

HB 4617

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2008



ENROLLED

COMMITTEE SUBSTITUTE

FOR

House Bill No. 4617

(By Delegates Webster, Proudfoot, Stemple and Ellem)



Passed March 8, 2008

In Effect from Passage

FILED
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COMMITTEE SUBSTITUTE OFFICE WEST VIRGINIA
SECRETARY OF STATE
FOR

H. B. 4617

(BY DELEGATES WEBSTER, PROUDFOOT, STEMPLER AND ELLEM)

[Passed March 8, 2008; in effect from passage.]

AN ACT to amend and reenact §31B-1-111 of the Code of West Virginia, 1931, as amended; to amend and reenact §31D-5-504 of said code; to amend and reenact §31D-15-1510 of said code; to amend and reenact §31E-5-504 of said code; to amend and reenact §31E-14-1410 of said code; to amend and reenact §46A-2-137 of said code; to amend and reenact §47-9-4 of said code; and to amend and reenact §56-3-31 and §56-3-33 of said code, all relating to service of process; service on corporation for-profit; service on corporation non-profit; service on foreign corporation; service of process on certain nonresidents; constituting the secretary of state as attorney-in-fact for all limited partnerships; service of process against non residents involved in motor vehicle accidents; service of process against nonresidents having certain contracts with this state.

Be it enacted by the Legislature of West Virginia:

That §31B-1-111 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §31D-5-504 of said code

be amended and reenacted; that §31D-15-1510 of said code be amended and reenacted; that §31E-5-504 of said code be amended and reenacted; that §31E-14-1410 of said code be amended and reenacted; that §46A-2-137 of said code be amended and reenacted; that §47-9-4 of said code be amended and reenacted; and that §56-3-31 and §56-3-33 of said code be amended and reenacted, all to read as follows:

**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 limited
2 liability company or a foreign limited liability company is an
3 agent of the company for service of any process, notice or
4 demand required or permitted by law to be served upon the
5 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 leaving
15 with the secretary of state, the assistant secretary of state or
16 clerk having charge of the limited liability company
17 department of the secretary of state, the original process,
18 notice or demand and two copies thereof for each defendant,
19 along with the fee required by section two, article one,
20 chapter fifty-nine of this code. No process, notice or demand

21 may be served on or accepted by the secretary of state less
22 than ten days before the return day thereof. The secretary of
23 state, upon being served with or accepting any process, notice
24 or demand, shall: (1) File in his or her office a copy of the
25 process, notice or demand, endorsed as of the time of service
26 or acceptance; and (2) transmit one copy of the process,
27 notice or demand by registered or certified mail, return
28 receipt requested, by a means which may include electronic
29 issuance and acceptance of electronic return receipts, to the
30 limited liability company's registered agent: *Provided*, That
31 if there is no registered agent, then to the individual whose
32 name and address was last given to the secretary of state's
33 office as the person designated to receive process, notice or
34 demand. If no person has been named, then to the principal
35 office of the limited liability company at the address last
36 given to the secretary of state's office and if no address is
37 available on record with the secretary of state then to the
38 address provided on the original process, notice or demand,
39 if available; and (3) transmit the original process, notice or
40 demand to the clerk's office of the court from which the
41 process, notice or demand was issued. Such service or
42 acceptance of process, notice or demand is sufficient if the
43 return receipt is signed by an agent or employee of such
44 company, or the registered or certified mail so sent by the
45 secretary of state is refused by the addressee and the
46 registered or certified mail is returned to the secretary of
47 state, showing the stamp of the United States postal service
48 that delivery thereof has been refused, and such return receipt
49 or registered or certified mail is received by the secretary of
50 state by a means which may include electronic issuance and
51 acceptance of electronic return receipts. After receiving
52 verification from the United States postal service that
53 acceptance of process, notice or demand has been signed, the
54 secretary of state shall notify the clerk's office of the court
55 from which the process, notice or demand was issued by a
56 means which may include electronic notification. If the
57 process, notice or demand was refused or undeliverable by

58 the United States postal service the secretary of state shall
59 return refused or undeliverable mail to the clerk's office of
60 the court from which the process, notice or demand was
61 issued. No process, notice or demand may be served on the
62 secretary of state or accepted by him or her less than ten days
63 before the return day of the process or notice. The court may
64 order continuances as may be reasonable to afford each
65 defendant opportunity to defend the action or proceedings.

66 (d) The secretary of state shall keep a record of all
67 processes, notices and demands served pursuant to this
68 section and record the time of and the action taken regarding
69 the service.

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

CHAPTER 31D. WEST VIRGINIA BUSINESS CORPORATION ACT.

ARTICLE 5. OFFICE AND AGENT.

§31D-5-504. Service on corporation.

1 (a) A corporation's registered agent is the corporation's
2 agent for service of process, notice or demand required or
3 permitted by law to be served on the corporation.

