

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Committee Substitute

for

House Bill 2767

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FOSTER, G.

[Originating in the Committee on the Judiciary]

1 A BILL to amend and reenact §31B-1-111 of the Code of West Virginia, 1931, as amended; and
2 to amend and reenact §31D-5-504 of said code; to amend and reenact §31E-5-504 and
3 to amend and reenact §47-9-4 of said code; and to amend and reenact §56-3-31, §56-3-
4 33, §56-3-33a and §56-3-34 of said code, all relating to requiring the Secretary of State to
5 create a preservation duplicate of registered or certified mail returned to the Secretary of
6 State; permitting the Secretary of State to destroy or otherwise dispose of original returned
7 or undeliverable mail; and requiring written notice of such action be provided to the circuit
8 clerks of the state by certified mail, facsimile or by electronic mail.

Be it enacted by the Legislature of West Virginia:

1 That §31B-1-111 of the Code of West Virginia, 1931, as amended, be amended and
2 reenacted; that §31D-5-504 of said code be amended and reenacted; that §31E-5-504 of said
3 code be amended and reenacted; that §47-9-4 of said code be amended and reenacted; and that
4 §56-3-31, §56-3-33, §56-3-33a and §56-3-34 of said code be amended and reenacted, all to read
5 as follows:

CHAPTER 31B. UNIFORM LIMITED LIABILITY COMPANY ACT.

ARTICLE 1. GENERAL PROVISIONS.

§31B-1-111. Service of process.

1 (a) An agent for service of process appointed by a limited liability company or a foreign
2 limited liability company is an agent of the company for service of any process, notice or demand
3 required or permitted by law to be served upon the company.

4 (b) If a limited liability company or foreign limited liability company fails to appoint or
5 maintain an agent for service of process in this state or the agent for service of process cannot
6 with reasonable diligence be found at the agent's address, the Secretary of State is an agent of
7 the company upon whom process, notice or demand may be served.

8 (c) Service of any process, notice or demand on the Secretary of State may be made by
9 delivering to and leaving with the Secretary of State, the assistant Secretary of State or clerk
10 having charge of the limited liability company department of the Secretary of State, the original
11 process, notice or demand and two copies thereof for each defendant, along with the fee required
12 by section two, article one, chapter fifty-nine of this code. No process, notice or demand may be
13 served on or accepted by the Secretary of State less than ten days before the return day thereof.
14 The Secretary of State, upon being served with or accepting any process, notice or demand, shall:
15 (1) File in his or her office a copy of the process, notice or demand, endorsed as of the time of
16 service or acceptance; and (2) transmit one copy of the process, notice or demand by registered
17 or certified mail, return receipt requested, by a means which may include electronic issuance and
18 acceptance of electronic return receipts, to the limited liability company's registered agent:
19 *Provided*, That if there is no registered agent, then to the individual whose name and address was
20 last given to the Secretary of State's office as the person designated to receive process, notice
21 or demand. If no person has been named, then to the principal office of the limited liability
22 company at the address last given to the Secretary of State's office and if no address is available
23 on record with the Secretary of State then to the address provided on the original process, notice
24 or demand, if available; and (3) transmit the original process, notice or demand to the clerk's office
25 of the court from which the process, notice or demand was issued. Such service or acceptance
26 of process, notice or demand is sufficient if the return receipt is signed by an agent or employee
27 of such company, or the registered or certified mail so sent by the Secretary of State is refused
28 by the addressee and the registered or certified mail is returned to the Secretary of State, showing
29 the stamp of the United States Postal Service that delivery thereof has been refused, and such
30 return receipt or registered or certified mail is received by the Secretary of State by a means which
31 may include electronic issuance and acceptance of electronic return receipts. After receiving
32 verification from the United States Postal Service that acceptance of process, notice or demand
33 has been signed, the Secretary of State shall notify the clerk's office of the court from which the

34 process, notice or demand was issued by a means which may include electronic notification. If
35 the process, notice or demand was refused or undeliverable by the United States Postal Service
36 the Secretary of State shall ~~return refused or undeliverable mail to the clerk's office of the court~~
37 ~~from which the process, notice or demand was issued~~ create a preservation duplicate from which
38 a reproduction of the stored record may be retrieved which truly and accurately depicts the image
39 of the original record. The Secretary of State may destroy or otherwise dispose of the original
40 returned or undeliverable mail. Written notice of the action by the Secretary of State shall be
41 provided by certified mail, return receipt requested, facsimile, or by electronic mail, to the clerk's
42 office of the court from which the process, notice or demand was issued. No process, notice or
43 demand may be served on the Secretary of State or accepted by him or her less than ten days
44 before the return day of the process or notice. The court may order continuances as may be
45 reasonable to afford each defendant opportunity to defend the action or proceedings.

46 (d) The Secretary of State shall keep a record of all processes, notices and demands
47 served pursuant to this section and record the time of and the action taken regarding the service.

