

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Enrolled

Committee Substitute

for

Senate Bill 670

SENATOR WELD, *original sponsor*

[Passed March 6, 2020; in effect 90 days from
passage]

1 AN ACT to amend and reenact §56-3-33 of the Code of West Virginia, 1931, as amended, relating
2 to amending the manner of service of process on nonresident persons or corporate
3 entities.

Be it enacted by the Legislature of West Virginia:

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

§56-3-33. Actions by or against nonresident persons having certain contacts with this state; authorizing Secretary of State to receive process; bond and fees; service of process; definitions; retroactive application.

1 (a) The engaging by a nonresident, or by his or her duly authorized agent, in any one or
2 more of the acts specified in subdivisions (1) through (7), inclusive, of this subsection shall be
3 considered equivalent to an appointment by a nonresident of the Secretary of State, or his or her
4 successor in office, to be his or her true and lawful attorney upon whom may be served all lawful
5 process in any action or proceeding against him or her, in any circuit court in this state, including
6 an action or proceeding brought by a nonresident plaintiff or plaintiffs, for a cause of action arising
7 from, or growing out of, such act or acts, and the engaging in such act or acts shall be a
8 signification of such nonresident's agreement that any such process against him or her, which is
9 served in the manner hereinafter provided, shall be of the same legal force and validity as though
10 such nonresident were personally served with a summons and complaint within this state:

11 (1) Transacting any business in this state;

12 (2) Contracting to supply services or things in this state;

13 (3) Causing tortious injury by an act or omission in this state;

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

17 (5) Causing injury in this state to any person by breach of warranty expressly or impliedly
18 made in the sale of goods outside this state when he or she might reasonably have expected the

19 person to use, consume, or be affected by the goods in this state: *Provided*, That he or she also
20 regularly does or solicits business, or engages in any other persistent course of conduct, or
21 derives substantial revenue from goods used or consumed or services rendered in this state;

22 (6) Having an interest in, using, or possessing real property in this state; or

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

25 (b) When jurisdiction over a nonresident is based solely upon the provisions of this section,
26 only a cause of action arising from or growing out of one or more of the acts specified in
27 subdivisions (1) through (7), inclusive, subsection (a) of this section may be asserted against him
28 or her.

29 (c) Service shall be made:

30 By leaving the original and two copies of both the summons and the complaint, and the
31 fee required by §59-1-2 of this code with the Secretary of State, or in his or her office, and this
32 service shall be sufficient upon the nonresident: *Provided*, That notice of the service and a copy
33 of the summons and complaint shall forthwith be sent by registered or certified mail, return receipt
34 requested, by a means which may include electronic issuance and acceptance of electronic return
35 receipts, by the Secretary of State to the defendant at his or her nonresident address and the
36 defendant's return receipt signed by himself or herself or his or her duly authorized agent or the
37 registered or certified mail so sent by the Secretary of State which is refused by the addressee
38 and which registered or certified mail is returned to the Secretary of State, or to his or her office,
39 showing thereon the stamp of the post-office department that delivery has been refused. After
40 receiving verification from the United States Postal Service that acceptance of process, notice, or
41 demand has been signed, the Secretary of State shall notify the clerk's office of the court from
42 which the process, notice, or demand was issued by a means which may include electronic
43 notification. If the process, notice, or demand was refused or undeliverable by the United States
44 Postal Service, the Secretary of State shall create a preservation duplicate from which a

45 reproduction of the stored record may be retrieved which truly and accurately depicts the image
46 of the original record. The Secretary of State may destroy or otherwise dispose of the original
47 returned or undeliverable mail. Written notice of the action by the Secretary of State must then be
48 provided by certified mail, return receipt requested, facsimile, or by electronic mail, to the clerk's
49 office of the court from which the process, notice, or demand was issued. If any defendant served
50 with summons and complaint fails to appear and defend within 30 days of service, judgment by
51 default may be rendered against him or her at any time thereafter. The court may order such
52 continuances as may be reasonable to afford the defendant opportunity to defend the action or
53 proceeding. If the certified mail was returned by the United States Postal Service as unclaimed,
54 unable to forward, or with any other notation other than "accepted" or "refused", notice may be
55 served as follows:

56 (1) In any manner accepted as service within the domiciled state of the nonresident, or
57 otherwise; or

58 (2) In any manner otherwise permitted by sections 4(d)(7) or (8) of the West Virginia Rules
59 of Civil Procedure for corporations and any way permitted by section 4(c) of the West Virginia
60 Rules of Civil Procedure for individuals or noncorporate entities.

61 (d) The fee remitted to the Secretary of State at the time of service shall be taxed in the
62 costs of the action or proceeding. The Secretary of State shall keep a record in his or her office
63 of all such process and the day and hour of service thereof.

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

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

70 residence, place of business, or post office of the nonresident, usually receives and receipts for
71 mail addressed to the nonresident.

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

77 (3) "Nonresident plaintiff or plaintiffs" means a nonresident of this state who institutes an
78 action or proceeding in a circuit court in this state having jurisdiction against a nonresident of this
79 state pursuant to the provisions of this section.

80 (f) The provision for service of process herein is cumulative and nothing herein contained
81 may be construed as a bar to the plaintiff in any action or proceeding from having process in such
82 action served in any other mode or manner provided by the law of this state or by the law of the
83 place in which the service is made for service in that place in an action in any of its courts of
84 general jurisdiction.

85 (g) This section may not be retroactive and the provisions hereof may not be available to
86 a plaintiff in a cause of action arising from or growing out of any of the acts occurring prior to the
87 effective date of this section.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, Senate Committee

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Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

The within this the.....
Day of, 2020.

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Governor