4 (b) If a corporation has no registered agent, or the agent
5 cannot with reasonable diligence be served, the corporation
6 may be served by registered or certified mail, return receipt
7 requested, addressed to the secretary of the corporation at its
8 principal office. Service is perfected under this subsection at
9 the earliest of:

10 (1) The date the corporation receives the mail;

11 (2) The date shown on the return receipt, if signed on
12 behalf of the corporation; or

13 (3) Five days after its deposit in the United States mail,
14 as evidenced by the postmark, if mailed postpaid and
15 correctly addressed.

16 (c) In addition to the methods of service on a corporation
17 provided in subsections (a) and (b) of this section, the
18 Secretary of State is hereby constituted the attorney-in-fact
19 for and on behalf of each corporation created pursuant to the
20 provisions of this chapter. The Secretary of State has the
21 authority to accept service of notice and process on behalf of
22 each corporation and is an agent of the corporation upon
23 whom service of notice and process may be made in this state
24 for and upon each corporation. No act of a corporation
25 appointing the Secretary of State as attorney-in-fact is
26 necessary. Service of any process, notice or demand on the
27 Secretary of State may be made by delivering to and leaving
28 with the Secretary of State the original process, notice or
29 demand and two copies of the process, notice or demand for
30 each defendant, along with the fee required by section two,
31 article one, chapter fifty-nine of this code: *Provided*. That
32 with regard to a class action suit in which all defendants are
33 to be served with the same process, notice or demand, service
34 may be made by filing with the Secretary of State the original
35 process, notice or demand and one copy for each named
36 defendant. Immediately after being served with or accepting
37 any process or notice, the Secretary of State shall: (1) File in
38 his or her office a copy of the process or notice, endorsed as
39 of the time of service or acceptance;(2) transmit one copy of
40 the process or notice by registered or certified mail, return
41 receipt requested, by a means which may include electronic
42 issuance and acceptance of electronic return receipts, to: (A)
43 The corporation's registered agent; or (B) if there is no
44 registered agent, to the individual whose name and address
45 was last given to the Secretary of State's office as the person

46 to whom notice and process are to be sent and if no person
47 has been named, to the principal office of the corporation as
48 that address was last given to the Secretary of State's office.
49 If no address is available on record with the secretary of state,
50 then to the address provided on the original process, notice or
51 demand, if available; and (3) transmit the original process,
52 notice or demand to the clerk's office of the court from which
53 the process, notice or demand was issued. Service or
54 acceptance of process or notice is sufficient if return receipt
55 is signed by an agent or employee of the corporation, or the
56 registered or certified mail sent by the Secretary of State is
57 refused by the addressee and the registered or certified mail
58 is returned to the Secretary of State, or to his or her office,
59 showing the stamp of the United States postal service that
60 delivery has been refused, and the return receipt or registered
61 or certified mail is received by the secretary of state by a
62 means which may include electronic issuance and acceptance
63 of electronic return receipts. After receiving verification from
64 the United States postal service that acceptance of process,
65 notice or demand has been signed, the secretary of state shall
66 notify the clerk's office of the court from which the process,
67 notice or demand was issued by a means which may include
68 electronic notification. If the process, notice or demand was
69 refused or undeliverable by the United States postal service
70 the secretary of state shall return the refused or undeliverable
71 mail to the clerk's office of the court from which the process,
72 notice or demand was issued. No process or notice may be
73 served on the Secretary of State or accepted by him or her
74 less than ten days before the return day of the process or
75 notice. The court may order continuances as may be
76 reasonable to afford each defendant opportunity to defend the
77 action or proceedings.

78 (d) This section does not prescribe the only means, or
79 necessarily the required means, of serving a corporation.

ARTICLE 15. FOREIGN CORPORATIONS.

§31D-15-1510. Service on foreign corporation.

1 (a) The registered agent of a foreign corporation
2 authorized to transact business in this state is the
3 corporation's agent for service of process, notice or demand
4 required or permitted by law to be served on the foreign
5 corporation.

6 (b) A foreign corporation may be served by registered or
7 certified mail, return receipt requested, addressed to the
8 secretary of the foreign corporation at its principal office
9 shown in its application for a certificate of authority or in its
10 most recent return required pursuant to section three, article
11 twelve-c, chapter eleven of this code if the foreign
12 corporation:

13 (1) Has no registered agent or its registered agent cannot
14 with reasonable diligence be served;

15 (2) Has withdrawn from transacting business in this state
16 under section one thousand five hundred twenty of this
17 article; or

18 (3) Has had its certificate of authority revoked under
19 section one thousand five hundred thirty-one of this article.

20 (c) Service is perfected under subsection (b) of this
21 section at the earliest of:

22 (1) The date the foreign corporation receives the mail;

23 (2) The date shown on the return receipt, if signed on
24 behalf of the foreign corporation; or

25 (3) Five days after its deposit in the United States mail,
26 as evidenced by the postmark, if mailed postpaid and
27 correctly addressed.

