 of state rules, to users on how the rule monitor can be  
40 utilized to determine whether the version of the rule in the  
41 code of state rules currently in effect. This subsection is  
42 not to be construed to require that subscribers to the  
43 updates of the code of state rules receive a subscription to  
44 the state register.

45 (d) The secretary of state shall cause to be duplicated  
46 in such number as shall be required, on white paper with  
47 two punches suitable for fastening in two-ring binders, the  
48 permanent biennial state register, the chronological index  
49 and other materials filed in the register, or any part by  
50 agency or section, article or chapter for subscription at a  
51 cost including labor, paper and postage, sufficient in his  
52 judgment to defray the expense of such duplication. The  
53 secretary of state shall also offer, at least at monthly  
54 intervals, supplements to the published materials listed  
55 above. Any subscription for monthly supplements shall be  
56 offered annually and shall include the chronological  
57 index and materials related to such agency or agencies, or  
58 section, article or chapter of the code as a person may  
59 designate. A person may limit the request to notices only,

60 to notices and rules, or to notices and proposed rules, or  
61 any combination thereof.

62 (e) Every two years, the secretary of state shall offer  
63 for purchase succeeding biennial permanent state registers  
64 which shall consist of all rules effective on the date of  
65 publication selected by the secretary of state, which date  
66 shall be at least two years from the last such publication  
67 date, and materials filed in the state register relating  
68 thereto. The cost of the succeeding biennial permanent  
69 state register and for the portion relating to any agency or  
70 any section, article or chapter of the code which may be  
71 designated by a person purchasing the same shall be fixed  
72 in the same manner specified in section eleven of this  
73 article.

74 (f) The secretary of state may omit from any  
75 duplication made pursuant to subsection (e) of this section  
76 any rules the duplication of which would be unduly  
77 cumbersome, expensive or otherwise inexpedient, if a  
78 copy of such rules is made available from the original  
79 filing of such rule, at a price not exceeding the cost of  
80 duplication, and if the volume from which such rule is  
81 omitted includes a notice in that portion of the publication  
82 in which the rule would have been located, stating (1) the  
83 general subject matter of the omitted rule, (2) each section,  
84 article and chapter of this code to which the omitted rule  
85 relates, and (3) the means by which a copy of the omitted  
86 rule may be obtained.

87 (g) The secretary of state may propose changes to  
88 the procedures outlined in the section above by proposing  
89 a legislative rule under the provisions of section nine,  
90 article three of this chapter, but may promulgate no rules  
91 containing those changes unless authorized by the  
92 Legislature pursuant to article three of this chapter.

## **CHAPTER 30. PROFESSIONS AND OCCUPATIONS.**

### **ARTICLE 18. PRIVATE INVESTIGATIVE AND SECURITY SERVICES.**

#### **§30-18-3. Application requirements for a license to conduct the private investigation business.**

1 (a) To be licensed to be a private detective, a private  
2 investigator or to operate a private detective or  
3 investigative firm, each applicant shall complete and file a  
4 written application, under oath, with the secretary of state  
5 and in such form as the secretary may prescribe.

6 (b) On the application each applicant shall provide  
7 the following information: The applicant's name, birth  
8 date, citizenship, physical description, military service,  
9 current residence, residences for the preceding seven  
10 years, qualifying education or experience, the location of  
11 each of his or her offices in this state and any other  
12 information requested by the secretary of state in order to  
13 comply with the requirements of this article.

14 (c) In the case of a corporation that is seeking a firm  
15 license, the application shall be signed by the president,  
16 and verified by the secretary or treasurer of such  
17 corporation and shall specify the name of the corporation,  
18 the date and place of its incorporation, the names and titles  
19 of all officers, the location of its principal place of  
20 business, and the name of the city, town or village, stating  
21 the street and number, and otherwise such apt description  
22 as will reasonably indicate the location. If the corporation  
23 has been incorporated in a state other than West Virginia, a  
24 certificate of good standing from the state of  
25 incorporation must accompany the application. This  
26 information must be provided in addition to that required  
27 to be provided by the applicant.

28 (d) The applicant shall provide:

29 (1) Information in the application about whether the  
30 applicant has ever been arrested for or convicted of any  
31 crime or wrongs, either done or threatened, against the  
32 government of the United States;

33 (2) Information about offenses against the laws of  
34 West Virginia or any state; and

35 (3) Any facts as may be required by the secretary of  
36 state to show the good character, competency and integrity  
37 of the applicant.

38 To qualify for a firm license, the applicant shall  
39 provide such information for each person who will be  
40 authorized to conduct the private investigation business  
41 and for each officer, member or partner of the firm.

42 (e) As part of the application, each applicant shall  
43 give the secretary of state permission to review the records  
44 held by the division of public safety for any convictions  
45 that may be on record for the applicant.

46 (f) For each applicant for a license and for each  
47 officer, member and partner of the firm applying for a  
48 license, the application shall be accompanied by one  
49 recent full-face photograph and one complete set of the  
50 person's fingerprints.

51 (g) For each applicant, the application shall be  
52 accompanied by:

53 (1) Character references from at least five reputable  
54 citizens. Each reference must have known the applicant  
55 for at least five years preceding the application. No  
56 reference may be connected to the applicant by blood or  
57 marriage. All references must have been written for the  
58 purpose of the application for a license to conduct the  
59 private investigation business; and

60 (2) A nonrefundable application processing service  
61 charge of fifty dollars, which shall be payable to the  
62 secretary of state to offset the cost of license review and  
63 criminal investigation background report from the  
64 department of public safety, along with a license fee of  
65 one hundred dollars if the applicant is an individual, or  
66 two hundred dollars if the applicant is a firm, or five  
67 hundred dollars if the applicant is a non-resident of West  
68 Virginia or a foreign corporation or business entity. The  
69 license fee shall be deposited to the general revenue fund,  
70 and shall be refunded only if the license is denied.

71 (h) All applicants for private detective or private  
72 investigator licenses or for private investigation firm  
73 licenses shall file in the office of secretary of state a surety  
74 bond. Such bond shall:

75 (1) Be in the sum of two thousand five hundred  
76 dollars and conditioned upon the faithful and honest  
77 conduct of such business by such applicant;

78 (2) Be written by a company recognized and  
79 approved by the insurance commissioner of West Virginia  
80 and approved by the attorney general of West Virginia  
81 with respect to its form;

82 (3) Be in favor of the state of West Virginia for any  
83 person who is damaged by any violation of this article.  
84 The bond must also be in favor of any person damaged  
85 by such a violation.

86 (i) Any person claiming against the bond required  
87 by subsection (h) of this section for a violation of this  
88 article may maintain an action at law against any licensed  
89 individual or firm and against the surety. The surety shall  
90 be liable only for damages awarded under section twelve  
91 of this article and not the punitive damages permitted  
92 under that section. The aggregate liability of the surety to  
93 all persons damaged by a person or firm licensed under  
94 this article may not exceed the amount of the bond.

**§30-18-6. Application requirements for a license to conduct security guard business.**

1 (a) To be licensed as a security guard or to operate a  
2 security guard firm, each applicant shall complete and file  
3 a written application, under oath, with the secretary of state  
4 and in such form as the secretary may prescribe.

5 (b) On the application, each applicant shall provide  
6 the following information: The applicant's name, birth  
7 date, citizenship, physical description, military service,  
8 current residence, residences for the preceding seven  
9 years, qualifying education or experience, the location of  
10 each of his or her offices in this state and any other  
11 information requested by the secretary of state in order to  
12 comply with the requirements of this article.

13 (c) In the case of a corporation that is seeking a firm  
14 license, the application shall be signed by the president,  
15 and verified by the secretary or treasurer of such  
16 corporation and shall specify the name of the corporation,

17 the date and place of its incorporation, the names and titles  
18 of all officers, the location of its principal place of  
19 business, and the name of the city, town or village, stating  
20 the street and number, and otherwise such apt description  
21 as will reasonably indicate the location. If the corporation  
22 has been incorporated in a state other than West Virginia, a  
23 certificate of good standing from the state of  
24 incorporation must accompany the application. This  
25 information shall be provided in addition to that required  
26 to be provided the applicant.

27 (d) The applicant shall provide:

28 (1) Information in the application about whether the  
29 applicant has ever been arrested for or convicted of any  
30 crime or wrongs, either done or threatened, against the  
31 government of the United States;

32 (2) Information about offenses against the laws of  
33 West Virginia or any state; and

34 (3) Any facts as may be required by the secretary of  
35 state to show the good character, competency and integrity  
36 of the applicant.

