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## Virginia's New "Long Arm" Statute

J. WESTWOOD SMITHERS

At its recent 1964 session, the General Assembly of Virginia enacted a statute which will widely expand the jurisdiction of our courts over nonresidents. The purpose of this brief editorial is to call attention to the new law, to provide a copy of it for our readers, and to make a few rather cursory comments on its significance.

In 1957, Mr. Justice Black, speaking for the Court in *McGee v. International Life Insurance Co.*, 355 U. S. 220, said:

Since *Pennoyer v. Neff*, 95 U. S. 714, 24 L. Ed. 565 [1878], this Court has held that the Due Process Clause of the Fourteenth Amendment places some limit on the power of state courts to enter binding judgments against persons not served with process within their boundaries. But just where this line of limitation falls has been the subject of prolific controversy, particularly with respect to foreign corporations. In a continuing process of evolution this Court accepted and then abandoned "consent," "doing business," and "presence" as the standard for measuring the extent of state judicial power over such corporations. . . . More recently in *International Shoe Co. v. State of Washington*, 326 U. S. 310, 66 S. Ct. 154, 90 L. Ed. 95 [1945], the Court decided that "due process requires only that in order to subject a defendant to a judgment *in personam*, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substant-

ial justice.' ' Id., 326 U. S. at page 316, 66 S. Ct. at page 158.

Looking back over this long history of litigation a trend is clearly discernible toward expanding the permissible scope of state jurisdiction over foreign corporations and other nonresidents. In part this is attributable to the fundamental transformation of our national economy over the years. Today many commercial transactions touch two or more States and may involve parties separated by the full continent. With this increasing nationalization of commerce has come a great increase in the amount of business conducted by mail across state lines. At the same time modern transportation and communication have made it much less burdensome for a party sued to defend himself in a State where he engages in economic activity.

Until now, Virginia has not chosen to exercise all the power that it possesses within "the permissible scope of state jurisdiction over foreign corporations and other nonresidents." For example, with reference to foreign corporations that have failed to obtain a certificate of authority to transact business in this state, our courts are authorized by our statutes to exercise jurisdiction only if the activities of such corporations are sufficient to constitute "transacting business" in this state. Va. Code Ann. § 13.1-119 (Repl. Vol. 1956). The phrase "transacting business" seems to mean nothing more than "doing business." *Rock-Ola Mfg. Corp. v. Wertz*, 249 F. 2d 813 (4th Cir. 1957). Thus Virginia has not heretofore taken advantage of the *International Shoe Co.* decision, *supra*, to extend its judicial powers over foreign corporations whose activities in the state may not be sufficient to constitute "doing business," but which may be sufficient to constitute "minimum contacts" with the state "such as to make the exercise of judicial jurisdiction reasonable."

Restatement (Second), CONFLICT OF LAWS § 74 (Tent. Draft No. 3, 1956).

Similarly, Virginia has not heretofore asserted jurisdiction over a nonresident *individual* doing business in the state through an agent, although the Supreme Court held almost thirty years ago that it was within the constitutional powers of the state to exercise such jurisdiction. *Doherty & Co. v. Goodman*, 294 U. S. 623 (1935).

It was the purpose of Senate Bill No. 266 (copied below) to fill these and other gaps so as to extend the jurisdiction of our courts over nonresidents (including individuals, partnerships, and corporations) substantially to the outermost limits permissible under Supreme Court decisions. The gist of the new law is found in § 8-81.2 of the bill, which — except for one paragraph — was taken verbatim from § 1.03 of the Uniform Interstate and International Procedure Act. 9B U.L.A., 1963 Pocket Part, p. 75. (This Act was approved by the Conference of Commissioners on Uniform State Laws and the American Bar Association in 1962.) But paragraph (5) of § 8-81.2 is original in Virginia and was thought desirable in order to make sure that actions for breach of warranty in the sale of goods could be brought in Virginia, in many situations, even though the sale of goods took place outside the state. The provisions of this paragraph are related to Virginia's recent statute abolishing the defense of "lack of privity" in breach of warranty actions. See Va. Code Ann. § 8-654.3 (Supp. 1962), which will become part of the Uniform Commercial Code in Virginia as §2-318 thereof. The new Act follows:

#### SENATE BILL NO. 266

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia be amended by adding in Title 8 a chapter, numbered 4.1, containing sections numbered 8-81.1 through 8-81.5, as follows:

## Chapter 4.1

§ 8-81.1. As used in this chapter, "person" includes an individual, his executor, administrator, or other personal representative, or a corporation, partnership, association or any other legal or commercial entity, whether or not a citizen or domiciliary of this State and whether or not organized under the laws of this State.

§ 8-81.2. (a) A court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a cause of action arising from the person's

(1) transacting any business in this State;

(2) contracting to supply services or things in this State;

(3) causing tortious injury by an act or omission in this State;

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

(5) causing injury in this State to any person by breach of warranty expressly or impliedly made in the sale of goods outside this State when he might reasonably have expected such person to use, consume, or be affected by the goods in this State, provided that he also regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this State;

(6) having an interest in, using, or possessing real property in this State; or

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

(b) When jurisdiction over a person is based solely upon this section, only a cause of action arising from acts enumerated in this section may be asserted against him; provided, however, nothing contained in this chapter shall limit, restrict or otherwise affect the jurisdiction of any court of this State over foreign corporations which are subject to service of process pursuant to the provisions of any other statute.

§ 8-81.3. (a) When the exercise of personal jurisdiction is authorized by this chapter, service of process or notice may be made in the same manner as is provided for elsewhere in this code in any other case in which personal jurisdiction is exercised over such a nonresident party, and, if there be no such provision, then process or notice may be served on any agent of such person in the county or city in this State in which he resides or on the Secretary of the Commonwealth of Virginia who, for this purpose, shall be deemed to be the statutory agent of such person.

(b) Service of such process or notice shall be made by leaving a copy of the process or notice, together with a fee of three dollars, plus one dollar additional for each defendant over one to be thus served, in the hands of the Secretary of the Commonwealth or in his office in the city of Richmond, Virginia, and such service shall be sufficient upon the nonresident, provided that notice of such service and a copy of the process or notice are forthwith sent by registered or certified mail, with delivery receipt requested, by the Secretary of the Commonwealth to the defendant or defendants at such defendant's or defendants' last known postoffice address, and an affidavit of compliance herewith by the Secretary of the Commonwealth or some one designated by him for that purpose and having knowledge of such compliance,

shall be forthwith filed with the papers in the action.

§ 8-81.4. When the exercise of personal jurisdiction is authorized by this chapter, any action or suit may be brought as provided in § 8-38 or, if not thereby provided for, it may be brought in the county or corporation wherein the plaintiff resides or where the cause of action or any part thereof arose.

§ 8-81.5. A court of this State may exercise jurisdiction on any other basis authorized by law.

2. If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.