

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 562
Committee Substitute Favorable 6/15/89

Short Title: Raise Nonresident Service Fee.

(Public)

Sponsors:

Referred to:

March 14, 1989

A BILL TO BE ENTITLED

AN ACT TO RAISE THE FEE FOR SERVICE ON NONRESIDENT MOTORISTS
AND FOR SERVICE WITH THE COMMISSIONER OF INSURANCE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1-105 reads as rewritten:

"§ 1-105. Service upon nonresident drivers of motor vehicles and upon the personal representatives of deceased nonresident drivers of motor vehicles.

The acceptance by a nonresident of the rights and privileges conferred by the laws now or hereafter in force in this State permitting the operation of motor vehicles, as evidenced by the operation of a motor vehicle by such nonresident on the public highways of this State, or at any other place in this State, or the operation by such nonresident of a motor vehicle on the public highways of this State or at any other place in this State, other than as so permitted or regulated, shall be deemed equivalent to the appointment by such nonresident of the Commissioner of Motor Vehicles, or his successor in office, to be his true and lawful attorney and the attorney of his executor or administrator, upon whom may be served all summonses or other lawful process in any action or proceeding against him or his executor or administrator, growing out of any accident or collision in which said nonresident may be involved by reason of the operation by him, for him, or under his control or direction, express or implied, of a motor vehicle on such public highways of this State, or at any other place in this State, and said acceptance or operation shall be a signification of his agreement that any such

1 process against him or his executor or administrator shall be of the same legal force and
2 validity as if served on him personally, or on his executor or administrator.

3 Service of such process shall be made in the following manner:

- 4 (1) By leaving a copy thereof, with a fee of ~~three dollars (\$3.00)~~, ten dollars
5 (\$10.00), in the hands of the Commissioner of Motor Vehicles, or in
6 his office. Such service, upon compliance with the other provisions of
7 this section, shall be sufficient service upon the said nonresident.
- 8 (2) Notice of such service of process and copy thereof must be forthwith
9 sent by certified or registered mail by plaintiff or the Commissioner of
10 Motor Vehicles to the defendant, and the entries on the defendant's
11 return receipt shall be sufficient evidence of the date on which notice
12 of service upon the Commissioner of Motor Vehicles and copy of
13 process were delivered to the defendant, on which date service on said
14 defendant shall be deemed completed. If the defendant refuses to
15 accept the certified or registered letter, service on the defendant shall
16 be deemed completed on the date of such refusal to accept as
17 determined by notations by the postal authorities on the original
18 envelope, and if such date cannot be so determined, then service shall
19 be deemed completed on the date that the certified or registered letter
20 is returned to the plaintiff or Commissioner of Motor Vehicles, as
21 determined by postal marks on the original envelope. If the certified
22 or registered letter is not delivered to the defendant because it is
23 unclaimed, or because he has removed himself from his last known
24 address and has left no forwarding address or is unknown at his last
25 known address, service on the defendant shall be deemed completed
26 on the date that the certified or registered letter is returned to the
27 plaintiff or Commissioner of Motor Vehicles.
- 28 (3) The defendant's return receipt, or the original envelope bearing a
29 notation by the postal authorities that receipt was refused, and an
30 affidavit by the plaintiff that notice of mailing the registered letter and
31 refusal to accept was forthwith sent to the defendant by ordinary mail,
32 together with the plaintiff's affidavit of compliance with the provisions
33 of this section, must be appended to the summons or other process and
34 filed with said summons, complaint and other papers in the cause.

35 Provided, that where the nonresident motorist has died prior to the commencement
36 of an action brought pursuant to this section, service of process shall be made on the
37 executor or administrator of such nonresident motorist in the same manner and on the
38 same notice as ~~is~~ provided in the case of a nonresident motorist.

39 The court in which the action is pending shall order such continuance as may be
40 necessary to afford the defendant reasonable opportunity to defend the action."

41 Sec. 2. G.S. 58-153 reads as rewritten:

42 "**§ 58-153. Service of legal process upon Commissioner of Insurance.**

43 As an alternative to service of legal process under the provisions of Rule 4 of the
44 Rules of Civil Procedure, the service of such process upon any company licensed or

1 admitted and authorized to do business in this State under the provisions of this Chapter
 2 may be made by the sheriff delivering and leaving a copy of such process in the office
 3 of the Commissioner of Insurance with a deputy duly appointed by the Commissioner
 4 for such purpose or acceptance of service of such process may be made by the
 5 Commissioner of Insurance or such duly appointed deputy. As a condition precedent to
 6 a valid service of process ~~and of the action of the Commissioner in the premises, under this~~
 7 section, the party obtaining such service shall pay to the Commissioner of Insurance at
 8 the time of service or acceptance of service the sum of ~~five dollars (\$5.00), ten dollars~~
 9 (\$10.00), which such party shall recover as part of the taxable costs if he prevails in his
 10 action."