37 To qualify for a firm license, the applicant shall  
38 provide such information for each person who would be  
39 authorized to conduct security guard business under the  
40 applicant's firm license and for each officer, member or  
41 partner in the firm.

42 (e) As part of the application, each applicant shall  
43 give the secretary of state permission to review the records  
44 held by the department of public safety for any  
45 convictions that may be on record for the applicant.

46 (f) For each applicant for a license and for each  
47 officer, member and partner of the firm applying for a  
48 license, the application shall be accompanied by one  
49 recent full-face photograph and one complete set of the  
50 person's fingerprints.

51 (g) For each applicant, the application shall be  
52 accompanied by:

53 (1) Character references from at least five reputable  
54 citizens. Each reference must have known the applicant  
55 for at least five years preceding the application. No  
56 reference may be connected to the applicant by blood or  
57 marriage. All references must have been written for the  
58 purpose of the application for a license to conduct  
59 security guard business; and

60 (2) A nonrefundable application processing service  
61 charge of fifty dollars, which shall be payable to the  
62 secretary of state to offset the cost of license review and  
63 criminal investigation background report from the  
64 department of public safety, along with a license fee of  
65 one hundred dollars if the applicant is an individual, or  
66 two hundred dollars if the applicant is a firm, or five  
67 hundred dollars if the applicant is a non-resident of West  
68 Virginia or a foreign corporation or business entity. The  
69 license fee shall be deposited to the general revenue fund,  
70 and shall be refunded only if the license is denied.

71 (h) All applicants for security guard licenses or  
72 security guard firm licenses shall file in the office of  
73 secretary of state a surety bond. Such bond shall:

74 (1) Be in the sum of two thousand five hundred  
75 dollars and conditioned upon the faithful and honest  
76 conduct of such business by such applicant;

77 (2) Be written by a company recognized and  
78 approved by the insurance commissioner of West Virginia  
79 and approved by the attorney general of West Virginia  
80 with respect to its form;

81 (3) Be in favor of the state of West Virginia for any  
82 person who is damaged by any violation of this article.  
83 The bond must also be in favor of any person damaged  
84 by such a violation.

85 (i) Any person claiming against the bond required  
86 by subsection (h) of this section for a violation of this  
87 article may maintain an action at law against any licensed  
88 individual or firm and against the surety. The surety shall  
89 be liable only for damages awarded under section twelve  
90 of this article and not the punitive damages permitted



91 under that section. The aggregate liability of the surety to  
92 all persons damaged by a person or firm licensed under  
93 this article may not exceed the amount of the bond.

### **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  
2 attorney-in-fact for and on behalf of every corporation  
3 created by virtue of the laws of this state and every foreign  
4 corporation authorized to conduct affairs or do or transact  
5 business herein pursuant to the provisions of this article,  
6 with authority to accept service of notice and process on  
7 behalf of every such corporation and upon whom service  
8 of notice and process may be made in this state for and  
9 upon every such corporation. No act of such corporation  
10 appointing the secretary of state such attorney-in-fact shall  
11 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  
14 the secretary of state with the original notice or process,  
15 together with the fee required by section two, article one,  
16 chapter fifty-nine of this code, the secretary of state shall  
17 file in his office a copy of such process or notice, with a  
18 note thereon endorsed of the time of service, or  
19 acceptance, as the case may be, and transmit one copy of  
20 such process or notice by registered or certified mail,  
21 return receipt requested, to the person to whom notice and  
22 process shall be sent, whose name and address were last  
23 furnished to the state officer at the time authorized by  
24 statute to accept service of notice and process and upon  
25 whom notice and process may be served; and if no such  
26 person has been named, to the principal office of the  
27 corporation at the address last furnished to the state officer  
28 at the time authorized by statute to accept service of  
29 process and upon whom process may be served, as

30 required by law. No process or notice shall be served on  
31 the secretary of state or accepted by him less than ten days  
32 before the return day thereof. Such corporation shall pay  
33 the annual fee prescribed by article twelve, chapter eleven  
34 of this code for the services of the secretary of state as its  
35 attorney-in-fact.

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

71 No process or notice shall be served on the secretary of  
72 state or accepted by him less than ten days before the  
73 return date thereof. The court may order such  
74 continuances as may be reasonable to afford each  
75 defendant opportunity to defend the action or  
76 proceedings.

77 For the purpose of this section, a foreign corporation  
78 not authorized to conduct affairs or do or transact  
79 business in this state pursuant to the provisions of this  
80 article shall nevertheless be deemed to be conducting  
81 affairs or doing or transacting business herein (a) if such  
82 corporation makes a contract to be performed, in whole or  
83 in part, by any party thereto, in this state, (b) if such  
84 corporation commits a tort, in whole or in part, in this  
85 state, or (c) if such corporation manufactures, sells, offers  
86 for sale or supplies any product in a defective condition  
87 and such product causes injury to any person or property  
88 within this state notwithstanding the fact that such  
89 corporation had no agents, servants or employees or  
90 contacts within this state at the time of said injury. The  
91 making of such contract, the committing of such tort or  
92 the manufacture or sale, offer of sale or supply of such  
93 defective product as hereinabove described shall be  
94 deemed to be the agreement of such corporation that any  
95 notice or process served upon, or accepted by, the  
96 secretary of state pursuant to the next preceding  
97 paragraph of this section in any action or proceeding  
98 against such corporation arising from, or growing out of,  
99 such contract, tort, or manufacture or sale, offer of sale or  
100 supply of such defective product shall be of the same legal  
101 force and validity as process duly served on such  
102 corporation in this state.

**§31-1-56. Appointment of person to whom notice or process  
may be sent by the secretary of state; change of  
principal office or name and address of person to  
receive notice or process.**

1 (a) A corporation may at any time appoint a person  
2 other than the corporation to whom notice or process  
3 served upon the secretary of state or service of which is  
4 accepted by the secretary of state may be sent, as required

5 by section fifteen of this article, by filing with the  
6 secretary of state a statement setting forth:

7 (1) The name of the corporation and the state of its  
8 incorporation.

9 (2) The present address of its principal office.

10 (3) Express appointment of and the name and  
11 address of the person to whom notice or process shall be  
12 sent by the secretary of state under section fifteen of this  
13 article.

14 (4) Express authority to the secretary of state to send  
15 to such person at the address given, all notices and process  
16 served upon the secretary of state or service of which is  
17 accepted by the secretary of state.

18 (5) That such appointment was duly authorized by  
19 the board of directors of the corporation.

20 Such statement shall be signed by the president or a  
21 vice president or secretary or an assistant secretary, of the  
22 corporation, verified by the signer and delivered to the  
23 secretary of state, and upon receipt thereof shall be filed  
24 by the secretary of state in his office.

25 (b) A corporation may at any time change the  
26 address of its principal office; or the name and address, or  
27 the address, of the person to whom shall be sent notice or  
28 process served upon, or service of which is accepted by,  
29 the secretary of state. Such change shall become effective  
30 as the name and address or address last furnished to the  
31 secretary of state for the purposes of section fifteen of this  
32 article only when such corporation has filed in the office  
33 of the secretary of state a statement setting forth:

34 (1) The name of the corporation.

35 (2) The state under whose laws it was incorporated.

36 (3) If the address of the principal office is changed,  
37 then the address of the former or present principal office  
38 and the address to which it is changed or to be changed.

39 (4) If the name and address or address only of the  
40 person to whom notice or process is to be sent is to be  
41 changed, then the name and address of such person to be  
42 used from and after the filing of the statement required by  
43 this section.

44 (5) That such change was duly authorized by the  
45 board of directors.

46 (c) The corporation may file a record of the election  
47 or appointment of new corporate officers, setting forth:

48 (1) The name and principal office address of the  
49 corporation.

50 (2) The name, address and office of each new  
51 officer.

52 (3) That the officers were duly elected or appointed.

53 Such statement shall be signed by the president, vice  
54 president, secretary or assistant secretary of the  
55 corporation and verified by him. The fee for filing any  
56 notice of a change of agent, officers and/or principal  
57 office address shall be as required by section two, article  
58 one, chapter fifty-nine of this code.

## **CHAPTER 31B. UNIFORM LIMITED LIABILITY COMPANY ACT.**

### **ARTICLE 1. GENERAL PROVISIONS.**

#### **§31B-1-111. Service of process.**

1 (a) An agent for service of process appointed by a  
2 limited liability company or a foreign limited liability  
3 company is an agent of the company for service of any  
4 process, notice or demand required or permitted by law to  
5 be served upon the company.

