

# **WEST VIRGINIA LEGISLATURE**

## **2017 REGULAR SESSION**

**Introduced**

### **House Bill 2767**

BY DELEGATES O'NEAL, HANSHAW, SOBONYA, HOLLEN,  
MOORE, KESSINGER, SUMMERS, FAST, OVERINGTON,  
FOSTER, G.

[Introduced March 1, 2017; Referred  
to the Committee on Government Organization then  
the Judiciary.]

1 A BILL to amend and reenact §31D-5-504 of the Code of West Virginia, 1931, as amended; and  
 2 to amend and reenact §56-3-31, §56-3-33, §56-3-33a and §56-3-34 of said code, all  
 3 relating to authorizing the Secretary of State to transmit electronic versions of  
 4 undeliverable mail to the circuit clerks of the state to minimize agency costs and streamline  
 5 processes for the state.

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

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

**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.

## 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 by  
37 himself or herself or his or her duly authorized agent or the registered or certified mail so sent by  
38 the Secretary of State which is refused by the addressee and which registered or certified mail is  
39 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.