

COMMITTEE SUBSTITUTE

FOR

H. B. 2586

(BY DELEGATE(S) SHOTT, LANE, MILLER, FRICH,
ROWAN, FLEISCHAUER, SOBONYA, BORDER, PASDON,
WAXMAN AND SUMMERS)

[BY REQUEST OF THE SUPREME COURT]

(Originating in the House Committee on Judiciary)

[February 13, 2015]

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.

1 A protective order may be served:

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

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

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

CHAPTER 56. PLEADING AND PRACTICE.

ARTICLE 3. WRITS, PROCESS AND ORDER OF PUBLICATION.

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

1 (a) Any person who is:

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

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

4 (3) A person whose residence is unknown shall be
5 considered to have submitted to the jurisdiction of the courts of
6 this state as to any action arising from the conduct specified in
7 subsection (b) of this section, if such conduct was:

8 (A) Committed in this state; or

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

12 (b) Conduct compelling application of this section consists

13 of:

14 (1) Any act constituting domestic violence or abuse as

15 defined in section two hundred two, article twenty-seven, chapter

16 forty-eight of this code; or

17 (2) Any act constituting a basis for seeking personal safety

18 relief as defined in section four, article eight, chapter fifty-three

19 of this code; or

20 (3) Any act or omission violating the provisions of a duly

21 authorized protective or restraining order, whether issued by this

22 state or another jurisdiction, for the protection of any person

23 within this state.

24 (c) Any person subject to or considered to have submitted to

25 the jurisdiction of the courts of this state who is made a

26 respondent in an action may be served by leaving the original

27 and two copies of both the petition and order initiating such

28 action either:

29 (1) By law-enforcement officers, wherever the respondent

30 may be found, whether inside or outside the boundaries of this

31 state; or

32 (2) If the respondent is alleged to have committed conduct
33 specified in subsection (b) of this section, this shall be
34 considered equivalent to an appointment by such nonresident of
35 the Secretary of State, or his or her successor in office, to be his
36 or her true and lawful attorney upon whom may be served all
37 lawful process in any action or proceeding against him or her, in
38 any court in this state, for a cause of action arising from or
39 growing out of such conduct, and the engaging in such conduct
40 is a signification of such nonresident's agreement that any such
41 process against him or her, which is served in the manner
42 hereinafter provided, is of the same legal force and validity as
43 though such nonresident were personally served within this state.

44 (A) Such service shall be made by leaving the original and
45 two copies of both the petition and order, with the Secretary of
46 State, or in his or her office, and such service shall be sufficient
47 upon such nonresident: *Provided*, That notice of such service and
48 a copy of the summons and complaint shall forthwith be sent by
49 registered or certified mail, return receipt requested, by a means
50 which may include electronic issuance and acceptance of
51 electronic return receipts, by the Secretary of State to the

52 defendant at his or her nonresident address and the defendant's
53 return receipt signed by himself or herself or his or her duly
54 authorized agent or the registered or certified mail so sent by the
55 Secretary of State which is refused by the addressee and which
56 registered or certified mail is returned to the Secretary of State,
57 or to his or her office, showing thereon the stamp of the
58 post-office department that delivery has been refused. After
59 receiving verification from the United States Postal Service that
60 acceptance of process, notice or demand has been signed, the
61 Secretary of State shall notify the clerk's office of the court from
62 which the process, notice or demand was issued by a means
63 which may include electronic notification. If the process, notice
64 or demand was refused or undeliverable by the United States
65 Postal Service, the Secretary of State shall return refused or
66 undeliverable mail to the clerk's office of the court from which
67 the process, notice or demand was issued. The court may order
68 such continuances as may be reasonable to afford the respondent
69 an opportunity to defend the proceeding.

70 (B) As provided in section three hundred eight, article
71 twenty-seven, chapter forty-eight of this code regarding

72 domestic violence proceedings and by section thirteen, article
73 eight, chapter fifty-three of this code regarding personal safety
74 proceeding, no fees may be charged for service of petitions or
75 orders until the matter is brought before the appropriate court for
76 final resolution. Any fees to be remitted to the Secretary of State
77 or to a law-enforcement agency at the time of service shall be
78 taxed in the costs of the action or proceeding.

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

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

88 (1) "Duly authorized agent" means and includes among
89 others a person who, at the direction of or with the knowledge or
90 acquiescence of a nonresident, engages in such act or acts and
91 includes among others a member of the family of such

92 nonresident or a person who, at the residence, place of business
93 or post office of such nonresident, usually receives and receipts
94 for mail addressed to such nonresident.

95 (2) “Nonresident” means a nonresident of this state, a
96 resident of the state who has left the state, or a person whose
97 residence is unknown and shall be considered to have submitted
98 to the jurisdiction of the courts of this state as to any action
99 arising from the conduct specified in subsection (b) of this
100 section.