48 (e) This section does not affect the right to serve process, notice or demand in any manner
49 otherwise provided by law.

CHAPTER 31D. WEST VIRGINIA BUSINESS CORPORATION ACT.

ARTICLE 5. OFFICE AND AGENT.

§31D-5-504. Service on corporation.

1 (a) A corporation's registered agent is the corporation's agent for service of process, notice
2 or demand required or permitted by law to be served on the corporation.

3 (b) If a corporation has no registered agent, or the agent cannot with reasonable diligence
4 be served, the corporation may be served by registered or certified mail, return receipt requested,
5 addressed to the secretary of the corporation at its principal office. Service is perfected under this
6 subsection at the earliest of:

7 (1) The date the corporation receives the mail;

8 (2) The date shown on the return receipt, if signed on behalf of the corporation; or

9 (3) Five days after its deposit in the United States mail, as evidenced by the postmark, if
10 mailed postpaid and correctly addressed.

11 (c) In addition to the methods of service on a corporation provided in subsections (a) and
12 (b) of this section, the Secretary of State is hereby constituted the attorney-in-fact for and on
13 behalf of each corporation created pursuant to the provisions of this chapter. The Secretary of
14 State has the authority to accept service of notice and process on behalf of each corporation and
15 is an agent of the corporation upon whom service of notice and process may be made in this state
16 for and upon each corporation. No act of a corporation appointing the Secretary of State as
17 attorney-in-fact is necessary. Service of any process, notice or demand on the Secretary of State
18 may be made by delivering to and leaving with the Secretary of State the original process, notice
19 or demand and two copies of the process, notice or demand for each defendant, along with the
20 fee required by section two, article one, chapter fifty-nine of this code: *Provided*, That with regard
21 to a class action suit in which all defendants are to be served with the same process, notice or
22 demand, service may be made by filing with the Secretary of State the original process, notice or
23 demand and one copy for each named defendant. Immediately after being served with or
24 accepting any process or notice, the Secretary of State shall: (1) File in his or her office a copy of
25 the process or notice, endorsed as of the time of service or acceptance; (2) transmit one copy of
26 the process or notice by registered or certified mail, return receipt requested, by a means which
27 may include electronic issuance and acceptance of electronic return receipts, to: (A) The
28 corporation's registered agent; or (B) if there is no registered agent, to the individual whose name
29 and address was last given to the Secretary of State's office as the person to whom notice and
30 process are to be sent and if no person has been named, to the principal office of the corporation
31 as that address was last given to the Secretary of State's office. If no address is available on
32 record with the Secretary of State, then to the address provided on the original process, notice or

33 demand, if available; and (3) transmit the original process, notice or demand to the clerk's office
34 of the court from which the process, notice or demand was issued. Service or acceptance of
35 process or notice is sufficient if return receipt is signed by an agent or employee of the corporation,
36 or the registered or certified mail sent by the Secretary of State is refused by the addressee and
37 the registered or certified mail is returned to the Secretary of State, or to his or her office, showing
38 the stamp of the United States postal service that delivery has been refused, and the return receipt
39 or registered or certified mail is received by the Secretary of State by a means which may include
40 electronic issuance and acceptance of electronic return receipts. After receiving verification from
41 the United States postal service that acceptance of process, notice or demand has been signed,
42 the Secretary of State shall notify the clerk's office of the court from which the process, notice or
43 demand was issued by a means which may include electronic notification. If the process, notice
44 or demand was refused or undeliverable by the United States postal service the Secretary of
45 State shall return the refused or undeliverable mail to the clerk's office of the court from which the
46 process, notice or demand was issued and create a preservation duplicate from which a
47 reproduction of the stored record may be retrieved which truly and accurately depicts the image
48 of the original record. The Secretary of State may destroy or otherwise dispose of the original
49 returned or undeliverable mail. Written notice of the action by the Secretary of State must then be
50 provided by certified mail, return receipt requested, facsimile, or by electronic mail, to the clerk's
51 office of the court from which the process, notice or demand was issued. No process or notice
52 may be served on the Secretary of State or accepted by him or her less than ten days before the
53 return day of the process or notice. The court may order continuances as may be reasonable to
54 afford each defendant opportunity to defend the action or proceedings.

55 (d) This section does not prescribe the only means, or necessarily the required means, of
56 serving a corporation.

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CHAPTER 31E. WEST VIRGINIA NONPROFIT CORPORATION ACT.

ARTICLE 5. OFFICE AND AGENT.

§31E-5-504. Service on corporation.

1 (a) A corporation's registered agent is the corporation's agent for service of process,
2 notice, or demand required or permitted by law to be served on the corporation.

