WEST VIRGINIA CODE CHAPTER 56 ARTICLE 3

WV Legislature

§56-3-1. Ancient writs.

The right and benefit of all writs, remedial and judicial, given by any statute or act of parliament made in aid of the common law prior to the fourth year of the reign of James the First, of a general nature, not local to England, shall still be saved, so far as the same may be consistent with the Constitution of this state, the acts of the general assembly of Virginia passed before June 20, eighteen hundred and sixty-three, and the acts of the Legislature of this state.

WV Legislature

§56-3-2. Writs abolished.

The writ of right, writ of entry, writ of formedon, writ de homine replegiando, writ of levari facias, writ of elegit, writ of distringas and writ of capias ad satisfaciendum are abolished and shall not hereafter be issued.

WV Legislature

§56-3-2a. Actions for breach of promise to marry and for alienation of affections prohibited.

Notwithstanding any other provision of law to the contrary, no civil action shall lie or be maintained in this state for breach of promise to marry or for alienation of affections, unless such civil action was instituted prior to the effective date of this section.

WV Legislature

§56-3-3. Forms of writs and other process.

The Supreme Court of Appeals may, from time to time, prescribe the forms of writs and other process, and until the court shall alter the forms, the same may be as heretofore used, except so far as is otherwise provided.

WV Legislature

§56-3-4. Issuance of process; alteration.

The process to commence a suit shall be a writ commanding the officer to whom it is directed to summon the defendant to answer the bill or action. It shall be issued on the order of the plaintiff, his attorney or agent, and shall not, after it is issued, be altered, nor any blank therein filled up, except by the clerk.

WV Legislature

§56-3-5. To whom process directed; return of process; return of summons for witness.

Process from any court, whether original, mesne or final, may be directed to the sheriff of any county. Any process shall be returnable, within ninety days after its date, except as provided in section six, article two of this chapter, to the court on any day of a term, or in the clerk's office to the first day of any rules, designated as the first or last Monday, as the case may be, in any month and year, except that a summons for a witness shall be returnable on whatever day his attendance is desired, and an order of attachment may be returnable to the next term of the court, although more than ninety days from the date of the order, and process awarded in court may be returnable as the court may direct.

WV Legislature

§56-3-6. Delivery of process.

The clerk of every court from whose office may be issued any process, original, mesne or final, or any order or decree to be served on any person, shall, unless the party interested, or his attorney, direct otherwise, deliver the same to the sheriff or other proper officer of the county for which the court is held, if it is to be executed therein, and if it is to be executed in any other county, shall enclose the same in an envelope properly addressed to the sheriff or other proper officer thereof, pay the postage thereon and mail it in the post office. Documentation of service of process will be according to rules promulgated by the Supreme Court of Appeals.

WV Legislature

§56-3-7. Officer's receipt of process.

Every officer who attends a court shall, within five days after the end of any rules, go to the clerk's office and receive all process, orders and decrees to be executed by him and give receipts therefor. For any failure so to do he shall forfeit $50.

WV Legislature

§56-3-8. Proof of mailing process to officer.

Proof that any process or order was put into the post office in an envelope or cover properly addressed to any officer, and that the postage thereon was paid, shall be prima facie evidence of the receipt thereof in due course of mail by the officer to whom it was so addressed; and this evidence may be furnished by the receipt taken at the time the process or order was put into the post office, from the postmaster, his deputy or clerk, and the certificate of a justice of the acknowledgment of the receipt before him But such evidence may be rebutted by the oath of the officer to whom such process or order was so addressed, that he did not himself receive the same, and believes that it was not received by any of his deputies.

WV Legislature

§56-3-9. Service in other county; return.

A sheriff or other officer may transmit by mail (the postage thereon being prepaid) any process or order which came to his hands from beyond his county, with his return thereon, in an envelope or cover properly addressed to the officer to whom or whose office such return ought to be made; and the receipt taken at the time from the postmaster, his deputy or clerk, certified as aforesaid, shall be evidence that the process or order, and return, were transmitted as aforesaid.

WV Legislature

§56-3-10. Clerk's receipt of process sent by mail; postage due.

If there come directed to a clerk, by mail, a letter with an indorsement on the envelope of the parties' names, and the nature of the process enclosed, he shall take the same out of the post office, and pay such postage as may be due thereon.

WV Legislature

§56-3-11. Execution and validity of service generally; execution when sheriff is disqualified; service when original is returned not executed.

Any process or notice may be executed on or before the return day thereof. If it appear to be duly served and good in other respects, it shall be deemed valid, although not directed to any officer, or although directed to an officer who is not qualified to execute it, provided it be executed by any other to whom it might lawfully have been directed. In any case in which it would be improper for the sheriff to execute any process, notice, writ or order, or summon a jury, because of interest or other disability, it shall be lawful for any deputy sheriff of such county not similarly disqualified to execute such process, notice, writ or order, or summon such jury, and make return thereof in his own name as deputy sheriff, and the execution and return thereof, if in other respects duly made, shall be valid, though it be directed to the sheriff. Process or notice to commence actions or suits, including writs of scire facias, mandamus, quo warranto, certiorari, prohibition, and alias or other process where the original is returned not executed, may also be served by any credible person; and the return of such person, verified by his affidavit, shall be evidence of the manner and time of service.

WV Legislature

§56-3-12. Service of summons or scire facias; finality of judgment by default on scire facias or summons.

Any summons or scire facias against any person, including a summons for a witness, may be served as a notice is served under section one, article two of this chapter, except that when such process is against a corporation the mode of service shall be as prescribed by the two following sections. To this end the clerk issuing such process, unless otherwise directed, shall deliver or transmit therewith as many copies thereof as there are persons named therein on whom it is to be served. No judgment by default on a scire facias or summons shall become final within twenty days after the service of such process.