28 (d) In addition to the methods of service on a foreign
29 corporation provided in subsections (a) and (b) of this
30 section, the secretary of state is hereby constituted the
31 attorney-in-fact for and on behalf of each foreign corporation
32 authorized to do or transact business in this state pursuant to
33 the provisions of this chapter. The secretary of state has the
34 authority to accept service of notice and process on behalf of
35 each corporation and is an agent of the corporation upon
36 whom service of notice and process may be made in this state
37 for and upon each corporation. No act of a corporation
38 appointing the secretary of state as attorney-in-fact is
39 necessary. Service of any process, notice or demand on the
40 secretary of state may be made by delivering to and leaving
41 with the secretary of state the original process, notice or
42 demand and one copy of the process, notice or demand for
43 each defendant, along with the fee required by section two,
44 article one, chapter fifty-nine of this code. Immediately after
45 being served with or accepting any process or notice, the
46 secretary of state shall: (1) File in his or her office a copy of
47 the process or notice, endorsed as of the time of service or
48 acceptance; (2) transmit one copy of the process or notice by
49 registered or certified mail, return receipt requested, by a
50 means which may include electronic issuance and acceptance
51 of electronic return receipts, to: (A) The foreign
52 corporation's registered agent; or (B) if there is no registered
53 agent, to the individual whose name and address was last
54 given to the secretary of state's office as the person to whom
55 notice and process are to be sent and if no person has been
56 named, to the principal office of the foreign corporation as
57 that address was last given to the secretary of state's office.
58 If no address is available on record with the secretary of state,
59 then to the address provided on the original process, notice or

60 demand, if available; and (3) transmit the original process,
61 notice or demand to the clerk's office of the court from which
62 the process, notice or demand was issued. Service or
63 acceptance of process or notice is sufficient if return receipt
64 is signed by an agent or employee of the corporation, or the
65 registered or certified mail sent by the secretary of state is
66 refused by the addressee and the registered or certified mail
67 is returned to the secretary of state, or to his or her office,
68 showing the stamp of the United States postal service that
69 delivery has been refused, and the return receipt or registered
70 or certified mail is received by the secretary of state by a
71 means which may include electronic issuance and acceptance
72 of electronic return receipts. After receiving verification
73 from United States postal service that acceptance of process,
74 notice or demand has been accepted, the secretary of state
75 shall notify the clerk's office of the court from which the
76 process, notice or demand was issued by means which may
77 include electronic notification. If the process, notice or
78 demand was refused or undeliverable by the United States
79 postal service the secretary of state shall return the refused or
80 undeliverable mail to the clerk's office of the court from
81 which the process, notice or demand was issued. No process
82 or notice may be served on the secretary of state or accepted
83 by him or her less than ten days before the return day of the
84 process or notice. The court may order continuances as may
85 be reasonable to afford each defendant opportunity to defend
86 the action or proceedings.

87 (e) Any foreign corporation doing or transacting business
88 in this state without having been authorized to do so pursuant
89 to the provisions of this chapter is conclusively presumed to
90 have appointed the secretary of state as its attorney-in-fact
91 with authority to accept service of notice and process on
92 behalf of the corporation and upon whom service of notice
93 and process may be made in this state for and upon the
94 corporation in any action or proceeding arising from

95 activities described in section one thousand five hundred one
96 of this article. No act of a corporation appointing the
97 secretary of state as its attorney-in-fact is necessary.
98 Immediately after being served with or accepting any process
99 or notice, of which process or notice one copy for each
100 defendant are to be furnished to the secretary of state with the
101 original notice or process, together with the fee required by
102 section two, article one, chapter fifty-nine of this code, the
103 secretary of state shall file in his or her office a copy of the
104 process or notice, with a note endorsed of the time of service
105 or acceptance, and transmit one copy of the process or notice
106 by registered or certified mail, return receipt requested, by a
107 means which may include electronic issuance and acceptance
108 of electronic return receipts, to the corporation at the address
109 of its principal office, which address shall be stated in the
110 process or notice. The service or acceptance of process or
111 notice is sufficient if the return receipt is signed by an agent
112 or employee of the corporation, or the registered or certified
113 mail sent by the secretary of state is refused by the addressee
114 and the registered or certified mail is returned to the secretary
115 of state, or to his or her office, showing thereon the stamp of
116 the United States postal service that delivery thereof has been
117 refused and the return receipt or registered or certified mail
118 is received by the secretary of state by a means which may
119 include electronic issuance and acceptance of electronic
120 return receipts. After receiving verification from the United
121 States postal service that acceptance of process, notice or
122 demand has been signed, the secretary of state shall notify the
123 clerk's office of the court from which the process, notice or
124 demand was issued by a means which may include electronic
125 notification. If the process, notice or demand was refused or
126 undeliverable by the United States postal service the
127 secretary of state shall return refused or undeliverable mail to
128 the clerk's office of the court from which the process, notice
129 or demand was issued. No process or notice may be served
130 on the secretary of state or accepted by him or her less than

131 ten days before the return date thereof. The court may order
132 continuances as may be reasonable to afford each defendant
133 opportunity to defend the action or proceedings.