3 (b) If a corporation has no registered agent, or the agent cannot with reasonable diligence
4 be served, the corporation may be served by registered or certified mail, return receipt requested,
5 addressed to the secretary of the corporation at its principal office. Service is perfected under this
6 subsection at the earliest of:

7 (1) The date the corporation receives the mail;

8 (2) The date shown on the return receipt, if signed on behalf of the corporation; or

9 (3) Five days after its deposit in the United States mail, as evidenced by the postmark, if
10 mailed postpaid and correctly addressed.

11 (c) In addition to the methods of service on a corporation provided in subsections (a) and
12 (b) of this section, the Secretary of State is hereby constituted the attorney-in-fact for and on
13 behalf of each corporation created pursuant to the provisions of this chapter. The Secretary of
14 State has the authority to accept service of notice and process on behalf of each corporation and
15 is an agent of the corporation upon whom service of notice and process may be made in this state
16 for and upon each corporation. No act of a corporation appointing the Secretary of State as
17 attorney-in-fact is necessary. Service of any process, notice or demand on the Secretary of State
18 may be made by delivering to and leaving with the Secretary of State the original process, notice
19 or demand and two copies of the process, notice or demand for each defendant, along with the
20 fee required by section two, article one, chapter fifty-nine of this code. Immediately after being
21 served with or accepting any process or notice, the Secretary of State shall: (1) File in his or her
22 office a copy of the process or notice, endorsed as of the time of service, or acceptance; (2)

23 transmit one copy of the process or notice by registered or certified mail, return receipt requested,
24 by a means which may include electronic issuance and acceptance of electronic return receipts,
25 to: (A) The corporation's registered agent; or (B) if there is no registered agent, to the individual
26 whose name and address was last given to the Secretary of State's office as the person to whom
27 notice and process are to be sent, and if no person has been named, to the principal office of the
28 corporation as that address was last given to the Secretary of State's office; and if no address is
29 available on record with the Secretary of State, then to the address provided on the original
30 process, notice or demand, if available; and (3) transmit the original process, notice or demand
31 to the clerk's office of the court from which the process, notice or demand was issued. Service or
32 acceptance of process or notice is sufficient if return receipt is signed by an agent or employee of
33 the corporation, or the registered or certified mail sent by the Secretary of State is refused by the
34 addressee and the registered or certified mail is returned to the Secretary of State, or to his or her
35 office, showing the stamp of the United States postal service that delivery has been refused, and
36 the return receipt or registered or certified mail is received by the Secretary of State by a means
37 which may include electronic issuance and acceptance of electronic return receipts. After
38 receiving verification from the United States postal service that acceptance of process, notice or
39 demand has been signed, the Secretary of State shall notify the clerk's office of the court from
40 which the process, notice or demand was issued by a means which may include electronic
41 notification. If the process, notice or demand was refused or undeliverable by the United States
42 postal service, the Secretary of State shall ~~return refused or undeliverable mail to the clerk's office~~
43 ~~of the court from which the process, notice or demand was issued~~ create a preservation duplicate
44 from which a reproduction of the stored record may be retrieved which truly and accurately depicts
45 the image of the original record. The Secretary of State may destroy or otherwise dispose of the
46 original returned or undeliverable mail. Written notice of the action by the Secretary of State shall
47 be provided by certified mail, return receipt requested, facsimile, or by electronic mail, to the
48 clerk's office of the court from which the process, notice or demand was issued. No process or

49 notice may be served on the Secretary of State or accepted by him or her less than ten days
50 before the return day of the process or notice. The court may order continuances as may be
51 reasonable to afford each defendant opportunity to defend the action or proceedings.

52 (d) This section does not prescribe the only means, or necessarily the required means of
53 serving a corporation.

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CHAPTER 47. REGULATION OF TRADE.

ARTICLE 9. UNIFORM LIMITED PARTNERSHIP ACT.

§47-9-4. Secretary of State constituted attorney-in-fact for all limited partnerships; manner of acceptance or service of notice and process upon Secretary of State; what constitutes conducting affairs or doing or transacting business in this state for purposes of this section.

1 The Secretary of State is hereby constituted the attorney-in-fact for and on behalf of every
2 limited partnership created by virtue of the laws of this state and every foreign limited partnership
3 authorized to conduct affairs or do or transact business herein pursuant to the provisions of this
4 article, with authority to accept service of notice and process on behalf of every such limited
5 partnership and upon whom service of notice and process may be made in this state for and upon
6 every such limited partnership. No act of such limited partnership appointing the Secretary of
7 State such attorney-in-fact shall be necessary. Immediately after being served with or accepting
8 any such process or notice, of which process or notice two copies for each defendant shall be
9 furnished the Secretary of State with the original notice or process, together with the fee required
10 by section two, article one, chapter fifty-nine of this code, the Secretary of State shall file in his
11 office a copy of such process or notice, with a note thereon endorsed of the time of service or
12 acceptance, as the case may be, and transmit one copy of such process or notice by registered
13 or certified mail, return receipt requested, to the person to whom notice and process shall be sent,