6 (b) If a limited liability company or foreign limited  
7 liability company fails to appoint or maintain an agent for  
8 service of process in this state or the agent for service of  
9 process cannot with reasonable diligence be found at the  
10 agent's address, the secretary of state is an agent of the

11 company upon whom process, notice or demand may be  
12 served.

13 (c) Service of any process, notice or demand on the  
14 secretary of state may be made by delivering to and  
15 leaving with the secretary of state, the assistant secretary of  
16 state or clerk having charge of the limited liability  
17 company department of the secretary of state, the original  
18 process, notice or demand and two copies thereof for each  
19 defendant, along with the fee required by section two,  
20 article one, chapter fifty-nine of this code. No process,  
21 notice or demand may be served on or accepted by the  
22 secretary of state less than ten days before the return day  
23 thereof. If the process, notice or demand is served on the  
24 secretary of state, the secretary of state shall forward one  
25 of the copies by registered or certified mail, return receipt  
26 requested, to the company at its designated office and  
27 shall file in his or her office a copy of such process, notice  
28 or demand, with a note thereon endorsed of the time of  
29 service, or acceptance, as the case may be. Such service or  
30 acceptance of such process, notice or demand is sufficient  
31 if such return receipt is signed by an agent or employee of  
32 such company, or the registered or certified mail so sent  
33 by the secretary of state is refused by the addressee and  
34 the registered or certified mail is returned to the secretary  
35 of state, showing thereon the stamp of the United States  
36 postal service that delivery thereof has been refused, and  
37 such return receipt or registered or certified mail is  
38 appended to the original process, notice or demand and  
39 filed therewith in the clerk's office of the court from  
40 which such process, notice or demand was issued.

41 (d) The secretary of state shall keep a record of all  
42 processes, notices and demands served pursuant to this  
43 section and record the time of and the action taken  
44 regarding the service.

45 (e) This section does not affect the right to serve  
46 process, notice or demand in any manner otherwise  
47 provided by law.

### **CHAPTER 33. INSURANCE.**

#### **ARTICLE 4. GENERAL PROVISIONS.**

**§33-4-12. Service of process on licensed insurers.**

1           The secretary of state shall be, and is hereby  
2 constituted, the attorney-in-fact of every licensed insurer,  
3 domestic, foreign, or alien, transacting insurance in this  
4 state, upon whom all legal process in any action, suit or  
5 proceeding against it shall be served, and he may accept  
6 service of such process. Such process shall be served  
7 upon the secretary of state, or accepted by him, in the  
8 same manner as provided for service of process upon  
9 unlicensed insurers under subdivisions (2) and (3) of  
10 subsection (b) of section thirteen of this article. Each  
11 licensed insurer shall pay to the secretary of state an  
12 annual fee of ten dollars for services as authorized agent  
13 for service of process, which shall be used to offset the  
14 costs of the secretary of state for his or her services as  
15 attorney-in-fact.

**§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 to  
5 the jurisdiction of the courts of this state in suits by or on  
6 behalf of the insurance commissioner of West Virginia.  
7 The Legislature declares that it is a subject of concern that  
8 certain insurers, while not licensed to transact insurance in  
9 this state, are soliciting the sale of insurance and selling  
10 insurance to residents of this state, thus presenting the  
11 insurance commissioner with the problem of resorting to  
12 courts of foreign jurisdictions for the purpose of  
13 enforcing the insurance laws of this state for the protection  
14 of our citizens. The Legislature declares that it is also a  
15 subject of concern that many residents of this state hold  
16 policies of insurance issued or delivered in this state by  
17 insurers not licensed to transact insurance in this state,  
18 thus presenting to such residents the often insuperable  
19 obstacle of resorting to distant fora for the purpose of  
20 asserting legal rights under such policies. In furtherance  
21 of such state interest, the Legislature herein provides a  
22 method of substituted service of process upon such  
23 insurers and declares that in so doing it exercises its

24 powers to protect its residents and to define, for the  
25 purpose of this section, what constitutes transacting  
26 insurance in this state, and also exercises powers and  
27 privileges available to the state by virtue of public law  
28 number fifteen, seventy-ninth Congress of the United  
29 States, chapter twenty, first session, Senate number three  
30 hundred forty, as amended, which declares that the  
31 business of insurance and every person engaged therein  
32 shall be subject to the laws of the several states.

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

55 (2) Such service of process upon any such insurer or  
56 upon an insurer pursuant to section twenty-two, article  
57 three of this chapter in any such action or proceeding in  
58 any court of competent jurisdiction of this state, or in any  
59 administrative proceeding before the commissioner, may  
60 be made by serving the secretary of state or his or her  
61 chief clerk with two copies and an original thereof and the  
62 payment to him or her of the fee required by section two,  
63 article one, chapter fifty-nine of this code. The secretary  
64 of state shall forward a copy of such process by registered



65 or certified mail to the defendant at its last-known  
66 principal place of business and shall keep a record of all  
67 process so served upon him or her. Such service of  
68 process is sufficient, provided notice of such service and a  
69 copy of the process are sent within ten days thereafter by  
70 or on behalf of the plaintiff or moving party to the  
71 defendant, or responding party, at its last-known principal  
72 place of business by registered or certified mail with  
73 return receipt requested. The plaintiff or moving party  
74 shall file with the clerk of the court in which the action is  
75 pending, or with the judge or magistrate of such court in  
76 case there be no clerk, or in the official records of the  
77 commissioner if an administrative proceeding before the  
78 commissioner, an affidavit of compliance herewith, a copy  
79 of the process and either a return receipt purporting to be  
80 signed by the defendant or responding party or a person  
81 qualified to receive its registered or certified mail in  
82 accordance with the rules and customs of the post-office  
83 department; or, if acceptance was refused by the defendant  
84 or responding party or an agent thereof, the original  
85 envelope bearing a notation by the postal authorities that  
86 receipt was refused. Service of process so made shall be  
87 deemed to have been made within the territorial  
88 jurisdiction of any court in this state.

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

94 (A) Soliciting insurance, or

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

97 (C) Collecting or receiving any premium,  
98 membership fee, assessment or other consideration for  
99 insurance: *Provided*, That notice of such service and a  
100 copy of such process are sent within ten days thereafter,  
101 by or on behalf of the plaintiff or moving party to the  
102 defendant or responding party at the last-known principal  
103 place of business of the defendant or responding party, by  
104 registered or certified mail with return receipt requested.

105 The plaintiff or moving party shall file with the clerk of  
106 the court in which the action is pending, or with the judge  
107 or magistrate of such court in case there be no clerk, or in  
108 the official records of the commissioner if an  
109 administrative proceeding before the commissioner, an  
110 affidavit of compliance herewith, a copy of the process  
111 and either a return receipt purporting to be signed by the  
112 defendant or responding party, or a person qualified to  
113 receive its registered or certified mail in accordance with  
114 the rules and customs of the post-office department; or, if  
115 acceptance was refused by the defendant or responding  
116 party, or an agent thereof, the original envelope bearing a  
117 notation by the postal authorities that receipt was refused.

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

126 (5) Nothing in this section contained shall limit or  
127 abridge the right to serve any process, notice or demand  
128 upon any insurer in any other manner now or hereafter  
129 permitted by law.

130 (c)(1) Before any unauthorized or unlicensed  
131 foreign or alien insurer shall file or cause to be filed any  
132 pleading in any action, suit or proceeding instituted  
133 against it, or any notice, order, pleading or process in an  
134 administrative proceeding before the commissioner  
135 instituted against such insurer, such unauthorized or  
136 unlicensed insurer shall either (i) deposit with the clerk of  
137 the court in which such action, suit or proceeding is  
138 pending, or with the commissioner in an administrative  
139 proceeding before the commissioner, cash or securities or  
140 file with such clerk or the commissioner a bond with good  
141 and sufficient sureties, to be approved by the court or the  
142 commissioner, in an amount to be fixed by the court or  
143 commissioner sufficient to secure the payment of any  
144 final judgment which may be rendered in such action or

145 administrative proceeding: *Provided*, That the court or the  
146 commissioner may in its, his or her respective discretion  
147 make an order dispensing with such deposit or bond  
148 where the auditor of the state shall have certified to such  
149 court or commissioner that such insurer maintains within  
150 this state funds or securities in trust or otherwise sufficient  
151 and available to satisfy any final judgment which may be  
152 entered in such action, suit or proceeding; or (ii) procure a  
153 license to transact insurance in this state.