134 (f) This section does not prescribe the only means, or
135 necessarily the required means, of serving a foreign
136 corporation.

**CHAPTER 31E. WEST VIRGINIA NONPROFIT
CORPORATION ACT.**

ARTICLE 5. OFFICE AND AGENT.

§31E-5-504. Service on corporation.

1 (a) A corporation's registered agent is the corporation's
2 agent for service of process, notice, or demand required or
3 permitted by law to be served on the corporation.

4 (b) If a corporation has no registered agent, or the agent
5 cannot with reasonable diligence be served, the corporation
6 may be served by registered or certified mail, return receipt
7 requested, addressed to the secretary of the corporation at its
8 principal office. Service is perfected under this subsection at
9 the earliest of:

10 (1) The date the corporation receives the mail;

11 (2) The date shown on the return receipt, if signed on
12 behalf of the corporation; or

13 (3) Five days after its deposit in the United States mail,
14 as evidenced by the postmark, if mailed postpaid and
15 correctly addressed.

16 (c) In addition to the methods of service on a corporation
17 provided in subsections (a) and (b) of this section, the
18 secretary of state is hereby constituted the attorney-in-fact for
19 and on behalf of each corporation created pursuant to the
20 provisions of this chapter. The secretary of state has the
21 authority to accept service of notice and process on behalf of
22 each corporation and is an agent of the corporation upon
23 whom service of notice and process may be made in this state
24 for and upon each corporation. No act of a corporation
25 appointing the secretary of state as attorney-in-fact is
26 necessary. Service of any process, notice or demand on the
27 secretary of state may be made by delivering to and leaving
28 with the secretary of state the original process, notice or
29 demand and two copies of the process, notice or demand for
30 each defendant, along with the fee required by section two,
31 article one, chapter fifty-nine of this code. Immediately after
32 being served with or accepting any process or notice, the
33 secretary of state shall: (1) File in his or her office a copy of
34 the process or notice, endorsed as of the time of service, or
35 acceptance; (2) transmit one copy of the process or notice by
36 registered or certified mail, return receipt requested, by a
37 means which may include electronic issuance and acceptance
38 of electronic return receipts, to: (A) The corporation's
39 registered agent; or (B) if there is no registered agent, to the
40 individual whose name and address was last given to the
41 secretary of state's office as the person to whom notice and
42 process are to be sent, and if no person has been named, to
43 the principal office of the corporation as that address was last
44 given to the secretary of state's office; and if no address is
45 available on record with the secretary of state, then to the
46 address provided on the original process, notice or demand,
47 if available; and (3) transmit the original process, notice or
48 demand to the clerk's office of the court from which the
49 process, notice or demand was issued. Service or acceptance
50 of process or notice is sufficient if return receipt is signed by
51 an agent or employee of the corporation, or the registered or

52 certified mail sent by the secretary of state is refused by the
53 addressee and the registered or certified mail is returned to
54 the secretary of state, or to his or her office, showing the
55 stamp of the United States postal service that delivery has
56 been refused, and the return receipt or registered or certified
57 mail is received by the secretary of state by a means which
58 may include electronic issuance and acceptance of electronic
59 return receipts. After receiving verification from the United
60 States postal service that acceptance of process, notice or
61 demand has been signed, the secretary of state shall notify the
62 clerk's office of the court from which the process, notice or
63 demand was issued by a means which may include electronic
64 notification. If the process, notice or demand was refused or
65 undeliverable by the United States postal service, the
66 secretary of state shall return the refused or undeliverable
67 mail to the clerk's office from which the process, notice or
68 demand was issued. No process or notice may be served on
69 the secretary of state or accepted by him or her less than ten
70 days before the return day of the process or notice. The court
71 may order continuances as may be reasonable to afford each
72 defendant opportunity to defend the action or proceedings.

73 (d) This section does not prescribe the only means, or
74 necessarily the required means of serving a corporation.

ARTICLE 14. FOREIGN CORPORATIONS.

PART 1. CERTIFICATE OF AUTHORITY.

§31E-14-1410. Service on foreign corporation.

1 (a) The registered agent of a foreign corporation
2 authorized to conduct activities in this state is the
3 corporation's agent for service of process, notice, or demand
4 required or permitted by law to be served on the foreign
5 corporation.

6 (b) A foreign corporation may be served by registered or
7 certified mail, return receipt requested, addressed to the
8 secretary of the foreign corporation at its principal office
9 shown in its application for a certificate of authority or in its
10 most recent return required pursuant to section three, article
11 twelve-c, chapter eleven of this code if the foreign
12 corporation:

13 (1) Has no registered agent or its registered agent cannot
14 with reasonable diligence be served;

15 (2) Has withdrawn from conducting activities in this state
16 under section one thousand four hundred twenty of this
17 article; or

18 (3) Has had its certificate of authority revoked under
19 section one thousand four hundred thirty-one of this article.

