

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 2586**

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

6
7 [By Request of the Supreme Court]

8 (Originating in the House Committee on Judiciary)

9 [February 13, 2015]

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

15 *Be it enacted by the Legislature of West Virginia:*

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

19 **CHAPTER 48. DOMESTIC RELATIONS.**

20 **ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.**

21 **§48-27-311. Service of process.**

22 A protective order may be served:

23 (1) On the respondent by means of a Class I legal advertisement published notice, with the
24 publication area being the most current known county in which the respondent resides, published in

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

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

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

11 **CHAPTER 56. PLEADING AND PRACTICE.**

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

13 **§56-3-33a. Actions against nonresident persons by petitioners seeking domestic violence or** 14 **personal safety relief; service of process; authorizing Secretary of State to** 15 **receive process against nonresidents.**

16 (a) Any person who is:

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

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

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

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

22 (A) Committed in this state; or

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

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

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

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

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

11 (c) Any person subject to or considered to have submitted to the jurisdiction of the courts of
12 this state who is made a respondent in an action may be served by leaving the original and two copies
13 of both the petition and order initiating such action either:

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

16 (2) If the respondent is alleged to have committed conduct specified in subsection (b) of this
17 section, this shall be considered equivalent to an appointment by such nonresident of the Secretary
18 of State, or his or her successor in office, to be his or her true and lawful attorney upon whom may
19 be served all lawful process in any action or proceeding against him or her, in any court in this state,
20 for a cause of action arising from or growing out of such conduct, and the engaging in such conduct
21 is a signification of such nonresident's agreement that any such process against him or her, which
22 is served in the manner hereinafter provided, is of the same legal force and validity as though such

1 nonresident were personally served within this state.

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

19 (B) As provided in section three hundred eight, article twenty-seven, chapter forty-eight of
20 this code regarding domestic violence proceedings and by section thirteen, article eight, chapter
21 fifty-three of this code regarding personal safety proceeding, no fees may be charged for service of
22 petitions or orders until the matter is brought before the appropriate court for final resolution. Any

1 fees to be remitted to the Secretary of State or to a law-enforcement agency at the time of service
2 shall be taxed in the costs of the action or proceeding.

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

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

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

13 (2) "Nonresident" means a nonresident of this state, a resident of the state who has left the
14 state, or a person whose residence is unknown and shall be considered to have submitted to the
15 jurisdiction of the courts of this state as to any action arising from the conduct specified in subsection
16 (b) of this section.