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

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

171 (d) In any action against an unauthorized or  
172 unlicensed foreign or alien insurer upon a contract of  
173 insurance issued or delivered in this state to a resident  
174 thereof or to a corporation authorized to do business  
175 therein, if the insurer has failed for thirty days after  
176 demand prior to the commencement of the action to make  
177 payment in accordance with the terms of the contract, and  
178 it appears to the court that such refusal was vexatious and  
179 without reasonable cause, the court may allow to the  
180 plaintiff a reasonable attorney's fee and include such fee  
181 in any judgment that may be rendered in such action.  
182 Such fee shall not exceed twelve and one-half percent of  
183 the amount which the court finds the plaintiff is entitled to  
184 recover against the insurer, but in no event shall such fee

185 be less than twenty-five dollars. Failure of an insurer to  
186 defend any such action shall be deemed prima facie  
187 evidence that its failure to make payment was vexatious  
188 and without reasonable cause.

## CHAPTER 38. LIENS.

### ARTICLE 1A. TRUSTEES OF SECURITY TRUSTS.

#### **§38-1A-8. How service of process or notice made.**

1 Service of such process or notice shall be made by  
2 mailing or delivering to the office of said secretary of state  
3 three copies of such process or notice, with a notation  
4 thereon of the residence address of the trustee upon whom  
5 service is being had, as stated in the security trust; if the  
6 address of the trustee be not stated in the security trust, the  
7 notation shall state the address of the beneficiary of such  
8 trust as given in the security trust; and service thereof shall  
9 be complete upon the receipt in said office of such notice  
10 or process bearing such notation and accompanied by the  
11 fee required by section two, article one, chapter fifty-nine  
12 of this code, which shall be taxed as costs in the suit, action  
13 or proceeding. The secretary of state shall pay into the  
14 state treasury all funds so coming into his hands, and shall  
15 keep one copy of all such process and notices, with a  
16 record of the day and hour of service thereof.

### ARTICLE 5A. SUGGESTIONS OF SALARY AND WAGES OF PERSONS ENGAGED IN PRIVATE EMPLOY- MENT.

#### **§38-5A-5. Service of suggestee execution upon suggestee; payments in satisfaction of execution; action for failure or refusal to pay; payments to be made every ninety days.**

1 (a) Service of a suggestee execution against salary or  
2 wages may be made by the clerk of the circuit court or the  
3 magistrate court clerk, as the case may be, by sending a  
4 copy of the suggestee execution to the suggestee by  
5 certified mail, return receipt requested, with delivery  
6 restricted to the addressee. If the registered mail is  
7 unclaimed, or otherwise is not accepted or is refused by  
8 the suggestee, then service of the suggestee execution shall

9 be made in the same manner as a summons commencing  
10 an action is served, in accordance with the rules of civil  
11 procedure for trial courts of record: *Provided*, That if the  
12 suggestee is located in a county other than the county  
13 where the suggestee execution issues, the clerk may mail  
14 the suggestee execution by first class mail to the sheriff of  
15 the other county for such service. If the service is made on  
16 a corporation, limited liability company, or other person  
17 or entity through the secretary of state, it shall be  
18 submitted along with the fee required by section two,  
19 article one, chapter fifty-nine of this code.

20 (b) If the suggestee served with the execution is  
21 indebted or will in the future become indebted to the  
22 judgment debtor for salary or wages, then during the time  
23 the execution remains a lien on any indebtedness for  
24 salary and wages, the suggestee is required to pay over to  
25 the officer serving the same or to the judgment creditor  
26 the percentage of the indebtedness required by section  
27 three of this article, until the execution is wholly satisfied.  
28 The suggestee shall deduct the amounts paid from the  
29 amounts payable to the judgment debtor as salary or  
30 wages, and the deduction of these amounts is a bar to any  
31 further action by the judgment creditor against the wages  
32 or salary of the judgment debtor.

33 (c) Once every ninety days during the life of such  
34 execution and any renewal execution, the suggestee upon  
35 whom the execution or any renewal execution is served  
36 shall pay over to the officer who served the same or to the  
37 judgment creditor the full amount of money held or  
38 retained pursuant to such execution or renewal execution  
39 during the preceding ninety days.

40 If the suggestee upon whom the execution is served  
41 fails or refuses to pay over to the officer serving the  
42 execution or to the judgment creditor the required  
43 percentage of the indebtedness, as aforesaid, he or she  
44 shall be liable to an action therefor by the judgment  
45 creditor named in the execution and the amount recovered  
46 in the action shall be applied in satisfaction of the  
47 execution.

**CHAPTER 46. UNIFORM COMMERCIAL CODE.**

**ARTICLE 9. SECURED TRANSACTIONS; SALES OF ACCOUNTS  
AND CHATTEL PAPERS.**

**§46-9-403. What constitutes filing; duration of filing; effect of  
lapsed filing; duties of filing officer.**

1           (1) Presentation for filing of a financing statement  
2 and tender of the filing fee or acceptance of the statement  
3 by the filing officer constitutes filing under this article.

4           (2) Except as provided in subsection (6) or in  
5 subsection (8), a filed financing statement is effective for a  
6 period of five years from the date of filing. The  
7 effectiveness of a filed financing statement lapses on the  
8 expiration of the five-year period, unless a continuation  
9 statement is filed prior to the lapse. If a security interest  
10 perfected by filing exists at the time insolvency  
11 proceedings are commenced by or against the debtor, the  
12 security interest remains perfected until termination of the  
13 insolvency proceedings and thereafter for a period of  
14 sixty days or until expiration of the five-year period,  
15 whichever occurs later. Upon lapse the security interest  
16 becomes unperfected, unless it is perfected without filing.  
17 If the security interest becomes unperfected upon lapse, it  
18 is deemed to have been unperfected as against a person  
19 who became a purchaser or lien creditor before lapse.

20           (3) A continuation statement may be filed by the  
21 secured party within six months prior to the expiration of  
22 the five-year period specified in subsection (2). Any such  
23 continuation statement must be signed by the secured  
24 party, identify the original statement by file number and  
25 state that the original statement is still effective. A  
26 continuation statement signed by a person other than the  
27 secured party of record must be accompanied by a  
28 separate written statement of assignment signed by the  
29 secured party of record and complying with subsection  
30 (2) of section 9-405, including payment of the required  
31 fee. Upon timely filing of the continuation statement, the  
32 effectiveness of the original statement is continued for five  
33 years after the last date to which the filing was effective  
34 whereupon it lapses in the same manner as provided in  
35 subsection (2) unless another continuation statement is  
36 filed prior to such lapse. Succeeding continuation

37 statements may be filed in the same manner to continue  
38 the effectiveness of the original statement. Unless a statute  
39 on disposition of public records provides otherwise, the  
40 filing officer may remove a lapsed statement from the files  
41 and destroy it immediately if he has retained a microfilm  
42 or other photographic record, or in other cases after one  
43 year after the lapse. The filing officer shall so arrange  
44 matters by physical annexation of financing statements to  
45 continuation statements or other related filings, or by  
46 other means, that if he physically destroys the financing  
47 statements of a period more than five years past, those  
48 which have been continued by a continuation statement or  
49 which are still effective under subsection (6) shall be  
50 retained.

51 (4) Except as provided in subsection (7), a filing  
52 officer shall mark each statement with a file number and  
53 with the date and hour of filing and shall hold the  
54 statement or a microfilm or other photographic copy  
55 thereof for public inspection. In addition the filing  
56 officer shall index the statements according to the name of  
57 the debtor and shall note in the index the file number and  
58 the address of the debtor given in the statement.

59 (5) The uniform fee for filing and indexing and for  
60 stamping a copy furnished by the secured party to show  
61 the date and place of filing for an original financing  
62 statement or for a continuation statement shall be ten  
63 dollars. The secured party may at his option show a trade  
64 name for any person .

65 (6) If the debtor is a transmitting utility (subsection  
66 (5) of section 9-401) and a filed financing statement so  
67 states, it is effective until a termination statement is filed.  
68 A real estate mortgage which is effective as a fixture filing  
69 under subsection (6) of section 9-402 remains effective as  
70 a fixture filing until the mortgage is released or satisfied  
71 of record or its effectiveness otherwise terminates as to the  
72 real estate.

73 (7) When a financing statement covers timber to be  
74 cut or covers minerals or the like (including oil and gas)  
75 or accounts subject to subsection (5) of section 9-103, or  
76 is filed as a fixture filing, it shall be filed for record and

77 the filing officer shall index it under the names of the  
78 debtor and any owner of record shown on the financing  
79 statement in the same fashion as if they were the  
80 mortgagors in a mortgage of the real estate described, and,  
81 to the extent that the law of this state provides for indexing  
82 of mortgages under the name of the mortgagee, under the  
83 name of the secured party as if he were the mortgagee  
84 thereunder, or where indexing is by description in the  
85 same fashion as if the financing statement were a  
86 mortgage of the real estate described.

