

SUBCHAPTER V. COMMENCEMENT OF ACTIONS.

Article 8.

Summons.

§§ 1-88 through 1-91. Repealed by Session Laws 1967, c. 954, s. 4.

§§ 1-92 through 1-93. Repealed by Session Laws 1971, c. 268, s. 34.

§§ 1-94 through 1-98. Repealed by Session Laws 1967, c. 954, s. 4.

§§ 1-98.1 through 1-98.4. Repealed by Session Laws 1971, c. 1093, s. 19.

§ 1-99. Repealed by Session Laws 1967, c. 954, s. 4.

§§ 1-99.1 through 1-99.4. Repealed by Session Laws 1971, c. 1093, s. 19.

§§ 1-100 through 1-104. Repealed by Session Laws 1967, c. 954, s. 4.

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

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

- (1) By leaving a copy thereof, with a fee of ten dollars (\$10.00), in the hands of the Commissioner of Motor Vehicles, or in his office. Such service, upon compliance with the other provisions of this section, shall be sufficient service upon the said nonresident.
- (2) Notice of such service of process and copy thereof must be forthwith sent by certified or registered mail by plaintiff or the Commissioner of Motor Vehicles to the defendant, and the entries on the defendant's return receipt shall be sufficient evidence of the date on which notice of service upon the Commissioner of Motor Vehicles and copy of process were delivered to the defendant, on which date service on said defendant shall be deemed completed. If the defendant refuses to accept the certified or registered letter, service on the

defendant shall be deemed completed on the date of such refusal to accept as determined by notations by the postal authorities on the original envelope, and if such date cannot be so determined, then service shall be deemed completed on the date that the certified or registered letter is returned to the plaintiff or Commissioner of Motor Vehicles, as determined by postal marks on the original envelope. If the certified or registered letter is not delivered to the defendant because it is unclaimed, or because he has removed himself from his last known address and has left no forwarding address or is unknown at his last known address, service on the defendant shall be deemed completed on the date that the certified or registered letter is returned to the plaintiff or Commissioner of Motor Vehicles.

- (3) The defendant's return receipt, or the original envelope bearing a notation by the postal authorities that receipt was refused, and an affidavit by the plaintiff that notice of mailing the registered letter and refusal to accept was forthwith sent to the defendant by ordinary mail, together with the plaintiff's affidavit of compliance with the provisions of this section, must be appended to the summons or other process and filed with said summons, complaint and other papers in the cause.

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

The court in which the action is pending shall order such continuance as may be necessary to afford the defendant reasonable opportunity to defend the action. (1929, c. 75, s. 1; 1941, c. 36, s. 4; 1951, c. 646; 1953, c. 796; 1955, c. 1022; 1961, c. 1191; 1963, c. 491; 1967, c. 954, s. 4; 1971, c. 420, s. 2; 1975, c. 294; 1989, c. 645, s. 1.)

§ 1-105.1. Service on residents who establish residence outside the State and on residents who depart from the State.

The provisions of G.S. 1-105 of this Chapter shall also apply to a resident of the State at the time of the accident or collision who establishes residence outside the State subsequent to the accident or collision and to a resident of the State at the time of the accident or collision who departs from the State subsequent to the accident or collision and remains absent therefrom for 60 days or more, continuously whether such absence is intended to be temporary or permanent. (1955, c. 232; 1967, c. 954, s. 4; 1971, c. 420, ss. 1, 2.)

§§ 1-106 through 1-107.3. Repealed by Session laws 1967, c. 954, s. 4.

§ 1-108. Defense after judgment set aside.

If a judgment is set aside pursuant to Rule 60(b) or (c) of the Rules of Civil Procedure and the judgment or any part thereof has been collected or otherwise enforced, such restitution may be compelled as the court directs. Title to property sold under such judgment to a purchaser in good faith is not thereby affected. No fiduciary officer or trustee who has made distribution of a fund under such judgment in good faith is personally liable if the judgment is changed by reason of such defense made after its rendition; nor in case the judgment was rendered for the partition of land, and any persons receiving any of the land in such partition sell it to a third person; the title of such

third person is not affected if such defense is successful, but the redress of the person so defending after judgment shall be had by proper judgment against the parties to the original judgment and their heirs and personal representatives, and in no case affects persons who in good faith have dealt with such parties or their heirs or personal representatives on the basis of such judgment being permanent. (C.C.P., s. 85; Code, s. 220; Rev., s. 449; 1917, c. 68; C.S., s. 492; 1943, cc. 228, 543; 1947, c. 817, s. 2; 1949, c. 256; 1967, c. 954, s. 3.)