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ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 2586

(By Delegates Shott, Lane, Miller, Frich, Rowan, Fleischauer,
Border, Pasdon and Waxman)

[By Request of the Supreme Court]

[Passed March 11, 2015; in effect ninety days from passage.]

AN ACT to amend and reenact §48-27-311 of the Code of West Virginia, 1931, as amended, and to amend said code by adding thereto a new section, designated §56-3-33a, all relating to service of process; actions against nonresident persons by petitioners seeking domestic violence or personal safety relief; and authorizing the Secretary of State to receive process against nonresidents.

Be it enacted by the Legislature of West Virginia:

That §48-27-311 of the Code of West Virginia, 1931, as amended, be amended and reenacted and that said code be amended by adding thereto a new section, designated §56-3-33a, all to read as follows:

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.

§48-27-311. Service of process.

A protective order may be served:

1 (1) On the respondent by means of a Class I legal advertisement published notice, with the
2 publication area being the most current known county in which the respondent resides, published in
3 accordance with the provisions of section two, article three, chapter fifty-nine of this code if personal
4 service by law enforcement has been unsuccessful. Simultaneously with the publication, the
5 respondent shall be served with the protective order and the order of publication by first class mail
6 to the respondent's most current known residential address.

7 (2) Against nonresident persons by the manner prescribed in section thirty-three-a, article
8 three, chapter fifty-six of this code.

9 Any protective order issued by the court of this state which is served in compliance with the
10 provisions of Rule 4(f) of the West Virginia Rules of Civil Procedure served outside the boundaries
11 of this state shall carry the same force and effect as if it had been personally served within this state's
12 boundaries.

13 **CHAPTER 56. PLEADING AND PRACTICE.**

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

15 **§56-3-33a. Actions against nonresident persons by petitioners seeking domestic violence or**
16 **personal safety relief; service of process; authorizing Secretary of State to receive**
17 **process against nonresidents.**

18 (a) Any person who is:

19 (1) Not a resident of this state; or

20 (2) A resident of this state who has left this state; or

21 (3) A person whose residence is unknown shall be considered to have submitted to the
22 jurisdiction of the courts of this state as to any action arising from the conduct specified in subsection

1 (b) of this section, if such conduct was:

2 (A) Committed in this state; or

3 (B) If such conduct was not committed in this state if the conduct was purposely directed at
4 a resident and has an effect within this state.

5 (b) Conduct compelling application of this section consists of:

6 (1) Any act constituting domestic violence or abuse as defined in section two hundred two,
7 article twenty-seven, chapter forty-eight of this code; or

8 (2) Any act constituting a basis for seeking personal safety relief as defined in section four,
9 article eight, chapter fifty-three of this code; or

10 (3) Any act or omission violating the provisions of a duly authorized protective or restraining
11 order, whether issued by this state or another jurisdiction, for the protection of any person within this
12 state.

13 (c) Any person subject to or considered to have submitted to the jurisdiction of the courts of
14 this state who is made a respondent in an action may be served with the petition and order initiating
15 such action either:

16 (1) By law-enforcement officers, wherever the respondent may be found, whether inside or
17 outside the boundaries of this state; or

18 (2) If the respondent is alleged to have committed conduct specified in subsection (b) of this
19 section, this shall be considered equivalent to an appointment by such nonresident of the Secretary
20 of State, or his or her successor in office, to be his or her true and lawful attorney upon whom may
21 be served all lawful process in any action or proceeding against him or her, in any court in this state,
22 for a cause of action arising from or growing out of such conduct, and the engaging in such conduct

1 is a signification of such nonresident's agreement that any such process against him or her, which
2 is served in the manner hereinafter provided, is of the same legal force and validity as though such
3 nonresident were personally served within this state.

4 (A) Such service shall be made by leaving two copies of both the petition and order, with the
5 Secretary of State, or in his or her office, and such service shall be sufficient upon such nonresident:
6 *Provided*, That notice of such service and a copy of the petition and order shall forthwith be sent by
7 registered or certified mail, return receipt requested, by a means which may include electronic
8 issuance and acceptance of electronic return receipts, by the Secretary of State to the respondent at
9 his or her nonresident address and the respondent's return receipt signed by himself or herself or his
10 or her duly authorized agent or the registered or certified mail so sent by the Secretary of State which
11 is refused by the addressee and which registered or certified mail is returned to the Secretary of State,
12 or to his or her office, showing thereon the stamp of the post-office department that delivery has been
13 refused. After receiving verification from the United States Postal Service that acceptance of the
14 notice, petition and order has been signed, the Secretary of State shall notify the clerk's office of the
15 court from which the petition and order were issued by a means which may include electronic
16 notification. If the notice, petition and order were refused or undeliverable by the United States
17 Postal Service, the Secretary of State shall return refused or undeliverable mail to the clerk's office
18 of the court from which the petition and order were issued. \If any respondent served with a petition
19 and order fails to appear and defend at the time and place set forth in the order, judgment may be
20 rendered against him or her at any time thereafter. The court may order such continuances as may
21 be reasonable to afford the respondent an opportunity to defend the action or proceeding.

22 (B) As provided in section three hundred eight, article twenty-seven, chapter forty-eight of

1 this code regarding domestic violence proceedings and in section thirteen, article eight, chapter fifty-
2 three of this code regarding personal safety proceedings, no fees may be charged for service of
3 petitions or orders until the matter is brought before the appropriate court for final resolution. Any
4 fees ordinarily remitted to the Secretary of State or to a law-enforcement agency at the time of
5 service shall be deferred and taxed in the costs of the action or proceeding.

6 (C) Data and records regarding service maintained by law-enforcement agencies and by the
7 office of the Secretary of State for purposes of fulfilling the obligations of this section are not public
8 records subject to disclosure under the provisions of article one, chapter twenty-nine-b of this code.

9 (d) The following words and phrases, when used in this section, shall for the purpose of this
10 section and unless a different intent be apparent from the context, have the following meanings:

11 (1) "Duly authorized agent" means and includes among others a person who, at the direction
12 of or with the knowledge or acquiescence of a nonresident, engages in such act or acts and includes
13 among others a member of the family of such nonresident or a person who, at the residence, place
14 of business or post office of such nonresident, usually receives and receipts for mail addressed to
15 such nonresident.

16 (2) "Nonresident" means any person who is not a resident of this state or a resident who has
17 moved from this state subsequent to engaging in such acts or acts covered by this section.