87 (8) Notwithstanding any provision of this code to the  
88 contrary, a filed financing statement on public bond issues  
89 of counties, municipalities or public service districts of this  
90 state shall be effective for the life of such bond issues  
91 without the need for filing continuation statements.

**§46-9-404. Termination statement.**

1 (1) If a financing statement covering consumer  
2 goods is filed on or after the first day of July, 1975, then  
3 within one month or within ten days following written  
4 demand by the debtor after there is no outstanding  
5 secured obligation and no commitment to make advances,  
6 incur obligations or otherwise give value, the secured party  
7 must file with each filing officer with whom the financing  
8 statement was filed, a termination statement to the effect  
9 that he no longer claims a security interest under the  
10 financing statement, which shall be identified by file  
11 number. In other cases whenever there is no outstanding  
12 secured obligation and no commitment to make advances,  
13 incur obligations or otherwise give value, the secured party  
14 must on written demand by the debtor send the debtor, for  
15 each filing officer with whom the financing statement was  
16 filed, a termination statement to the effect that he no  
17 longer claims a security interest under the financing  
18 statement, which shall be identified by file number. A  
19 termination statement signed by a person other than the  
20 secured party of record must be accompanied by a  
21 separate written statement of assignment signed by the  
22 secured party of record complying with subsection (2) of  
23 section 9-405, including payment of the required fee. If  
24 the affected secured party fails to file such a termination



25 statement as required by this subsection, or to send such a  
26 termination statement within ten days after proper demand  
27 therefor he shall be liable to the debtor for one hundred  
28 dollars, and in addition for any loss caused to the debtor  
29 by such failure.

30 (2) On presentation to the filing officer of such a  
31 termination statement he must note it in the index. If he  
32 has received the termination statement in duplicate, he  
33 shall return one copy of the termination statement to the  
34 secured party stamped to show the time of receipt thereof.  
35 If the filing officer has a microfilm or other photographic  
36 record of the financing statement, and of any related  
37 continuation statement, statement of assignment and  
38 statement of release, he may remove the originals from the  
39 files at any time after receipt of the termination statement,  
40 or if he has no such record, he may remove them from the  
41 files at any time after one year after receipt of the  
42 termination statement.

43 (3) The uniform fee for filing and indexing the  
44 termination statement shall be ten dollars.

**§46-9-405. Assignment of security interest; duties of filing officer; fees.**

1 (1) A financing statement may disclose an  
2 assignment of a security interest in the collateral described  
3 in the financing statement by indication in the financing  
4 statement of the name and address of the assignee or by  
5 an assignment itself or a copy thereof on the face or back  
6 of the statement. On presentation to the filing officer of  
7 such a financing statement the filing officer shall mark the  
8 same as provided in section 9-403 (4). The uniform fee  
9 for filing, indexing and furnishing filing data for a  
10 financing statement so indicating an assignment shall be  
11 ten dollars.

12 (2) A secured party may assign of record all or a  
13 part of his rights under a financing statement by the filing  
14 in the place where the original financing statement was  
15 filed of a separate written statement of assignment signed  
16 by the secured party of record and setting forth the name  
17 of the secured party of record and the debtor, the file

18 number and the date of filing of the financing statement  
 19 and the name and address of the assignee and containing a  
 20 description of the collateral assigned. A copy of the  
 21 assignment is sufficient as a separate statement if it  
 22 complies with the preceding sentence. On presentation to  
 23 the filing officer of such a separate statement, the filing  
 24 officer shall mark such separate statement with the date  
 25 and hour of the filing. He shall note the assignment on  
 26 the index of the financing statement, or in the case of a  
 27 fixture filing, or a filing covering timber to be cut, or  
 28 covering minerals or the like (including oil and gas) or  
 29 accounts subject to subsection (5) of section 9-103, he  
 30 shall index the assignment under the name of the assignor  
 31 as grantor and, to the extent that the law of this state  
 32 provides for indexing the assignment of a mortgage under  
 33 the name of the assignee, he shall index the assignment of  
 34 the financing statement under the name of the assignee.  
 35 The uniform fee for filing, indexing and furnishing filing  
 36 data about such a separate statement of assignment shall  
 37 be ten dollars. Notwithstanding the provisions of this  
 38 subsection, an assignment of record of a security interest  
 39 in a fixture contained in a mortgage effective as a fixture  
 40 filing (subsection (6) of section 9-402) may be made only  
 41 by an assignment of the mortgage in the manner provided  
 42 by the law of this state other than this chapter.

43 (3) After the disclosure or filing of an assignment  
 44 under this section, the assignee is the secured party of  
 45 record.

**§46-9-406. Release of collateral; duties of filing officer; fees.**

1 A secured party of record may by his signed  
 2 statement release all or a part of any collateral described in  
 3 a filed financing statement. The statement of release is  
 4 sufficient if it contains a description of the collateral being  
 5 released, the name and address of the debtor, the name  
 6 and address of the secured party, and the file number of  
 7 the financing statement. A statement of release signed by  
 8 a person other than the secured party of record must be  
 9 accompanied by a separate written statement of  
 10 assignment signed by the secured party of record and  
 11 complying with subsection (2) of section 9-405, including

12 payment of the required fee. Upon presentation of such a  
13 statement of release to the filing officer he shall mark the  
14 statement with the hour and date of filing and shall note  
15 the same upon the margin of the index of the filing of the  
16 financing statement. The uniform fee for filing and noting  
17 such a statement of release shall be ten dollars.

**§46-9-407. Information from filing officer; central indexing  
system for recording security interest in farm  
products; contents.**

1 (1) If the person filing any financing statement,  
2 termination statement, statement of assignment, or  
3 statement of release, furnishes the filing officer a copy  
4 thereof, the filing officer shall upon request note upon the  
5 copy the file number and date and hour of the filing of  
6 the original and deliver or send the copy to such person.

7 (2) Upon request of any person, the secretary of state  
8 shall issue his certificate showing whether there is on file  
9 in his office on the date and hour stated therein, any  
10 presently effective financing statement naming a particular  
11 debtor and any statement of assignment thereof and if  
12 there is, giving the date and hour of filing of each such  
13 statement and the names and addresses of each secured  
14 party therein. The uniform fee for such a certificate shall  
15 be five dollars plus fifty cents for each financing statement  
16 and for each statement of assignment reported therein.  
17 Upon request the filing officer shall furnish a copy of any  
18 filed financing statement or statement of assignment for a  
19 uniform fee of fifty cents per page.

20 (3) The secretary of state shall develop and  
21 implement a central indexing system containing the  
22 information filed with his office pursuant to subsection  
23 four, section three hundred seven of this article. Under  
24 this system, the secretary shall record the date and time of  
25 filing and compile the information into a master list  
26 organized according to farm products. The list shall be  
27 organized within each farm product category in  
28 alphabetical order according to the last name of the  
29 borrower, or in the case of borrowers doing business other  
30 than as individuals, the first word in the name of such  
31 borrower in numerical order according to the social

32 security or taxpayer identification number of the  
33 borrower, geographically by county and by crop year.  
34 The master list shall also contain the name and address of  
35 the secured party, the name and address of the borrower, a  
36 description of the farm products, including amount where  
37 applicable, subject to the security interest, and a reasonable  
38 description of the real estate, including the county where  
39 or upon which the farm products are located.

40 (4) The secretary of state shall maintain a list of all  
41 buyers of farm products, commission merchants and  
42 selling agents who register with the secretary of state  
43 indicating an interest in receiving the lists described in  
44 subsection five of this section.

45 (5) The secretary of state shall distribute on a regular  
46 basis as determined by the secretary of state to each buyer,  
47 commission merchant and selling agent registered under  
48 subsection four, a copy in written or printed form of those  
49 portions of the master list which the buyer, commission  
50 merchant or selling agent has indicated an interest in  
51 receiving.

52 (6) Upon the request of any person, the secretary of  
53 state shall provide within twenty-four hours an oral  
54 confirmation of the filing of the form described in  
55 subsection four, section three hundred seven of this article,  
56 followed by a written confirmation.

57 (7) All fees and moneys collected by the secretary of  
58 state pursuant to the provisions of this article shall be  
59 deposited by the secretary of state in a separate fund in the  
60 state treasury and shall be expended solely for the  
61 purposes of this article, unless otherwise provided by  
62 appropriation or other action of the Legislature.