14 whose name and address were last furnished to the state officer at the time authorized by statute
15 to accept service of notice and process and upon whom notice and process may be served; and
16 if no such person has been named, to the principal office of the limited partnership at the address
17 last furnished to the state officer at the time authorized by statute to accept service of process
18 and upon whom process may be served, as required by law, or if no address is available on record
19 with the Secretary of State then to the address provided on the original process or process, if
20 available. No process or notice shall be served on the Secretary of State or accepted by him less
21 than ten days before the return day thereof. Such limited partnership shall pay the annual fee
22 prescribed by article twelve, chapter eleven of this code for the services of the Secretary of State
23 as its attorney-in-fact.

24 Any foreign limited partnership which shall conduct affairs or do or transact business in
25 this state without having been authorized so to do pursuant to the provisions of this article shall
26 be conclusively presumed to have appointed the Secretary of State as its attorney-in-fact with
27 authority to accept service of notice and process on behalf of such limited partnership and upon
28 whom service of notice and process may be made in this state for and upon every such limited
29 partnership in any action or proceeding described in the next following paragraph of this section.
30 No act of such limited partnership appointing the Secretary of State as such attorney-in-fact shall
31 be necessary. Immediately after being served with or accepting any such process or notice, of
32 which process or notice two copies for each defendant shall be furnished the Secretary of State
33 with the original notice or process, together with the fee required by section two, article one,
34 chapter fifty-nine of this code, the Secretary of State shall file in his office a copy of such process
35 or notice, with a note thereon endorsed of the time of service or acceptance, as the case may be,
36 and transmit one copy of such process or notice by registered or certified mail, return receipt
37 requested, by a means which may include electronic issuance and acceptance of electronic return
38 receipts, to such limited partnership at the address of its principal office, which address shall be
39 stated in such process or notice. Such service or acceptance of such process or notice shall be

40 sufficient if such return receipt shall be signed by an agent or employee of such limited
41 partnership. After receiving verification from the United States postal service that acceptance of
42 process or notice has been signed, the Secretary of State shall notify the clerk's office of the court
43 from which the process or notice was issued by a means which may include electronic notification.
44 If the process or notice was refused or undeliverable by the United States postal service the
45 Secretary of State shall ~~return refused or undeliverable mail to the clerk's office of the court from~~
46 ~~which the process, notice or demand was issued~~ create a preservation duplicate from which a
47 reproduction of the stored record may be retrieved which truly and accurately depicts the image
48 of the original record. The Secretary of State may destroy or otherwise dispose of the original
49 returned or undeliverable mail. Written notice of the action by the Secretary of State shall be
50 provided by certified mail, return receipt requested, facsimile, or by electronic mail, to the clerk's
51 office of the court from which the process, notice or demand was issued. No process or notice
52 shall be served on the Secretary of State or accepted by him less than ten days before the return
53 date thereof. The court may order such continuances as may be reasonable to afford each
54 defendant opportunity to defend the action or proceedings.

55 For the purpose of this section, a foreign limited partnership not authorized to conduct
56 affairs or do or transact business in this state pursuant to the provisions of this article shall
57 nevertheless be deemed to be conducting affairs or doing or transacting business herein: (a) If
58 such limited partnership makes a contract to be performed, in whole or in part, by any party thereto
59 in this state; (b) if such limited partnership commits a tort, in whole or in part, in this state; or (c) if
60 such limited partnership manufactures, sells, offers for sale or supplies any product in a defective
61 condition and such product causes injury to any person or property within this state
62 notwithstanding the fact that such limited partnership had no agents, servants or employees or
63 contacts within this state at the time of said injury. The making of such contract, the committing
64 of such tort or the manufacture or sale, offer of sale or supply of such defective product as herein
65 above described shall be deemed to be the agreement of such limited partnership that any notice

66 or process served upon, or accepted by, the Secretary of State pursuant to the next preceding
67 paragraph of this section in any action or proceeding against such limited partnership arising from
68 or growing out of such contract, tort or manufacture or sale, offer of sale or supply of such
69 defective product shall be of the same legal force and validity as process duly served on such
70 limited partnership in this state.

CHAPTER 56. PLEADING AND PRACTICE.

ARTICLE 3. WRITS, PROCESS AND ORDER OF PUBLICATION.

§56-3-31. Actions by or against nonresident operators of motor vehicles involved in highway accidents; appointment of Secretary of State, insurance company, as agents; service of process.