20 (c) Service is perfected under subsection (b) of this
21 section at the earliest of:

22 (1) The date the foreign corporation receives the mail;

23 (2) The date shown on the return receipt, if signed on
24 behalf of the foreign corporation; or

25 (3) Five days after its deposit in the United States mail,
26 as evidenced by the postmark, if mailed postpaid and
27 correctly addressed.

28 (d) In addition to the methods of service on a foreign
29 corporation provided in subsections (a) and (b) of this
30 section, the secretary of state is hereby constituted the
31 attorney-in-fact for and on behalf of each foreign corporation
32 authorized to conduct affairs in this state pursuant to the
33 provisions of this chapter. The secretary of state has the

34 authority to accept service of notice and process on behalf of
35 each corporation and is an agent of the corporation upon
36 whom service of notice and process may be made in this state
37 for and upon each corporation. No act of a corporation
38 appointing the secretary of state as attorney-in-fact is
39 necessary. Service of any process, notice or demand on the
40 secretary of state may be made by delivering to and leaving
41 with the secretary of state the original process, notice or
42 demand and two copies of the process, notice or demand for
43 each defendant, along with the fee required by section two,
44 article one, chapter fifty-nine of this code. Immediately after
45 being served with or accepting any process or notice, the
46 secretary of state shall: (1) File in his or her office a copy of
47 the process or notice, endorsed as of the time of service, or
48 acceptance; (2) transmit one copy of the process or notice by
49 registered or certified mail, return receipt requested, by a
50 means which may include electronic issuance and acceptance
51 of electronic return receipts, to: (A) The foreign corporation's
52 registered agent; or (B) if there is no registered agent, to the
53 individual whose name and address was last given to the
54 secretary of state's office as the person to whom notice and
55 process are to be sent, and if no person has been named, to
56 the principal office of the foreign corporation as that address
57 was last given to the secretary of state's office. If no address
58 is available on record with the secretary of state, then to the
59 address provided on the original process, notice or demand,
60 if available; and (3) transmit the original process, notice or
61 demand to the clerk's office of the court from which the
62 process, notice or demand was issued. Service or acceptance
63 of process or notice is sufficient if return receipt is signed by
64 an agent or employee of the corporation, or the registered or
65 certified mail sent by the secretary of state is refused by the
66 addressee and the registered or certified mail is returned to
67 the secretary of state, or to his or her office, showing the
68 stamp of the United States postal service that delivery has
69 been refused, and the return receipt or registered or certified

70 mail is received by the secretary of state by a means which
71 may include electronic issuance and acceptance of electronic
72 return receipts. After receiving verification from United
73 States postal service that acceptance of process, notice or
74 demand has been accepted, the secretary of state shall notify
75 the clerk's office of the court from which the process, notice
76 or demand was issued by means which may include
77 electronic notification. If the process, notice or demand was
78 refused or undeliverable by the United States postal service
79 the secretary of state shall return the refused or undeliverable
80 mail to the clerk's office of the court from which the process,
81 notice or demand was issued. No process or notice may be
82 served on the secretary of state or accepted by him or her less
83 than ten days before the return day of the process or notice.
84 The court may order continuances as may be reasonable to
85 afford each defendant opportunity to defend the action or
86 proceedings.

87 (e) Any foreign corporation conducting affairs in this
88 state without having been authorized to do so pursuant to the
89 provisions of this chapter is conclusively presumed to have
90 appointed the secretary of state as its attorney-in-fact with
91 authority to accept service of notice and process on behalf of
92 the corporation and upon whom service of notice and process
93 may be made in this state for and upon the corporation in any
94 action or proceeding arising from activities described in
95 section one thousand four hundred one of this article. No act
96 of a corporation appointing the secretary of state as its
97 attorney-in-fact is necessary. Immediately after being served
98 with or accepting any process or notice, of which process or
99 notice two copies for each defendant are to be furnished to
100 the secretary of state with the original notice or process,
101 together with the fee required by section two, article one,
102 chapter fifty-nine of this code, the secretary of state shall file
103 in his or her office a copy of the process or notice, with a
104 note endorsed of the time of service or acceptance, and