11 Sec. 3. G.S. 58-153.1(b) reads as rewritten:

12 "(b) Service of Process upon Unauthorized Insurer.

13 (1) Any of the following acts in this State, effected by mail or otherwise,
 14 by an unauthorized foreign or alien insurer:

- 15 a. The issuance or delivery of contracts of insurance to residents
 16 of this State or to corporations authorized to do business
 17 therein,
- 18 b. The solicitation of applications for such contracts,
- 19 c. The collection of premiums, membership fees, assessments or
 20 other considerations for such contracts, or
- 21 d. Any other transaction of business,

22 Is equivalent to and shall constitute an appointment by such insurer of
 23 the Commissioner of Insurance and his successor or successors in
 24 office, to be its true and lawful attorney, upon whom may be served all
 25 lawful process in any action, suit, or proceeding instituted by or on
 26 behalf of an insured or beneficiary arising out of any such contract of
 27 insurance, and any such act shall be signification of its agreement that
 28 such service of process is of the same legal force and validity as
 29 personal service of process in this State upon such insurer.

30 (2) Such service of process shall be made by delivering to and leaving
 31 with the Commissioner of Insurance or some person in apparent
 32 charge of his office two copies thereof and the payment to him of ~~five~~
 33 ~~dollars (\$5.00), ten dollars (\$10.00).~~ The Commissioner of Insurance
 34 shall within four business days mail by certified or registered mail one
 35 of the copies of such process to the defendant at its last known
 36 principal place of business, and shall keep a record of all process so
 37 served upon him. Such service of process is sufficient, provided notice
 38 of such service and a copy of the process are sent within 10 days
 39 thereafter by certified or registered mail by plaintiff or plaintiff's
 40 attorney to the defendant at its last known principal place of business,
 41 and the defendant's receipt, or receipt issued by the transmitting post
 42 office, ~~with which the letter is registered,~~ showing the name of the sender
 43 of the letter and the name and address of the person to whom the letter
 44 is addressed, and the affidavit of the plaintiff or plaintiff's attorney

- 1 showing a compliance herewith are filed with the clerk of the court in
2 which such action is pending on or before the date the defendant is
3 required to appear, or within such further time as the court may allow.
- 4 (3) Service of process in any such action, suit or proceeding shall in
5 addition to the manner provided in subdivision (2) of this subsection
6 be valid ~~if-if: served upon any person within this State who, in this State on~~
7 ~~behalf or such insurer, is~~
8 a. ~~Soliciting insurance, or~~
9 b. ~~Making, issuing or delivering any contract of insurance, or~~
10 e. ~~Collecting or receiving any premium, membership fee,~~
11 ~~assessment or other consideration for insurance.~~
12 ~~And a copy of such process is sent within 10 days thereafter by~~
13 ~~registered mail by the plaintiff or plaintiff's attorney to the defendant at~~
14 ~~the last known principal place of business of the defendant, and~~
15 a. It is served on a person within this State who is in the State on
16 behalf of the insurer to solicit insurance, make, issue, or deliver
17 a contract of insurance, or collect or receive a premium,
18 membership fee, assessment, or other consideration for
19 insurance;
20 b. A copy of the process is sent within 10 days after service by
21 certified or registered mail by the plaintiff or plaintiff's attorney
22 to the defendant at the defendant's last known principal place of
23 business; and
24 c. ~~the~~The defendant's receipt, or the receipt issued by the
25 transmitting post office, ~~with which the letter is registered,~~
26 showing the name of the sender of the letter and the name and
27 address of the person to whom the letter is addressed, and the
28 affidavit of the plaintiff or plaintiff's attorney showing a
29 compliance herewith are filed with the clerk of the court in
30 which such action is pending on or before the date the
31 defendant is required to appear, or within such further time as
32 the court may allow.
- 33 (4) No plaintiff or complainant shall be entitled to a judgment by default
34 under this section until the expiration of 30 days from the date of the
35 filing of the affidavit of compliance.
- 36 (5) Nothing in this section contained shall limit or abridge the right to
37 serve any process, notice or demand upon any insurer in any other
38 manner now or hereafter permitted by law."