1 (a) Every nonresident, for the privilege of operating a motor vehicle on a public street, road
2 or highway of this state, either personally or through an agent, appoints the Secretary of State, or
3 his or her successor in office, to be his or her agent or attorney-in-fact upon whom may be served
4 all lawful process in any action or proceeding against him or her in any court of record in this state
5 arising out of any accident or collision occurring in the State of West Virginia in which the
6 nonresident was involved: *Provided*, That in the event process against a nonresident defendant
7 cannot be effected through the Secretary of State, as provided by this section, for the purpose
8 only of service of process, the nonresident motorist shall be considered to have appointed as his
9 or her agent or attorney-in-fact any insurance company which has a contract of automobile or
10 liability insurance with the nonresident defendant.

11 (b) For purposes of service of process as provided in this section, every insurance
12 company shall be considered the agent or attorney-in-fact of every nonresident motorist insured
13 by that company if the insured nonresident motorist is involved in any accident or collision in this
14 state and service of process cannot be effected upon the nonresident through the office of the
15 Secretary of State. Upon receipt of process as provided in this section, the insurance company

16 may, within thirty days, file an answer or other pleading or take any action allowed by law on
17 behalf of the defendant.

18 (c) A nonresident operating a motor vehicle in this state, either personally or through an
19 agent, is considered to acknowledge the appointment of the Secretary of State, or, as the case
20 may be, his or her automobile insurance company, as his or her agent or attorney-in-fact, or the
21 agent or attorney-in-fact of his or her administrator, administratrix, executor or executrix in the
22 event the nonresident dies, and furthermore is considered to agree that any process against him
23 or her or against his or her administrator, administratrix, executor or executrix, which is served in
24 the manner provided in this section, shall be of the same legal force and validity as though the
25 nonresident or his or her administrator, administratrix, executor or executrix were personally
26 served with a summons and complaint within this state.

27 Any action or proceeding may be instituted, continued or maintained on behalf of or
28 against the administrator, administratrix, executor or executrix of any nonresident who dies during
29 or subsequent to an accident or collision resulting from the operation of a motor vehicle in this
30 state by the nonresident or his or her duly authorized agent.

31 (d) Service of process upon a nonresident defendant shall be made by leaving the original
32 and two copies of both the summons and complaint, together with the bond certificate of the clerk,
33 and the fee required by section two, article one, chapter fifty-nine of this code with the Secretary
34 of State, or in his or her office, and the service shall be sufficient upon the nonresident defendant
35 or, if a natural person, his or her administrator, administratrix, executor or executrix: *Provided,*
36 That notice of service and a copy of the summons and complaint shall be sent by registered or
37 certified mail, return receipt requested, by a means which may include electronic issuance and
38 acceptance of electronic return receipts, by the Secretary of State to the nonresident defendant.
39 After receiving verification from the United States postal service that acceptance of process,
40 notice or demand has been signed, the Secretary of State shall notify the clerk's office of the court
41 from which the process, notice or demand was issued by a means which may include electronic

42 notification. If the process, notice or demand was refused or undeliverable by the United States
43 postal service the Secretary of State shall return refused or undeliverable mail to the clerk's office
44 of the court from which the process, notice or demand was issued and create a preservation
45 duplicate from which a reproduction of the stored record may be retrieved which truly and
46 accurately depicts the image of the original record. The Secretary of State may destroy or
47 otherwise dispose of the original returned or undeliverable mail. Written notice of the action by
48 the Secretary of State must then be provided by certified mail, return receipt requested, facsimile,
49 or by electronic mail, to the clerk's office of the court from which the process, notice or demand
50 was issued. The court may order any reasonable continuances to afford the defendant opportunity
51 to defend the action.

52 (e) The fee remitted to the Secretary of State at the time of service shall be taxed in the
53 costs of the proceeding. The Secretary of State shall keep a record in his or her office of all service
54 of process and the day and hour of service of process.

55 (f) In the event service of process upon a nonresident defendant cannot be effected
56 through the Secretary of State as provided by this section, service may be made upon the
57 defendant's insurance company. The plaintiff shall file with the clerk of the circuit court an affidavit
58 alleging that the defendant is not a resident of this state; that process directed to the Secretary of
59 State was sent by registered or certified mail, return receipt requested; that the registered or
60 certified mail was returned to the office of the Secretary of State showing the stamp of the post
61 office department that delivery was refused or that the notice was unclaimed or that the defendant
62 addressee moved without any forwarding address; and that the Secretary of State has complied
63 with the provisions of subsection (d) of this section. Upon receipt of process the insurance
64 company may, within thirty days, file an answer or other pleading and take any action allowed by
65 law in the name of the defendant.

66 (g) The following words and phrases, when used in this article, for the purpose of this
67 article and unless a different intent on the part of the Legislature is apparent from the context,
68 have the following meanings:

69 (1) "Duly authorized agent" means and includes, among others, a person who operates a
70 motor vehicle in this state for a nonresident as defined in this section and chapter, in pursuit of
71 business, pleasure or otherwise, or who comes into this state and operates a motor vehicle for,
72 or with the knowledge or acquiescence of, a nonresident; and includes, among others, a member
73 of the family of the nonresident or a person who, at the residence, place of business or post office
74 of the nonresident, usually receives and acknowledges receipt for mail addressed to the
75 nonresident.