105 transmit one copy of the process or notice by registered or
106 certified mail, return receipt requested, by a means which
107 may include electronic issuance and acceptance of electronic
108 return receipts, to the corporation at the address of its
109 principal office, which address shall be stated in the process
110 or notice. The service or acceptance of process or notice is
111 sufficient if the return receipt is signed by an agent or
112 employee of the corporation, or the registered or certified
113 mail sent by the secretary of state is refused by the addressee
114 and the registered or certified mail is returned to the secretary
115 of state, or to his or her office, showing thereon the stamp of
116 the United States postal service that delivery thereof has been
117 refused, and the return receipt or registered or certified mail
118 is received by the secretary of state by a means which may
119 include electronic issuance and acceptance of electronic
120 return receipts. After receiving verification from the United
121 States postal service that acceptance of process, notice or
122 demand has been signed, the secretary of state shall notify the
123 clerk's office of the court from which the process, notice or
124 demand was issued by a means which may include electronic
125 notification. If the process, notice or demand was refused or
126 undeliverable by the United States postal service the
127 secretary of state shall return refused or undeliverable mail to
128 the clerk's office of the court from which the process, notice
129 or demand was issued. No process or notice may be served
130 on the secretary of state or accepted by him or her less than
131 ten days before the return date thereof. The court may order
132 continuances as may be reasonable to afford each defendant
133 opportunity to defend the action or proceedings.

(f) This section does not prescribe the only means, or necessarily
the required means, of serving a foreign corporation.

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

33 secretary of state shall notify the clerk's office of the court
 34 from which the process or notice was issued by a means
 35 which may include electronic notification. If the process or
 36 notice was refused or undeliverable by the United States
 37 postal service the secretary of state shall return refused or
 38 undeliverable mail to the clerk's office of the court from
 39 which the process or notice was issued. But no process or
 40 notice shall be served on the secretary of state or accepted
 41 fewer than ten days before the return date thereof. The court
 42 may order such continuances as may be reasonable to afford
 43 each defendant opportunity to defend the action or proceeding.
 44 The provisions for service of process or notice herein are
 45 cumulative and nothing herein contained shall be construed
 46 as a bar to the plaintiff in any action from having process or
 47 notice in such action served in any other mode and manner
 48 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 attorney-
 2 in-fact for and on behalf of every limited partnership created
 3 by virtue of the laws of this state and every foreign limited
 4 partnership authorized to conduct affairs or do or transact
 5 business herein pursuant to the provisions of this article, with
 6 authority to accept service of notice and process on behalf of
 7 every such limited partnership and upon whom service of
 8 notice and process may be made in this state for and upon

9 every such limited partnership. No act of such limited
10 partnership appointing the secretary of state such attorney-in-
11 fact shall be necessary. Immediately after being served with
12 or accepting any such process or notice, of which process or
' 13 notice two copies for each defendant shall be furnished the
14 secretary of state with the original notice or process, together
15 with the fee required by section two, article one, chapter
16 fifty-nine of this code, the secretary of state shall file in his
17 office a copy of such process or notice, with a note thereon
18 endorsed of the time of service or acceptance, as the case
19 may be, and transmit one copy of such process or notice by
20 registered or certified mail, return receipt requested, to the
21 person to whom notice and process shall be sent, whose name
22 and address were last furnished to the state officer at the time
23 authorized by statute to accept service of notice and process
24 and upon whom notice and process may be served; and if no
25 such person has been named, to the principal office of the
26 limited partnership at the address last furnished to the state
27 officer at the time authorized by statute to accept service of
28 process and upon whom process may be served, as required
29 by law, or if no address is available on record with the
30 secretary of state then to the address provided on the original
31 process or process, if available. No process or notice shall be
32 served on the secretary of state or accepted by him less than
33 ten days before the return day thereof. Such limited
34 partnership shall pay the annual fee prescribed by article
35 twelve, chapter eleven of this code for the services of the
36 secretary 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 having
39 been authorized so to do pursuant to the provisions of this
40 article shall be conclusively presumed to have appointed the
41 secretary of state as its attorney-in-fact with authority to
42 accept service of notice and process on behalf of such limited
43 partnership and upon whom service of notice and process

44 may be made in this state for and upon every such limited
45 partnership in any action or proceeding described in the next
46 following paragraph of this section. No act of such limited
47 partnership appointing the secretary of state as such attorney-
48 in-fact shall be necessary. Immediately after being served
49 with or accepting any such process or notice, of which
50 process or notice two copies for each defendant shall be
51 furnished the secretary of state with the original notice or
52 process, together with the fee required by section two, article
53 one, chapter fifty-nine of this code, the secretary of state shall
54 file in his office a copy of such process or notice, with a note
55 thereon endorsed of the time of service or acceptance, as the
56 case may be, and transmit one copy of such process or notice
57 by registered or certified mail, return receipt requested, by a
58 means which may include electronic issuance and acceptance
59 of electronic return receipts, 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 such
62 process or notice shall be sufficient if such return receipt
63 shall be signed by an agent or employee of such limited
64 partnership. After receiving verification from the United
65 States postal service that acceptance of process or notice has
66 been signed, the secretary of state shall notify the clerk's
67 office of the court from which the process or notice was
68 issued by a means which may include electronic notification.
69 If the process or notice was refused or undeliverable by the
70 United State postal service the secretary of state shall return
71 refused or undeliverable mail to the clerk's office of the court
72 from which the process or notice was issued. No process or
73 notice shall be served on the secretary of state or accepted by
74 him less than ten days before the return date thereof. The
75 court may order such continuances as may be reasonable to
76 afford each defendant opportunity to defend the action or
77 proceedings. For the purpose of this section, a foreign limited
78 partnership not authorized to conduct affairs or do or transact
79 business in this state pursuant to the provisions of this article