63 (8) The secretary of state shall, pursuant to the  
64 provisions of article three, chapter twenty-nine-a of this  
65 code, promulgate rules and set fees, not otherwise  
66 provided for by general law, to carry out the duties  
67 associated with this article.

**CHAPTER 46A. WEST VIRGINIA CONSUMER CREDIT  
AND PROTECTION ACT.**

**ARTICLE 2. CONSUMER CREDIT PROTECTION.**

**§46A-2-137. Service of process on certain nonresidents.**

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

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

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

#### CHAPTER 47. REGULATION OF TRADE.

##### ARTICLE 9. UNIFORM LIMITED PARTNERSHIP ACT.

##### **§47-9-4. 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  
2 attorney-in-fact for and on behalf of every limited  
3 partnership created by virtue of the laws of this state and  
4 every foreign limited partnership authorized to conduct  
5 affairs or do or transact business herein pursuant to the  
6 provisions of this article, with authority to accept service of  
7 notice and process on behalf of every such limited  
8 partnership and upon whom service of notice and process  
9 may be made in this state for and upon every such limited  
10 partnership. No act of such limited partnership appointing  
11 the secretary of state such attorney-in-fact shall be  
12 necessary. Immediately after being served with or  
13 accepting any such process or notice, of which process or  
14 notice two copies for each defendant shall be furnished  
15 the secretary of state with the original notice or process,  
16 together with the fee required by section two, article one,  
17 chapter fifty-nine of this code, the secretary of state shall  
18 file in his office a copy of such process or notice, with a  
19 note thereon endorsed of the time of service or

20 acceptance, as the case may be, and transmit one copy of  
21 such process or notice by registered or certified mail,  
22 return receipt requested, to the person to whom notice and  
23 process shall be sent, whose name and address were last  
24 furnished to the state officer at the time authorized by  
25 statute to accept service of notice and process and upon  
26 whom notice and process may be served; and if no such  
27 person has been named, to the principal office of the  
28 limited partnership at the address last furnished to the state  
29 officer at the time authorized by statute to accept service  
30 of process and upon whom process may be served, as  
31 required by law. No process or notice shall be served on  
32 the secretary of state or accepted by him less than ten days  
33 before the return day thereof. Such limited partnership  
34 shall pay the annual fee prescribed by article twelve,  
35 chapter eleven of this code for the services of the secretary  
36 of state as its attorney-in-fact.

37 Any foreign limited partnership which shall conduct  
38 affairs or do or transact business in this state without  
39 having been authorized so to do pursuant to the provisions  
40 of this article shall be conclusively presumed to have  
41 appointed the secretary of state as its attorney-in-fact with  
42 authority to accept service of notice and process on behalf  
43 of such limited partnership and upon whom service of  
44 notice and process may be made in this state for and upon  
45 every such limited partnership in any action or proceeding  
46 described in the next following paragraph of this section.  
47 No act of such limited partnership appointing the  
48 secretary of state as such attorney-in-fact shall be  
49 necessary. Immediately after being served with or  
50 accepting any such process or notice, of which process or  
51 notice two copies for each defendant shall be furnished  
52 the secretary of state with the original notice or process,  
53 together with the fee required by section two, article one,  
54 chapter fifty-nine of this code, the secretary of state shall  
55 file in his office a copy of such process or notice, with a  
56 note thereon endorsed of the time of service or  
57 acceptance, as the case may be, and transmit one copy of  
58 such process or notice by registered or certified mail,  
59 return receipt requested, to such limited partnership at the  
60 address of its principal office, which address shall be stated

61 in such process or notice. Such service or acceptance of  
62 such process or notice shall be sufficient if such return  
63 receipt shall be signed by an agent or employee of such  
64 limited partnership, or the registered or certified mail so  
65 sent by the secretary of state is refused by the addressee  
66 and the registered or certified mail is returned to the  
67 secretary of state, or to his office, showing thereon the  
68 stamp of the United States postal service that delivery  
69 thereof has been refused, and such return receipt or  
70 registered or certified mail is appended to the original  
71 process or notice and filed therewith in the clerk's office  
72 of the court from which such process or notice was issued.  
73 No process or notice shall be served on the secretary of  
74 state or accepted by him less than ten days before the  
75 return date thereof. The court may order such  
76 continuances as may be reasonable to afford each  
77 defendant opportunity to defend the action or  
78 proceedings.

79 For the purpose of this section, a foreign limited  
80 partnership not authorized to conduct affairs or do or  
81 transact business in this state pursuant to the provisions of  
82 this article shall nevertheless be deemed to be conducting  
83 affairs or doing or transacting business herein (a) if such  
84 limited partnership makes a contract to be performed, in  
85 whole or in part, by any party thereto in this state, (b) if  
86 such limited partnership commits a tort in whole or in part  
87 in this state, or (c) if such limited partnership  
88 manufactures, sells, offers for sale or supplies any product  
89 in a defective condition and such product causes injury to  
90 any person or property within this state notwithstanding  
91 the fact that such limited partnership had no agents,  
92 servants or employees or contacts within this state at the  
93 time of said injury. The making of such contract, the  
94 committing of such tort or the manufacture or sale, offer  
95 of sale or supply of such defective product as hereinabove  
96 described shall be deemed to be the agreement of such  
97 limited partnership that any notice or process served upon,  
98 or accepted by, the secretary of state pursuant to the next  
99 preceding paragraph of this section in any action or  
100 proceeding against such limited partnership arising from  
101 or growing out of such contract, tort or manufacture or



102 sale, offer of sale or supply of such defective product shall  
103 be of the same legal force and validity as process duly  
104 served on such limited partnership in 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; 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 this  
3 state, either personally or through an agent, appoints the  
4 secretary of state, or his or her successor in office, to be  
5 his or her agent or attorney-in-fact upon whom may be  
6 served all lawful process in any action or proceeding  
7 against him or her in any court of record in this state  
8 arising out of any accident or collision occurring in the  
9 state of West Virginia in which such nonresident may be  
10 involved: *Provided*, That in the event process against a  
11 nonresident defendant cannot be effected through the  
12 secretary of state, as provided by this section, for the  
13 purpose only of service of process, such nonresident  
14 motorist shall be deemed to have appointed as his or her  
15 agent or attorney-in-fact any insurance company which  
16 has a contract of automobile or liability insurance with  
17 said nonresident defendant.

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

29 (c) A nonresident operating a motor vehicle in this  
30 state, either personally or through an agent, is deemed to  
31 acknowledge the appointment of the secretary of state, or,  
32 as the case may be, his or her automobile insurance  
33 company, as his or her agent or attorney-in-fact, or the  
34 agent or attorney-in-fact of his or her administrator,  
35 administratrix, executor or executrix in the event the  
36 nonresident dies, and furthermore is deemed to agree that  
37 any process against him or her or against his or her  
38 administrator, administratrix, executor or executrix, which  
39 is served in the manner hereinafter provided, shall be of  
40 the same legal force and validity as though said  
41 nonresident or his or her administrator, administratrix,  
42 executor or executrix were personally served with a  
43 summons and complaint within this state.

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

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

64 (e) Service of process upon a nonresident defendant  
65 shall be made by leaving the original and two copies of  
66 both the summons and complaint, together with the bond  
67 certificate of the clerk, and the fee required by section two,  
68 article one, chapter fifty-nine of this code with the

69 secretary of state, or in his or her office, and said service  
70 shall be sufficient upon the nonresident defendant or, if a  
71 natural person, his or her administrator, administratrix,  
72 executor or executrix: *Provided*, That notice of service  
73 and a copy of the summons and complaint shall be sent  
74 by registered or certified mail, return receipt requested, by  
75 the secretary of state to the nonresident defendant. The  
76 return receipt signed by the defendant or his or her duly  
77 authorized agent shall be attached to the original  
78 summons and complaint and filed in the office of the  
79 clerk of the court from which process is issued. In the  
80 event the registered or certified mail sent by the secretary  
81 of state is refused or unclaimed by the addressee or if the  
82 addressee has moved without any forwarding address, the  
83 registered or certified mail returned to the secretary of  
84 state, or to his or her office, showing thereon the stamp of  
85 the post office department that delivery has been refused  
86 or not claimed or that the addressee has moved without  
87 any forwarding address, shall be appended to the original  
88 summons and complaint and filed in the clerk's office of  
89 the court from which process issued. The court may order  
90 such continuances as may be reasonable to afford the  
91 defendant opportunity to defend the action.