76 (2) "Motor vehicle" means and includes any self-propelled vehicle, including a motorcycle,
77 tractor and trailer, not operated exclusively upon stationary tracks.

78 (3) "Nonresident" means any person who is not a resident of this state or a resident who
79 has moved from the state subsequent to an accident or collision and among others includes a
80 nonresident firm, partnership, corporation or voluntary association, or a firm, partnership,
81 corporation or voluntary association that has moved from the state subsequent to an accident or
82 collision.

83 (4) "Nonresident plaintiff or plaintiffs" means a nonresident who institutes an action in a
84 court in this state having jurisdiction against a nonresident in pursuance of the provisions of this
85 article.

86 (5) "Nonresident defendant or defendants" means a nonresident motorist who, either
87 personally or through his or her agent, operated a motor vehicle on a public street, highway or
88 road in this state and was involved in an accident or collision which has given rise to a civil action
89 filed in any court in this state.

90 (6) "Street", "road" or "highway" means the entire width between property lines of every
91 way or place of whatever nature when any part of the street, road or highway is open to the use
92 of the public, as a matter of right, for purposes of vehicular traffic.

93 (7) "Insurance company" means any firm, corporation, partnership or other organization
94 which issues automobile insurance.

95 (h) The provision for service of process in this section is cumulative and nothing contained
96 in this section shall be construed as a bar to the plaintiff in any action from having process in the
97 action served in any other mode and manner provided by law.

**§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) of this subsection shall be deemed
3 equivalent to an appointment by such 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 signification
8 of such nonresident's agreement that any such process against him or her, which is served in the
9 manner hereinafter provided, shall be of the same legal force and validity as though such
10 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
19 such person to use, consume or be affected by the goods in this state: *Provided*, That he or she
20 also 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), subsection (a) of this section may be asserted against him or her.

28 (c) Service shall be made by leaving the original and two copies of both the summons and
29 the complaint, and the fee required by section two, article one, chapter fifty-nine of this code with
30 the Secretary of State, or in his or her office, and such service shall be sufficient upon such
31 nonresident: *Provided*, That notice of such service and a copy of the summons and complaint
32 shall forthwith be sent by registered or certified mail, return receipt requested, by a means which
33 may include electronic issuance and acceptance of electronic return receipts, by the Secretary of
34 State to the defendant at his or her nonresident address and the defendant's return receipt signed
35 by himself or herself or his or her duly authorized agent or the registered or certified mail so sent
36 by the Secretary of State which is refused by the addressee and which registered or certified mail
37 is returned to the Secretary of State, or to his or her office, showing thereon the stamp of the post-
38 office department that delivery has been refused. After receiving verification from the United
39 States postal service that acceptance of process, notice or demand has been signed, the

40 Secretary of State shall notify the clerk's office of the court from which the process, notice or
41 demand was issued by a means which may include electronic notification. If the process, notice
42 or demand was refused or undeliverable by the United States postal service the Secretary of
43 State shall return refused or undeliverable mail to the clerk's office of the court from which the
44 process, notice or demand was issued and 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 thirty 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.

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

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

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

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

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

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

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

**§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 considered to have submitted to the
5 jurisdiction of the courts of this state as to any action arising from the conduct specified in
6 subsection (b) of this section, if such conduct was:

7 (A) Committed in this state; or

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

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

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

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

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

18 (c) Any person subject to or considered to have submitted to the jurisdiction of the courts
19 of this state who is made a respondent in an action may be served with the petition and order
20 initiating such action either:

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

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

31 (A) Such service shall be made by leaving two copies of both the petition and order, with
32 the Secretary of State, or in his or her office, and such service shall be sufficient upon such
33 nonresident: *Provided*, That notice of such service and a copy of the petition and order shall

34 forthwith be sent by registered or certified mail, return receipt requested, by a means which may
35 include electronic issuance and acceptance of electronic return receipts, by the Secretary of State
36 to the respondent at his or her nonresident address and the respondent's return receipt signed
37 by himself or herself or his or her duly authorized agent or the registered or certified mail so sent
38 by the Secretary of State which is refused by the addressee and which registered or certified mail
39 is returned to the Secretary of State, or to his or her office, showing thereon the stamp of the post-
40 office department that delivery has been refused. After receiving verification from the United
41 States Postal Service that acceptance of the notice, petition and order has been signed, the
42 Secretary of State shall notify the clerk's office of the court from which the petition and order were
43 issued by a means which may include electronic notification. If the notice, petition and order were
44 refused or undeliverable by the United States Postal Service, the Secretary of State shall return
45 refused or undeliverable mail to the clerk's office of the court from which the petition and order
46 were issued and create a preservation duplicate from which a reproduction of the stored record
47 may be retrieved which truly and accurately depicts the image of the original record. The Secretary
48 of State may destroy or otherwise dispose of the original returned or undeliverable mail. Written
49 notice of the action by the Secretary of State must then be provided by certified mail, return receipt
50 requested, facsimile, or by electronic mail, to the clerk's office of the court from which the process,
51 notice or demand was issued. If any respondent served with a petition and order fails to appear
52 and defend at the time and place set forth in the order, judgment may be rendered against him or
53 her at any time thereafter. The court may order such continuances as may be reasonable to afford
54 the respondent an opportunity to defend the action or proceeding.