80 shall nevertheless be deemed to be conducting affairs or
81 doing or transacting business herein (a) if such limited
82 partnership makes a contract to be performed, in whole or in
83 part, by any party thereto in this state, (b) if such limited
84 partnership commits a tort, in whole or in part, in this state,
85 or (c) if such limited partnership manufactures, sells, offers
86 for sale or supplies any product in a defective condition and
87 such product causes injury to any person or property within
88 this state notwithstanding the fact that such limited
89 partnership had no agents, servants or employees or contacts
90 within this state at the time of said injury. The making of
91 such contract, the committing of such tort or the manufacture
92 or sale, offer of sale or supply of such defective product as
93 herein above described shall be deemed to be the agreement
94 of such limited partnership that any notice or process served
95 upon, or accepted by, the secretary of state pursuant to the
96 next preceding paragraph of this section in any action or
97 proceeding against such limited partnership arising from or
98 growing out of such contract, tort or manufacture or sale,
99 offer of sale or supply of such defective product shall be of
100 the same legal force and validity as process duly served on
101 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 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 all
6 lawful process in any action or proceeding against him or her
7 in any court of record in this state arising out of any accident
8 or collision occurring in the state of West Virginia in which
9 the nonresident was involved: *Provided*, That in the event
10 process against a nonresident defendant cannot be effected
11 through the secretary of state, as provided by this section, for
12 the purpose only of service of process, the nonresident
13 motorist shall be considered to have appointed as his or her
14 agent or attorney-in-fact any insurance company which has
15 a contract of automobile or liability insurance with the
16 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 motorist
21 is involved in any accident or collision in this state and
22 service of process cannot be effected upon the nonresident
23 through the office of the secretary of state. Upon receipt of
24 process as provided in this section, the insurance company
25 may, within thirty days, file an answer or other pleading or
26 take any action allowed by law on behalf of the defendant.

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

38 though the nonresident or his or her administrator,
39 administratrix, executor or executrix were personally served
40 with a summons and complaint within this state.

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

47 (d) Service of process upon a nonresident defendant shall
48 be made by leaving the original and two copies of both the
49 summons and complaint, together with the bond certificate of
50 the clerk, and the fee required by section two, article one,
51 chapter fifty-nine of this code with the secretary of state, or
52 in his or her office, and the service shall be sufficient upon
53 the nonresident defendant or, if a natural person, his or her
54 administrator, administratrix, executor or executrix:
55 *Provided*, That notice of service and a copy of the summons
56 and complaint shall be sent by registered or certified mail,
57 return receipt requested, by a means which may include
58 electronic issuance and acceptance of electronic return
59 receipts, by the secretary of state to the nonresident
60 defendant. After receiving verification from the United
61 States postal service that acceptance of process, notice or
62 demand has been signed, the secretary of state shall notify the
63 clerk's office of the court from which the process, notice or
64 demand was issued by a means which may include electronic
65 notification. If the process, notice or demand was refused or
66 undeliverable by the United State postal service the secretary
67 of state shall return refused or undeliverable mail to the
68 clerk's office of the court from which the process, notice or
69 demand was issued. The court may order any reasonable
70 continuances to afford the defendant opportunity to defend
71 the action.

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

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

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

97 (1) "Duly authorized agent" means and includes, among
98 others, a person who operates a motor vehicle in this state for
99 a nonresident as defined in this section and chapter, in pursuit
100 of business, pleasure or otherwise, or who comes into this
101 state and operates a motor vehicle for, or with the knowledge
102 or acquiescence of, a nonresident; and includes, among
103 others, a member of the family of the nonresident or a person
104 who, at the residence, place of business or post office of the

105 nonresident, usually receives and acknowledges receipt for
106 mail addressed to the nonresident.

107 (2) "Motor vehicle" means and includes any self-
108 propelled vehicle, including a motorcycle, tractor and trailer,
109 not operated exclusively upon stationary tracks.

110 (3) "Nonresident" means any person who is not a resident
111 of this state or a resident who has moved from the state
112 subsequent to an accident or collision and among others
113 includes a nonresident firm, partnership, corporation or
114 voluntary association, or a firm, partnership, corporation or
115 voluntary association that has moved from the state
116 subsequent to an accident or collision.

117 (4) "Nonresident plaintiff or plaintiffs" means a
118 nonresident who institutes an action in a court in this state
119 having jurisdiction against a nonresident in pursuance of the
120 provisions of this article.

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

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

132 (7) "Insurance company" means any firm, corporation,
133 partnership or other organization which issues automobile
134 insurance.

