

SB-52

FILED

2003 MAR 27 P 4: 44

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**

Regular Session, 2003



**ENROLLED**

SENATE BILL NO. 52

(By Senator Rowe )



PASSED March 8, 2003

In Effect from Passage

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## Senate Bill No. 52

(BY SENATOR ROWE)

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[Passed March 8, 2003; in effect from passage.]

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AN ACT to amend and reenact section thirty-one, article three, chapter fifty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to eliminating the requirement of a one hundred-dollar bond on out-of-state defendants in automobile accident cases.

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

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

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

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

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

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

28 (c) A nonresident operating a motor vehicle in this state,  
29 either personally or through an agent, is considered to  
30 acknowledge the appointment of the secretary of state, or,  
31 as the case may be, his or her automobile insurance  
32 company, as his or her agent or attorney-in-fact, or the  
33 agent or attorney-in-fact of his or her administrator,  
34 administratrix, executor or executrix in the event the  
35 nonresident dies, and furthermore is considered to agree  
36 that any process against him or her or against his or her  
37 administrator, administratrix, executor or executrix,

38 which is served in the manner provided in this section,  
39 shall be of the same legal force and validity as though the  
40 nonresident or his or her administrator, administratrix,  
41 executor or executrix were personally served with a  
42 summons and complaint within this state.

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

50 (d) Service of process upon a nonresident defendant shall  
51 be made by leaving the original and two copies of both the  
52 summons and complaint, together with the bond certifi-  
53 cate of the clerk, and the fee required by section two,  
54 article one, chapter fifty-nine of this code with the secre-  
55 tary of state, or in his or her office, and the service shall be  
56 sufficient upon the nonresident defendant or, if a natural  
57 person, his or her administrator, administratrix, executor  
58 or executrix: *Provided*, That notice of service and a copy  
59 of the summons and complaint shall be sent by registered  
60 or certified mail, return receipt requested, by the secretary  
61 of state to the nonresident defendant. The return receipt  
62 signed by the defendant or his or her duly authorized  
63 agent shall be attached to the original summons and  
64 complaint and filed in the office of the clerk of the court  
65 from which process is issued. In the event the registered or  
66 certified mail sent by the secretary of state is refused or  
67 unclaimed by the addressee or if the addressee has moved  
68 without any forwarding address, the registered or certified  
69 mail returned to the secretary of state, or to his or her  
70 office, showing on the mail the stamp of the post office  
71 department that delivery has been refused or not claimed  
72 or that the addressee has moved without any forwarding  
73 address, shall be appended to the original summons and  
74 complaint and filed in the clerk's office of the court from

75 which process issued. The court may order any reasonable  
76 continuances to afford the defendant opportunity to  
77 defend the action.

78 (e) The fee remitted to the secretary of state at the time  
79 of service shall be taxed in the costs of the proceeding.  
80 The secretary of state shall keep a record in his or her  
81 office of all service of process and the day and hour of  
82 service of process.

83 (f) In the event service of process upon a nonresident  
84 defendant cannot be effected through the secretary of state  
85 as provided by this section, service may be made upon the  
86 defendant's insurance company. The plaintiff shall file  
87 with the clerk of the circuit court an affidavit alleging that  
88 the defendant is not a resident of this state; that process  
89 directed to the secretary of state was sent by registered or  
90 certified mail, return receipt requested; that the registered  
91 or certified mail was returned to the office of the secretary  
92 of state showing the stamp of the post office department  
93 that delivery was refused or that the notice was unclaimed  
94 or that the defendant addressee moved without any  
95 forwarding address; and that the secretary of state has  
96 complied with the provisions of subsection (d) of this  
97 section. Upon receipt of process the insurance company  
98 may, within thirty days, file an answer or other pleading  
99 and take any action allowed by law in the name of the  
100 defendant.

101 (g) The following words and phrases, when used in this  
102 article, for the purpose of this article and unless a different  
103 intent on the part of the Legislature is apparent from the  
104 context, have the following meanings:

105 (1) "Duly authorized agent" means and includes, among  
106 others, a person who operates a motor vehicle in this state  
107 for a nonresident as defined in this section and chapter, in  
108 pursuit of business, pleasure or otherwise, or who comes  
109 into this state and operates a motor vehicle for, or with the  
110 knowledge or acquiescence of, a nonresident; and includes,

111 among others, a member of the family of the nonresident  
112 or a person who, at the residence, place of business or post  
113 office of the nonresident, usually receives and acknowl-  
114 edges receipt for mail addressed to the nonresident.

115 (2) "Motor vehicle" means and includes any self-pro-  
116 pelled vehicle, including a motorcycle, tractor and trailer,  
117 not operated exclusively upon stationary tracks.

118 (3) "Nonresident" means any person who is not a resi-  
119 dent of this state or a resident who has moved from the  
120 state subsequent to an accident or collision and among  
121 others includes a nonresident firm, partnership, corpora-  
122 tion or voluntary association, or a firm, partnership,  
123 corporation or voluntary association that has moved from  
124 the state subsequent to an accident or collision.

125 (4) "Nonresident plaintiff or plaintiffs" means a nonresi-  
126 dent who institutes an action in a court in this state having  
127 jurisdiction against a nonresident in pursuance of the  
128 provisions of this article.

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

135 (6) "Street", "road" or "highway" means the entire  
136 width between property lines of every way or place of  
137 whatever nature when any part of the street, road or  
138 highway is open to the use of the public, as a matter of  
139 right, for purposes of vehicular traffic.

140 (7) "Insurance company" means any firm, corporation,  
141 partnership or other organization which issues automobile  
142 insurance.

143 (h) The provision for service of process in this section is  
144 cumulative and nothing contained in this section shall be

145 construed as a bar to the plaintiff in any action from  
146 having process in the action served in any other mode and  
147 manner provided by law.

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

*Cary*  
.....  
Chairman Senate Committee

*Greg Butcher*  
.....  
Chairman House Committee

Originated in the Senate.

In effect from passage.

*Parrell Gibson*  
.....  
Clerk of the Senate

*Bruce M. Bell*  
.....  
Clerk of the House of Delegates

*Earl Ray Tomblin*  
.....  
President of the Senate

*Robert Skiff*  
.....  
Speaker House of Delegates

The within *is approved* this the *27<sup>th</sup>*  
*March* Day of ....., 2003.

*Bob Wise*  
.....  
Governor



PRESENTED TO THE  
GOVERNOR

Date 3-20-03

Time 9:50 AM