

# **WEST VIRGINIA LEGISLATURE**

**2020 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 670**

SENATOR WELD, *original sponsor*

[Originating in the Committee on the Judiciary;

reported on February 5, 2020]



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

- 12 (1) Transacting any business in this state;
- 13 (2) Contracting to supply services or things in this state;
- 14 (3) Causing tortious injury by an act or omission in this state;
- 15 (4) Causing tortious injury in this state by an act or omission outside this state if he or she  
16 regularly does or solicits business, or engages in any other persistent course of conduct, or  
17 derives substantial revenue from goods used or consumed or services rendered in this state;

18 (5) Causing injury in this state to any person by breach of warranty expressly or impliedly  
19 made in the sale of goods outside this state when he or she might reasonably have expected  
20 ~~such~~ the person to use, consume, or be affected by the goods in this state: *Provided*, That he or  
21 she also regularly does or solicits business, or engages in any other persistent course of conduct,  
22 or derives substantial revenue from goods used or consumed or services rendered in this state;

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

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

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

30 (c) Service shall be made:

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

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

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

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

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

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

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

70 and includes among others a member of the family of ~~such~~ the nonresident or a person who, at  
71 the residence, place of business, or post office of ~~such~~ the nonresident, usually receives and  
72 receipts for mail addressed to ~~such~~ the nonresident.

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

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

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

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

NOTE: The purpose of this bill is to amend the manner of service of process on nonresident persons or corporate entities.

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