92 (f) The fee remitted to the secretary of state at the  
93 time of service, shall be taxed in the costs of the  
94 proceeding and the secretary of state shall pay into the  
95 state treasury all funds so coming into his or her hands  
96 from such service. The secretary of state shall keep a  
97 record in his or her office of all service of process and the  
98 day and hour of service thereof.

99 (g) In the event service of process upon a  
100 nonresident defendant cannot be effected through the  
101 secretary of state as provided by this section, service may  
102 be made upon the defendant's insurance company. The  
103 plaintiff must file with the clerk of the circuit court an  
104 affidavit alleging that the defendant is not a resident of  
105 this state; that process directed to the secretary of state was  
106 sent by registered or certified mail, return receipt  
107 requested; that the registered or certified mail was returned  
108 to the office of the secretary of state showing the stamp of  
109 the post office department that delivery was refused or that

110 the notice was unclaimed or that the defendant addressee  
111 moved without any forwarding address; and that the  
112 secretary of state has complied with the provisions of  
113 subsection (e) herein. Upon receipt of process the  
114 insurance company may, within thirty days, file an answer  
115 or other pleading and take any action allowed by law in  
116 the name of the defendant.

117 (h) The following words and phrases, when used in  
118 this article, shall, for the purpose of this article and unless  
119 a different intent on the part of the Legislature is apparent  
120 from the context, have the following meanings:

121 (1) "Duly authorized agent" means and includes,  
122 among others, a person who operates a motor vehicle in  
123 this state for a nonresident as defined in this section and  
124 chapter, in pursuit of business, pleasure or otherwise, or  
125 who comes into this state and operates a motor vehicle for,  
126 or with the knowledge or acquiescence of, a nonresident;  
127 and includes, among others, a member of the family of  
128 such nonresident or a person who, at the residence, place  
129 of business or post office of such nonresident, usually  
130 receives and acknowledges receipt for mail addressed to  
131 the nonresident.

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

135 (3) "Nonresident" means any person who is not a  
136 resident of this state or a resident who has moved from the  
137 state subsequent to an accident or collision, and among  
138 others includes a nonresident firm, partnership,  
139 corporation or voluntary association, or a firm,  
140 partnership, corporation or voluntary association that has  
141 moved from the state subsequent to an accident or  
142 collision.

143 (4) "Nonresident plaintiff or plaintiffs" means a  
144 nonresident who institutes an action in a court in this state  
145 having jurisdiction against a nonresident in pursuance of  
146 the provisions of this article.

147 (5) "Nonresident defendant or defendants" means a  
148 nonresident motorist who, either personally or through his  
149 or her agent, operated a motor vehicle on a public street,  
150 highway or road in this state and was involved in an  
151 accident or collision which has given rise to a civil action  
152 filed in any court in this state.

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

158 (7) "Insurance company" means any firm,  
159 corporation, partnership or other organization which  
160 issues automobile insurance.

161 (i) The provision for service of process herein is  
162 cumulative and nothing herein contained shall be  
163 construed as a bar to the plaintiff in any action from  
164 having process in such action served in any other mode  
165 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  
2 authorized agent, in any one or more of the acts specified  
3 in subdivisions (1) through (7) of this subsection shall be  
4 deemed equivalent to an appointment by such nonresident  
5 of the secretary of state, or his successor in office, to be his  
6 true and lawful attorney upon whom may be served all  
7 lawful process in any action or proceeding against him, in  
8 any circuit court in this state, including an action or  
9 proceeding brought by a nonresident plaintiff or  
10 plaintiffs, for a cause of action arising from or growing  
11 out of such act or acts, and the engaging in such act or  
12 acts shall be a signification of such nonresident's  
13 agreement that any such process against him, which is  
14 served in the manner hereinafter provided, shall be of the  
15 same legal force and validity as though such nonresident

16 were personally served with a summons and complaint  
17 within this state:

18 (1) Transacting any business in this state;

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

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

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

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

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

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

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

45 (c) At the time of filing a complaint and before a  
46 summons is issued thereon, the plaintiff, or someone for  
47 him, shall execute a bond in the sum of one hundred  
48 dollars before the clerk of the court, with surety to be  
49 approved by said clerk, conditioned that on failure of the  
50 plaintiff to prevail in the action or proceeding that he will  
51 reimburse the defendant, or cause him to be reimbursed,  
52 the necessary taxable costs incurred by him in and about

53 the defense of the action or proceeding in this state, and  
54 upon the issuance of a summons, the clerk shall certify  
55 thereon that such bond has been given and approved.  
56 Service shall be made by leaving the original and two  
57 copies of both the summons and the complaint with the  
58 certificate aforesaid of the clerk thereon, and the fee  
59 required by section two, article one, chapter fifty-nine of  
60 this code with the secretary of state, or in his office, and  
61 such service shall be sufficient upon such nonresident:  
62 *Provided*, That notice of such service and a copy of the  
63 summons and complaint shall forthwith be sent by  
64 registered or certified mail, return receipt requested, by the  
65 secretary of state to the defendant and the defendant's  
66 return receipt signed by himself or his duly authorized  
67 agent or the registered or certified mail so sent by the  
68 secretary of state which is refused by the addressee and  
69 which registered or certified mail is returned to the  
70 secretary of state, or to his office, showing thereon the  
71 stamp of the post-office department that delivery has been  
72 refused, shall be appended to the original summons and  
73 complaint and filed therewith in the clerk's office of the  
74 court from which process issued. If any defendant served  
75 with summons and complaint fails to appear and defend  
76 within thirty days of service, judgment by default may be  
77 rendered against him at any time thereafter. The court  
78 may order such continuances as may be reasonable to  
79 afford the defendant opportunity to defend the action or  
80 proceeding.

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

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

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

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

108 (3) "Nonresident plaintiff or plaintiffs" means a  
109 nonresident of this state who institutes an action or  
110 proceeding in a circuit court in this state having  
111 jurisdiction against a nonresident of this state pursuant to  
112 the provisions of this section.

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

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

**CHAPTER 59. FEES, ALLOWANCES AND COSTS;  
NEWSPAPERS; LEGAL ADVERTISEMENTS.**

**ARTICLE 1. FEES AND ALLOWANCES.**

**§59-1-2. Fees to be charged by secretary of state.**



1           Except as may be otherwise provided in this code,  
2 the secretary of state shall charge for services rendered in  
3 his office the following fees to be paid by the person to  
4 whom the service is rendered at the time it is done:

5           For filing, recording, indexing, preserving a record  
6 of and issuing a certificate relating to the formation,  
7 amendment, change of name, registration of trade name,  
8 merger, consolidation, conversion, renewal, dissolution,  
9 termination, cancellation, withdrawal revocation and  
10 reinstatement of business entities organized within the  
11 state, as follows:

12	Articles of incorporation of for-profit	
13	corporation . . . . .	50.00
14	Articles of incorporation of non-profit	
15	corporation . . . . .	25.00
16	Agreement of a general partnership . . . . .	50.00
17	Certificate of a limited partnership . . . . .	100.00
18	Agreement of a voluntary association . . . . .	50.00
19	Articles of organization of a business trust . . .	50.00
20	Amendment or correction of articles of	
21	incorporation, including change of name or increase of	
22	capital stock, in addition to any applicable	
23	license tax . . . . .	25.00
24	Amendment or correction, including change of	
25	name, of articles of organization of business trust, limited	
26	liability partnership, limited liability company or	
27	professional limited liability company, or of certificate of	
28	limited partnership or agreement of	
29	voluntary association . . . . .	25.00
30	Amendment and restatement of articles of	
31	incorporation, certificate of limited partnership, agreement	
32	of voluntary association, or articles of organization of	
33	limited liability partnership, limited liability company or	
34	professional limited liability company, or	
35	business trust . . . . .	25.00

36	Registration of trade name, otherwise designated as a	
37	true name, fictitious name or D.B.A. (doing business as)	
38	name for any domestic business entity as	
39	permitted by law . . . . .	25.00
40	Articles of merger of two corporations, limited	
41	partnerships, limited liability partnerships, limited liability	
42	companies or professional limited liability companies,	
43	voluntary associations, or business trusts . . . . .	25.00
44	Plus for each additional party to the merger in excess	
45	of two . . . . .	15.00.
46	Statement of conversion, when permitted, from one	
47	business entity into another business entity, in addition to	
48	the cost of filing the appropriate documents to organize	
49	the surviving entity . . . . .	25.00
50	Articles of dissolution of a corporation, voluntary	
51	association or business trust, or statement of dissolution of	
52	a general partnership . . . . .	25.00
53	Revocation of voluntary dissolution of a corporation,	
54	voluntary association or business trust . . . . .	15.00
55	Articles of termination of a limited liability	
56	company, cancellation of a limited partnership or	
57	statement of withdrawal of limited liability	
58	partnership . . . . .	25.00
59	Reinstatement of a limited liability company or	
60	professional limited liability company after administrative	
61	dissolution . . . . .	25.00
62	For filing, recording, indexing, preserving a record	
63	of and issuing a certificate relating to the registration,	
64	amendment, change of name, merger, consolidation,	
65	conversion, renewal, withdrawal or termination within this	
66	state of business entities organized in other states or	
67	countries, as follows:	
68	Certificate of authority of for-profit	
69	corporation . . . . .	100.00