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

17 (1) Transacting any business in this state;

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

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

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

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

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

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

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

43 (c) Service shall be made by leaving the original and two
44 copies of both the summons and the complaint, and the fee
45 required by section two, article one, chapter fifty-nine of this
46 code with the secretary of state, or in his or her office, and
47 such service shall be sufficient upon such nonresident:
48 *Provided*, That notice of such service and a copy of the
49 summons and complaint shall forthwith be sent by registered
50 or certified mail, return receipt requested, by a means which
51 may include electronic issuance and acceptance of electronic

52 return receipts, by the secretary of state to the defendant at
53 his or her nonresident address and the defendant's return
54 receipt signed by himself or herself or his or her duly
55 authorized agent or the registered or certified mail so sent by
56 the secretary of state which is refused by the addressee and
57 which registered or certified mail is returned to the secretary
58 of state, or to his or her office, showing thereon the stamp of
59 the post-office department that delivery has been refused.
60 After receiving verification from the United States postal
61 service that acceptance of process, notice or demand has been
62 signed, the secretary of state shall notify the clerk's office of
63 the court from which the process, notice or demand was
64 issued by a means which may include electronic notification.
65 If the process, notice or demand was refused or undeliverable
66 by the United States postal service the secretary of state shall
67 return refused or undeliverable mail to the clerk's office of
68 the court from which the process, notice or demand was
69 issued. If any defendant served with summons and complaint
70 fails to appear and defend within thirty days of service,
71 judgment by default may be rendered against him or her at
72 any time thereafter. The court may order such continuances
73 as may be reasonable to afford the defendant opportunity to
74 defend the action or proceeding.

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

79 (e) The following words and phrases, when used in this
80 section, shall for the purpose of this section and unless a
81 different intent be apparent from the context, have the
82 following meanings:

83 (1) "Duly authorized agent" means and includes among
84 others a person who, at the direction of or with the

85 knowledge or acquiescence of a nonresident, engages in such
86 act or acts and includes among others a member of the family
87 of such nonresident or a person who, at the residence, place
88 of business or post office of such nonresident, usually
89 receives and receipts for mail addressed to such nonresident.

90 (2) "Nonresident" means any person, other than voluntary
91 unincorporated associations, who is not a resident of this state
92 or a resident who has moved from this state subsequent to
93 engaging in such act or acts, and among others includes a
94 nonresident firm, partnership or corporation or a firm,
95 partnership or corporation which has moved from this state
96 subsequent to any of said such act or acts.

97 (3) "Nonresident plaintiff or plaintiffs" means a
98 nonresident of this state who institutes an action or
99 proceeding in a circuit court in this state having jurisdiction
100 against a nonresident of this state pursuant to the provisions
101 of this section.

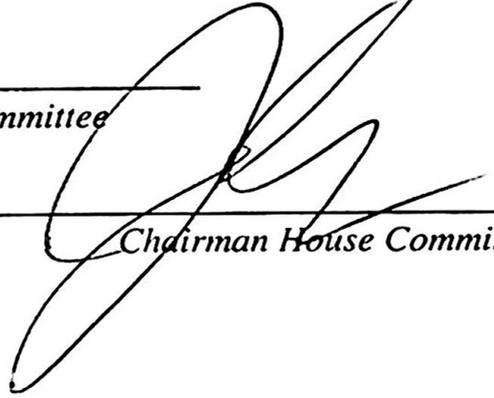
102 (f) The provision for service of process herein is
103 cumulative and nothing herein contained shall be construed
104 as a bar to the plaintiff in any action or proceeding from
105 having process in such action served in any other mode or
106 manner provided by the law of this state or by the law of the
107 place in which the service is made for service in that place in
108 an action in any of its courts of general jurisdiction.

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

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



Chairman Senate Committee



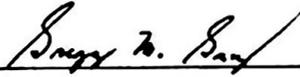
Chairman House Committee

Originating in the House.

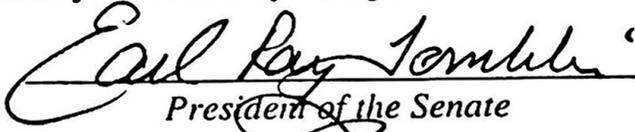
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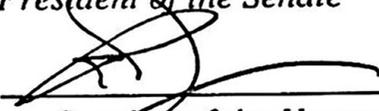
Clerk of the Senate



Clerk of the House of Delegates

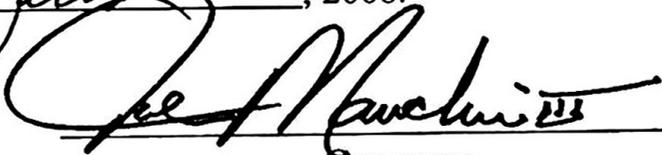


President of the Senate



Speaker of the House of Delegates

The within is approved this the 3/8th
day of March, 2008.



Governor

PRESENTED TO THE
GOVERNOR

MAR 26 2008

Time 3:05 pm