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

59 Any fees ordinarily remitted to the Secretary of State or to a law-enforcement agency at the time
60 of service shall be deferred and taxed in the costs of the action or proceeding.

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

65 (d) 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 nonresident or a person who, at the
71 residence, place of business or post office of such nonresident, usually receives and receipts for
72 mail addressed to such nonresident.

73 (2) "Nonresident" means any person who is not a resident of this state or a resident who
74 has moved from this state subsequent to engaging in such acts or acts covered by this section.

**§56-3-34. Actions by or against nonresident bail bond enforcement agents or bail
bondsmen; appointment of Secretary of State as agents; service of process.**

1 (a) Every nonresident bail bond enforcer or bail bondsman, for the privilege of entering
2 this state to act in the capacity of a bail bond enforcer, either personally or through an agent,
3 appoints the Secretary of State, or his or her successor in office, to be his or her agent or attorney-
4 in-fact upon whom may be served all lawful process in any action or proceeding against him or
5 her in any court of record in this state for any act occurring within this state resulting in injury
6 arising out of any breach of the applicable standard of care with respect to any person other than
7 a defendant whose custody or appearance the bail bond enforcer secures or attempts to secure,
8 or with respect to the property of any person other than a defendant whose custody or appearance

9 the bail bond enforcer secures or attempts to secure; or for enforcement of any civil penalty for
10 breach of a duty imposed by this code with respect to bail bondsmen employing or contracting
11 with bail bond enforcers: *Provided*, That in the event process against a nonresident defendant
12 cannot be effected through the Secretary of State, as provided by this section, for the purpose
13 only of service of process, the nonresident bail bond enforcer or bondsman shall be deemed to
14 have appointed as his or her agent or attorney-in-fact any insurance company which has a
15 contract of liability insurance for his or her activities.

16 (b) For purposes of service of process as provided in this section, every insurance
17 company shall be deemed the agent or attorney-in-fact of every nonresident bail bond enforcer
18 or bondsman insured by the company if the insured nonresident bail bond enforcer or bondsman
19 is involved in any bail bond enforcement activity occurring within this state resulting in injury
20 arising out of any breach of the applicable standard of care with respect to any person other than
21 a defendant whose custody or appearance the bail bond enforcer secures or attempts to secure,
22 or with respect to the property of any person other than a defendant whose custody or appearance
23 the bail bond enforcer secures or attempts to secure and service of process cannot be effected
24 upon the nonresident through the office of the Secretary of State. Upon receipt of process as
25 hereinafter provided, the insurance company may, within thirty days, file an answer or other
26 pleading or take any action allowed by law on behalf of the defendant.

27 (c) A nonresident bail bond enforcer or bail bondsman entering this state, either personally
28 or through an agent, is deemed to acknowledge the appointment of the Secretary of State, or, as
29 the case may be, his or her liability insurance company, as his or her agent or attorney-in-fact, or
30 the agent or attorney-in-fact of his or her administrator, administratrix, executor or executrix in the
31 event the nonresident dies, and furthermore is deemed to agree that any process against him or
32 her or against his or her administrator, administratrix, executor or executrix, which is served in the
33 manner hereinafter provided, shall be of the same legal force and validity as though said

34 nonresident or his or her administrator, administratrix, executor or executrix were personally
35 served with a summons and complaint within this state.

36 Any action or proceeding may be instituted, continued or maintained on behalf of or
37 against the administrator, administratrix, executor or executrix of any nonresident who dies
38 subsequent to bail bond enforcement activity in this state by the nonresident or his or her duly
39 authorized agent.

40 (d) At the time of filing a complaint against a nonresident bail bond enforcer or bondsman
41 who has been involved in bail bond enforcement activity in the State of West Virginia and before
42 a summons is issued thereon, the plaintiff, or someone for him or her, shall execute a bond in the
43 sum of \$100 before the clerk of the court in which the action is filed, with surety to be approved
44 by said clerk, conditioned that on failure of the plaintiff to prevail in the action he or she will
45 reimburse the defendant, or cause the defendant to be reimbursed, the necessary expense
46 incurred in the defense of the action in this state. Upon the issue of a summons the clerk will
47 certify thereon that the bond has been given and approved.