39 Sec. 4. G.S. 58-340.35(b) reads as rewritten:

40 "(b) Service shall only be made upon the Commissioner of Insurance, or if absent,
41 upon the person in charge of the Commissioner's office. It shall be made in duplicate
42 and shall constitute sufficient service upon the society. When legal process against a
43 society is served upon the Commissioner of Insurance, the Commissioner shall
44 forthwith forward one of the duplicate copies by certified or registered mail, prepaid,

1 directed to the secretary or corresponding officer. No such service shall require a
2 society to file its answer, pleading or defense in less than 30 days from the date of
3 mailing the copy of the service to a society. Legal process shall not be served upon a
4 society except in the manner herein provided. At the time of serving any process upon
5 the Commissioner of Insurance, the plaintiff or complainant in the action shall pay to
6 the Commissioner of Insurance a fee of five dollars (\$5.00) in the amount set in G.S. 58-
7 153."

8 Sec. 5. G.S. 58-615(h) reads as rewritten:

9 "(h) Resident-Nonresident Licenses. – The Commissioner shall issue a resident or
10 nonresident license to an agent, broker, limited representative, adjuster, or motor vehicle
11 damage appraiser as follows:

12 (1) Resident.

13 An individual may qualify for a license as a resident if he resides in
14 this State. Any license issued pursuant to an application claiming
15 residency in this State shall be void if the licensee, while holding a
16 resident license in this State, also holds or makes application for a
17 resident license in, or thereafter claims to be a resident of, any other
18 state, or ceases to be a resident of this State; provided, however, if the
19 applicant is a resident of a county in another state, the border of which
20 county is contiguous with the state line of this State, the applicant may
21 qualify as a resident for licensing purposes in this State.

22 (2) Nonresident.

23 a. An individual may qualify for a license under this Article as a
24 nonresident if he holds a like license in another state or territory
25 of the United States. An individual may qualify for a license as
26 a nonresident motor vehicle damage appraiser or a nonresident
27 adjuster if the applicant's state of residency does not offer such
28 licenses and such applicant meets all other requirements for
29 licensure of a resident. A license issued to a nonresident of this
30 State shall grant the same rights and privileges afforded a
31 resident licensee, except as provided in subsection (i) of this
32 section.

33 b. A nonresident of this State may be licensed without taking an
34 otherwise required written examination if the Commissioner of
35 the state of the applicant's residence certifies that the applicant
36 has passed a similar written examination or has been a
37 continuous holder, prior to the time such written examination
38 was required, of a license like the license being applied for in
39 this State.

40 c. Notwithstanding other provisions of this Article, no new bond
41 shall be required for a nonresident broker if the Commissioner
42 is satisfied that an existing bond covers his insurance business
43 in this State.

44 d. Process Against Nonresident Licensees.

- 1 1. Each licensed nonresident agent, broker, adjuster, limited
2 representative, or motor vehicle damage appraiser shall
3 by the act of acquiring such license be deemed to appoint
4 the Commissioner as his attorney to receive service of
5 legal process issued against the agent, broker, adjuster,
6 limited representative, or motor vehicle damage
7 appraiser in this State upon causes of action arising
8 within this State.
 - 9 2. The appointment shall be irrevocable for as long as there
10 could be any cause of action against the nonresident
11 arising out of his insurance transactions in this State.
 - 12 3. Duplicate copies of such legal process against such
13 nonresident licensee shall be served upon the
14 Commissioner either by a person competent to serve a
15 summons, or through certified or registered mail. At the
16 time of such service the plaintiff shall pay to the
17 Commissioner a fee of ~~five dollars (\$5.00)~~ in the amount
18 set in G.S. 58-153, taxable as costs in the action to
19 defray the expense of such service.
 - 20 4. Upon receiving such service, the Commissioner or his
21 duly appointed deputy shall within three business days
22 send one of the copies of the process, by registered or
23 certified mail, to the defendant nonresident licensee at
24 his last address of record as filed with the Commissioner.
 - 25 5. The Commissioner shall keep a record of the day and
26 hour of service upon him of all such legal process. No
27 proceedings shall be had against the defendant
28 nonresident licensee, and such defendant shall not be
29 required to appear, plead or answer until the expiration
30 of 40 days after the date of service upon the
31 Commissioner.
 - 32 e. If the Commissioner revokes or suspends any nonresident's
33 license through a formal proceeding under this Article, he shall
34 promptly notify the appropriate Commissioner of the licensee's
35 residence of such action and of the particulars thereof."
- 36 Sec. 6. This act shall become effective October 1, 1989.