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2002 MAR 26 A 9:35

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**

*REGULAR SESSION, 2002*

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**ENROLLED**

SENATE BILL NO. 425

(By Senator Wooten, ET AL)

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PASSED MARCH 8, 2002

In Effect EVERY DAY FROM Passage

FILED

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ENROLLED

## Senate Bill No. 425

(BY SENATORS WOOTON, BURNETTE, CALDWELL, FANNING,  
HUNTER, KESSLER, MINARD, MITCHELL, OLIVERIO, REDD, ROSS,  
ROWE, SNYDER, DEEM AND FACEMYER)

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[Passed March 8, 2002; in effect ninety days from passage.]

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AN ACT to amend and reenact section thirty-three, article three, chapter fifty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the filing of a bond by a plaintiff against a nonresident prior to the filing of a complaint and summons in circuit court.

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

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

**ARTICLE 3. WRITS, PROCESS AND ORDER OF PUBLICATION.**

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

18 (1) Transacting any business in this state;

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

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

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

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

34 nue from goods used or consumed or services rendered in  
35 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 risk  
39 located within this state at the time of contracting.

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

45 (c) Service shall be made by leaving the original and two  
46 copies of both the summons and the complaint and the fee  
47 required by section two, article one, chapter fifty-nine of  
48 this code with the secretary of state, or in his or her office,  
49 and such service shall be sufficient upon such nonresident:  
50 *Provided*, That notice of such service and a copy of the  
51 summons and complaint shall forthwith be sent by regis-  
52 tered or certified mail, return receipt requested, by the  
53 secretary of state to the defendant at his or her nonresi-  
54 dent address and the defendant's return receipt signed by  
55 himself or herself or his or her duly authorized agent or  
56 the registered or certified mail so sent by the secretary of  
57 state which is refused by the addressee and which regis-  
58 tered or certified mail is returned to the secretary of state,  
59 or to his or her office, showing thereon the stamp of the  
60 post office department that delivery has been refused  
61 shall be appended to the original summons and complaint  
62 and filed therewith in the clerk's office of the court from  
63 which process issued. If any defendant served with  
64 summons and complaint fails to appear and defend within  
65 thirty days of service, judgment by default may be ren-  
66 dered against him or her at any time thereafter. The court  
67 may order such continuances as may be reasonable to  
68 afford the defendant opportunity to defend the action or  
69 proceeding.

70 (d) The fee remitted to the secretary of state at the time  
71 of service shall be taxed in the costs of the action or  
72 proceeding. The secretary of state shall keep a record in  
73 his or her office of all such process and the day and hour  
74 of service thereof.

75 (e) The following words and phrases, when used in this  
76 section, shall for the purpose of this section and unless a  
77 different intent be apparent from the context, have the  
78 following meanings:

79 (1) "Duly authorized agent" means and includes among  
80 others a person who, at the direction of or with the knowl-  
81 edge or acquiescence of a nonresident, engages in such act  
82 or acts and includes among others a member of the family  
83 of such nonresident or a person who, at the residence,  
84 place of business or post office of such nonresident,  
85 usually receives and receipts for mail addressed to such  
86 nonresident.

87 (2) "Nonresident" means any person, other than volun-  
88 tary unincorporated associations, who is not a resident of  
89 this state or a resident who has moved from this state  
90 subsequent to engaging in such act or acts and among  
91 others includes a nonresident firm, partnership or corpora-  
92 tion or a firm, partnership or corporation which has moved  
93 from this state subsequent to any of said such act or acts.

94 (3) "Nonresident plaintiff or plaintiffs" means a nonresi-  
95 dent of this state who institutes an action or proceeding in  
96 a circuit court in this state having jurisdiction against a  
97 nonresident of this state pursuant to the provisions of this  
98 section.

99 (f) The provision for service of process herein is cumula-  
100 tive and nothing herein contained shall be construed as a  
101 bar to the plaintiff in any action or proceeding from  
102 having process in such action served in any other mode or  
103 manner provided by the law of this state or by the law of  
104 the place in which the service is made for service in that

105 place in an action in any of its courts of general jurisdic-  
106 tion.

107 (g) This section shall not be retroactive and the provi-  
108 sions hereof shall not be available to a plaintiff in a cause  
109 of action arising from or growing out of any of said acts  
110 occurring prior to the effective date of this section.

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

*[Signature]*  
.....  
Chairman Senate Committee

*[Signature]*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*[Signature]*  
.....  
Clerk of the Senate

*[Signature]*  
.....  
Clerk of the House of Delegates

*[Signature]*  
.....  
President of the Senate

*[Signature]*  
.....  
Speaker House of Delegates

The within is approved this the 25<sup>th</sup>  
Day of March, 2002.

*[Signature]*  
.....  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/19/02

Time 9:05 am