48 (e) Service of process upon a nonresident defendant shall be made by leaving the original
49 and two copies of both the summons and complaint, together with the bond certificate of the clerk,
50 and the fee required by section two, article one, chapter fifty-nine of this code with the Secretary
51 of State, or in his or her office, and said service shall be sufficient upon the nonresident defendant
52 or, if a natural person, his or her administrator, administratrix, executor or executrix: *Provided,*
53 That notice of service and a copy of the summons and complaint shall be sent by registered or
54 certified mail, return receipt requested, by the Secretary of State to the nonresident defendant.
55 The return receipt signed by the defendant or his or her duly authorized agent shall be attached
56 to the original summons and complaint and filed in the office of the clerk of the court from which
57 process is issued. In the event the registered or certified mail sent by the Secretary of State is
58 refused or unclaimed by the addressee or if the addressee has moved without any forwarding
59 address, the registered or certified mail returned to the Secretary of State, or to his or her office,

60 showing thereon the stamp of the post-office department that delivery has been refused or not
61 claimed or that the addressee has moved without any forwarding address, shall be appended to
62 the original summons and complaint and filed in the clerk's office of the court from which process
63 issued and the Secretary of State shall create a preservation duplicate from which a reproduction
64 of the stored record may be retrieved which truly and accurately depicts the image of the original
65 record. The Secretary of State may destroy or otherwise dispose of the original returned or
66 undeliverable mail. Written notice of the action by the Secretary of State must then be provided
67 by certified mail, return receipt requested, facsimile, or by electronic mail, to the clerk's office of
68 the court from which the process, notice or demand was issued. The court may order such
69 continuances as may be reasonable to afford the defendant opportunity to defend the action.

70 (f) The fee remitted to the Secretary of State at the time of service, shall be taxed in the
71 costs of the proceeding and the Secretary of State shall pay into the State Treasury all funds so
72 coming into his or her hands from the service. The Secretary of State shall keep a record in his
73 or her office of all service of process and the day and hour of service thereof.

74 (g) In the event service of process upon a nonresident defendant cannot be effected
75 through the Secretary of State as provided by this section, service may be made upon the
76 defendant's insurance company. The plaintiff must file with the clerk of the circuit court an affidavit
77 alleging that the defendant is not a resident of this state; that process directed to the Secretary of
78 State was sent by registered or certified mail, return receipt requested; that the registered or
79 certified mail was returned to the office of the Secretary of State showing the stamp of the post-
80 office department that delivery was refused or that the notice was unclaimed or that the defendant
81 addressee moved without any forwarding address; and that the Secretary of State has complied
82 with the provisions of subsection (e) of this section. Upon receipt of process the insurance
83 company may, within thirty days, file an answer or other pleading and take any action allowed by
84 law in the name of the defendant.

85 (h) The following words and phrases, when used in this article, shall, for the purpose of
86 this article and unless a different intent on the part of the Legislature is apparent from the context,
87 have the following meanings:

88 (1) "Agent" or "duly authorized agent" means and includes, among others, a bail bond
89 enforcer who, on behalf of a bail bondsman, is involved in any bail bond enforcement activity
90 occurring within this state resulting in injury arising out of any breach of the applicable standard
91 of care with respect to any person other than a defendant whose custody or appearance the bail
92 bond enforcer secures or attempts to secure, or with respect to the property of any person other
93 than a defendant whose custody or appearance the bail bond enforcer secures or attempts to
94 secure;

95 (2) "Nonresident" means any person who is not a resident of this state or a resident who
96 has moved from the state subsequent to bail bond enforcement activity within this state, and
97 among others includes a nonresident firm, partnership, corporation or voluntary association, or a
98 firm, partnership, corporation or voluntary association that has moved from the state subsequent
99 to bail bond enforcement activity;

100 (3) "Nonresident defendant or defendants" means a nonresident bail bond enforcer or
101 bondsman who, either personally or through his or her agent, is involved in any bail bond
102 enforcement activity occurring within this state resulting in injury arising out of any breach of the
103 applicable standard of care with respect to any person other than a defendant whose custody or
104 appearance the bail bond enforcer secures or attempts to secure, or with respect to the property
105 of any person other than a defendant whose custody or appearance the bail bond enforcer
106 secures or attempts to secure, which has given rise to a civil action filed in any court in this state;

107 (4) "Insurance company" means any firm, corporation, partnership or other organization
108 which issues liability insurance.

109 (i) The provision for service of process herein is cumulative and nothing herein contained
110 shall be construed as a bar to the plaintiff in any action from having process in the action served
111 in any other mode and manner provided by law.

112 (j) This section is not retroactive and its provisions are not available to a plaintiff in a cause
113 of action arising out of acts occurring prior to the effective date of this section.

NOTE: The purpose of this bill is relating to authorizing the Secretary of State to transmit electronic versions of undeliverable mail to the circuit clerks of the state to minimize agency costs and streamline processes for the state.

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