

H. B. 2586

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

[By Request of the Supreme Court]

[Introduced February 4, 2015; referred to the
Committee on the Judiciary.]

A BILL 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) On the respondent by means of a Class I legal advertisement published notice, with the

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

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

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

12 **CHAPTER 56. PLEADING AND PRACTICE.**

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

14 **§56-3-33a. Actions against nonresident persons by petitioners seeking domestic violence or**
15 **personal safety relief; service of process; authorizing Secretary of State to**
16 **receive process against nonresidents.**

17 (a) Any person who is:

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

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

20 (3) A person whose residence is unknown shall be considered to have submitted to the

21 jurisdiction of the courts of this state as to any action arising from the conduct specified in subsection

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

- 1 (A) Committed in this state; or
- 2 (B) If such conduct was not committed in this state if the conduct was purposely directed at
3 a resident and has an effect within this state.
- 4 (b) Conduct compelling application of this section consists of:
- 5 (1) Any act constituting domestic violence or abuse as defined in section two hundred two,
6 article twenty-seven, chapter forty-eight of this code; or
- 7 (2) Any act constituting a basis for seeking personal safety relief as defined in section four,
8 article eight, chapter fifty-three of this code; or
- 9 (3) Any act or omission violating the provisions of a duly authorized protective or restraining
10 order, whether issued by this state or another jurisdiction, for the protection of any person within this
11 state.
- 12 (c) Any person subject to or considered to have submitted to the jurisdiction of the courts of
13 this state who is made a respondent in an action may be served by leaving the original and two copies
14 of both the petition and order initiating such action either:
- 15 (1) By law- enforcement officers, wherever the respondent may be found, whether inside or
16 outside the boundaries of this state; or
- 17 (2) If the respondent is alleged to have committed conduct specified in subsection (b) of this
18 section, this shall be considered equivalent to an appointment by such nonresident of the Secretary
19 of State, or his or her successor in office, to be his or her true and lawful attorney upon whom may
20 be served all lawful process in any action or proceeding against him or her, in any circuit court in
21 this state, for a cause of action arising from or growing out of such conduct, and the engaging in such
22 conduct is a signification of such nonresident's agreement that any such process against him or her,

1 which is served in the manner hereinafter provided, is of the same legal force and validity as though
2 such nonresident were personally served within this state.

3 (A) Such service shall be made by leaving the original and two copies of both the petition
4 and order, and the fee required by section two, article one, chapter fifty-nine of this code 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 summons and complaint shall forthwith be
7 sent by registered or certified mail, return receipt requested, by a means which may include
8 electronic issuance and acceptance of electronic return receipts, by the Secretary of State to the
9 defendant at his or her nonresident address and the defendant's return receipt signed by himself or
10 herself or his or her duly authorized agent or the registered or certified mail so sent by the Secretary
11 of State which is refused by the addressee and which registered or certified mail is returned to the
12 Secretary of State, or to his or her office, showing thereon the stamp of the post-office department
13 that delivery has been refused. After receiving verification from the United States Postal Service
14 that acceptance of process, notice or demand has been signed, the Secretary of State shall notify the
15 clerk's office of the court from which the process, notice or demand was issued by a means which
16 may include electronic notification. If the process, notice or demand was refused or undeliverable
17 by the United States Postal Service the Secretary of State shall return refused or undeliverable mail
18 to the clerk's office of the court from which the process, notice or demand was issued. If any
19 defendant served with summons and complaint fails to appear and defend within thirty days of
20 service, judgment by default may be rendered against him or her at any time thereafter. The court
21 may order such continuances as may be reasonable to afford the defendant opportunity to defend the
22 action or proceeding.

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

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

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

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

17 (2) "Nonresident" means any person, other than voluntary unincorporated associations, who
18 is not a resident of this state or a resident who has moved from this state subsequent to engaging in
19 such act or acts, and among others includes a nonresident firm, partnership or corporation or a firm,
20 partnership or corporation which has moved from this state subsequent to any of said such act or
21 acts.

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NOTE: The purpose of this bill is to allow for an alternative form of service of process in actions against nonresident persons by petitioners seeking domestic violence or personal safety relief.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

§56-3-33a is new; therefore, it has been completely underscored.