70	Certificate of authority of non-profit	
71	corporation . . . . .	50.00
72	Certificate of exemption from certificate	
73	of authority . . . . .	25.00
74	Registration of a general partnership . . . . .	50.00
75	Registration of a limited partnership . . . . .	150.00
76	Registration of a limited liability partnership for two-	
77	year term . . . . .	500.00
78	Registration of a voluntary association . . . . .	50.00
79	Registration of a trust or business trust . . . . .	50.00
80	Amendment or correction of certificate of authority	
81	of a foreign corporation, including change of name or	
82	increase of capital stock, in addition to any applicable	
83	license tax . . . . .	25.00
84	Amendment or correction of certificate of limited	
85	partnership, limited liability partnership, limited liability	
86	company or professional limited liability company,	
87	voluntary association, or business trust . . . . .	25.00
88	Registration of trade name, otherwise designated as a	
89	true name, fictitious name or D.B.A. (doing business as)	
90	name for any foreign business entity as	
91	permitted by law . . . . .	25.00
92	Amendment and restatement of certificate of	
93	authority or of registration of a corporation, limited	
94	partnership, limited liability partnership, limited liability	
95	company or professional limited liability company,	
96	voluntary association, or business trust . . . . .	25.00
97	Articles of merger of two corporations, limited	
98	partnerships, limited liability partnerships, limited liability	
99	companies or professional limited liability companies,	
100	voluntary associations, or business trusts . . . . .	25.00
101	Plus for each additional party to the merger in excess	
102	of two . . . . .	5.00

103	Statement of conversion, when permitted, from one	
104	business entity into another business entity, in addition to	
105	the cost of filing the appropriate articles or certificate to	
106	organize the surviving entity . . . . .	25.00
107	Certificate of withdrawal or cancellation of a	
108	corporation, limited partnership, limited liability	
109	partnership, limited liability company, voluntary	
110	association or business trust . . . . .	25.00
111	For receiving, filing and recording a change of the	
112	principal or designated office, change of the agent of	
113	process and/or change of officers, directors, partners,	
114	members or managers, as the case may be, of a	
115	corporation, limited partnership, limited liability	
116	partnership, limited liability company or other business	
117	entity as provided by law . . . . .	15.00
118	For receiving, filing and preserving a reservation of a	
119	name for each 120 days or for any other period in excess	
120	of seven days prescribed by law for a corporation, limited	
121	partnership, limited liability partnership, or limited liability	
122	company . . . . .	15.00
123	For issuing a certificate relating to a corporation or	
124	other business entity, as follows:	
125	Certificate of good standing of a domestic or foreign	
126	corporation . . . . .	10.00
127	Certificate of existence of a domestic limited liability	
128	company, and certificate of authorization foreign limited	
129	liability company . . . . .	10.00
130	Certificate of existence of any business entity,	
131	trademark or service mark registered with the secretary of	
132	state . . . . .	10.00
133	Certified copy of corporate charter or comparable	
134	organizing documents for other business entities . .	15.00
135	Plus, for each additional amendment, restatement or	
136	other additional document . . . . .	5.00

137	Certificate of registration of the name of a foreign	
138	corporation, limited liability company, limited partnership,	
139	or limited liability partnership . . . . .	25.00
140	and for the annual renewal of the name	
141	registration . . . . .	10.00
142	Any other certificate not herein specified . . . .	10.00
143	For issuing a certificate other than those relating to	
144	business entities as provided above, as follows:	
145	Certificate or apostille relating to the authority of	
146	certain public officers, including the membership of	
147	boards and commissions . . . . .	10.00
148	Any other certificate not herein specified . . . .	10.00
149	For acceptance, indexing, recordation and execution	
150	of service of process by certified or registered mail upon	
151	any corporation, limited partnership, limited liability	
152	partnership, limited liability company, voluntary	
153	association, business trust, insurance company, person or	
154	other entity as permitted by law . . . . .	15.00
155	For a search of records of the office conducted by	
156	employees of or at the expense of the secretary of state	
157	upon request, as follows:	
158	For any search of archival records maintained at sites	
159	other than the office of the secretary of state,	
160	no less than . . . . .	10.00
161	For searches of archival records maintained at sites	
162	other than the office of the secretary of state which require	
163	more than one hour, for each hour or fraction thereof	
164	consumed in making such search . . . . .	10.00
165	For any search of records maintained on site for the	
166	purpose of obtaining copies of documents or printouts of	
167	data . . . . .	5.00
168	For any search of records maintained in electronic	
169	format which requires special programming to be	
170	performed by the state information services agency or	
171	other vendor, any actual cost, but not less than . . . .	25.00

172           The cost of the search shall be in addition to the cost  
173 of any copies or printouts prepared or any certificate  
174 issued pursuant thereto or based thereon.

175           For recording any paper for which no specific fee is  
176 prescribed . . . . . 5.00

177           For producing and providing photocopies or  
178 printouts of electronic data of specific records upon  
179 request, as follows:

180           For a copy of any paper or printout of electronic  
181 data, if one sheet . . . . . 1.00

182           For each sheet after the first . . . . . .50

183           For sending the copies or lists by fax  
184 transmission . . . . . 5.00

185           For producing and providing photocopies of lists,  
186 reports, guidelines and other documents produced in  
187 multiple copies for general public use, a publication price  
188 to be established by the secretary of state at a rate  
189 approximating 2.00 plus .10 per page, and rounded to the  
190 nearest dollar.

191           For electronic copies of records obtained in data  
192 format on disk, the cost of the record in the least  
193 expensive available printed format, plus, for each required  
194 disk, which shall be provided by the secretary of  
195 state, . . . . . 5.00

196           The secretary of state may promulgate legislative  
197 rules for charges for on-line electronic access to database  
198 information or other information maintained by the  
199 secretary of state.

200           For any other work or service not herein enumerated,  
201 such fee as may be elsewhere prescribed.

202           The records maintained by the secretary of state are  
203 prepared and indexed at the expense of the state, and  
204 those records shall not be obtained for commercial resale  
205 without the written agreement of the state to a contract  
206 including reimbursement to the state for each instance of  
207 resale.

Enr. Com. Sub. for H. B. 2671] 54

208           The secretary of state may provide printed or  
209 electronic information free of charge as he or she deems  
210 necessary and efficient for the purpose of informing the  
211 general public or the news media.

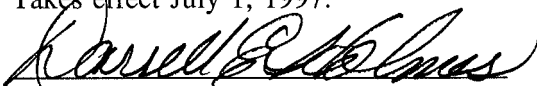
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

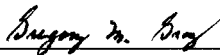
  
\_\_\_\_\_  
Chairman Senate Committee

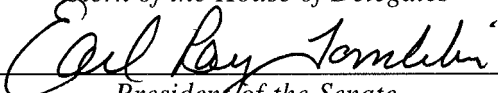
  
\_\_\_\_\_  
Chairman House Committee

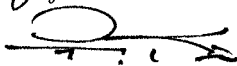
Originating in the House.

Takes effect July 1, 1997.

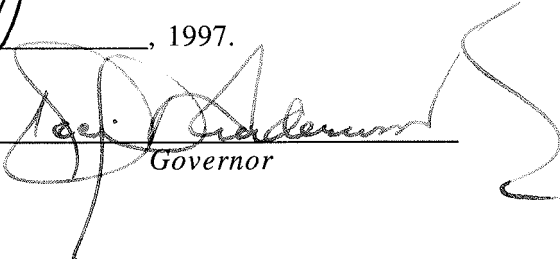
  
\_\_\_\_\_  
Clerk of the Senate

  
\_\_\_\_\_  
Clerk of the House of Delegates

  
\_\_\_\_\_  
President of the Senate

  
\_\_\_\_\_  
Speaker of the House of Delegates

The within is approved this the 7th  
day of May, 1997.

  
\_\_\_\_\_  
Governor



PRESENTED TO THE

GOVERNOR

Date 5/1/97

Time 3:45pm