WV Legislature

§56-3-13. Service of process or notice on domestic corporations.

Unless otherwise specially provided, process against, or notice to, a corporation created by virtue of the laws of this state may be served as follows:

(a) If a city, town or village, on its mayor, city manager, recorder, clerk, treasurer, or any member of its council or board of commissioners;

(b) If a county commission of any county, on any commissioner or the clerk thereof, or if they be absent, on the prosecuting attorney of the county;

(c) If a Board of Education of any district or independent school district, on the president or any commissioner thereof, or if they be absent, on the prosecuting attorney of the county;

(d) If any other corporation, on the Secretary of State as statutory attorney-in-fact of such corporation, as provided in section fifteen, article one, chapter thirty-one of this code, or on any person appointed by it to accept service of process in its behalf, or on its president or other chief officer, or its vice president, cashier, assistant cashier, treasurer, assistant treasurer, secretary, or any member of its board of directors, or, if no such officer or director be found, on any agent of such corporation, including in the case of a railroad company a depot or station agent in the actual employment of the company.

WV Legislature

§56-3-13a. Service of process or notice on domestic and foreign limited partnerships; service by publication.

Process against, or notice to, a domestic limited partnership or a foreign limited partnership may be served on any general partner, or on the Secretary of State as statutory attorney-in-fact of such limited partnership as provided in section twenty-six-a of article nine, chapter forty-seven of this code, or on any other person appointed by it to accept service of process in its behalf, or on any agent of such limited partnership. Any foreign limited partnership for which no statutory attorney-in-fact, general partner or agent is found in this state upon whom service may be had, shall be subject to service by publication under this article in the same manner and upon the same conditions and requirements as are foreign corporations for which no statutory attorneys-in-fact, officers, directors or agents are found in this state upon whom service may be had.

WV Legislature

§56-3-14. Service of process or notice on foreign corporations.

Process against, or notice to, a foreign corporation which has a usual place of business in this state, or, with or without such usual place of business, is doing business in this state, permanently or temporarily, and which has qualified to do such business under the laws of this state, may be served in accordance with the provisions of subdivision (d) of the next preceding section.

If such corporation has not qualified to do such business under the laws of this state, service may be made by delivering, within the state, a copy of the process or notice to any officer, director or agent of such corporation acting or transacting business for it in this state.

If there be no statutory attorney-in-fact, officer, director or agent found in this state upon whom service may be had as aforesaid, then on affidavit of that fact an order of publication may be awarded as provided by sections twenty-three and twenty-four of this article.

WV Legislature

§56-3-15. Service of process or notice on common carriers other than corporations.

In a case against any common carrier, other than a corporation, for any liability as such, it shall be sufficient to serve any process against or notice to the carrier on any agent, or the driver, operator, captain or conductor of any vehicle of such carrier.

WV Legislature

§56-3-16. Execution of process on Sunday.

No civil process or order shall be executed on Sunday, except in cases of persons escaping from custody, or where it may be specially provided by law.

WV Legislature

§56-3-17. Where process may be executed.

Every officer by whom any process or order may be lawfully executed shall execute the same within his bailiwick, or upon any river or creek adjoining thereto.

WV Legislature

§56-3-18. When officer may summon assistance; failure to assist.

Such officer may, in case resistance be made or apprehended to the execution of such process or order, summon to his assistance, either orally or by writing, so many of the male inhabitants of his county of the age of eighteen years or more, or require the commandant of any company, regiment or separate battalion of militia or volunteers to call out such portion, or the whole thereof, to assist him as shall be deemed sufficient for the occasion; and he and those assisting him may use such force as shall be necessary or proper to overcome any resistance made to the execution of such process or order, and to seize, arrest and confine the resisters, their aiders and abettors, to be dealt with according to law. If any male inhabitant of the county of the age of eighteen years or more fail to obey such summons, or if any commandant fail to comply with such requisition, the officer shall report the fact to the court from which such process or order issued, which court may, in a summary way, after notice to the person so reported, adjudge him to be fined or imprisoned, or both, as for contempt. Or if the process or order was not issued by a court, the person so failing to obey such summons or requisition shall be punished as for a misdemeanor and, to that end the officer shall report him to the prosecuting attorney for the county.

WV Legislature

§56-3-19. Officer's service and return of process; failure to make proper return; false return.

Every officer to whom any process or order is lawfully delivered for execution shall, without avoidable delay, execute the same according to the command thereof and the provisions of law, and make true return thereon at the proper time and place, stating in such return the time and manner of executing the same, or why the same was not executed, and shall subscribe his name to such return. When the service is by deputy, such deputy shall subscribe to the return his own name as well as that of his principal. With the order or process there shall be returned any bond taken, and an account of any sale made under the same, specifying therein the several articles sold, the persons to whom sold, and the prices thereof. Such return shall be made to the court, justice, person or office from which such process or order issued, unless in such process or order it is directed to be otherwise returned, in which case return thereof shall be made according to such direction. Where a sale is made under any process or order, and no particular time for the return thereof is prescribed therein, or by law, the return shall be made within thirty days after the sale. But if no particular time be prescribed in the process or order, or by law, for the return thereof, and no sale is made under the same, the return shall be made immediately after such process or order is executed; or, if it be not executed, within two months after its date. Except when the process or order is issued by a justice, any officer failing to comply with the provisions of this section shall forfeit $20; and, if he make a false return, shall forfeit therefor $100.

WV Legislature

§56-3-20. Further liability for failure to make proper return.

A judgment in a prosecution under the preceding section for failure to make proper return of any process or order, or to subscribe the return as aforesaid, shall be no bar to further proceedings if the failure be continued; but there shall be a further forfeiture by the officer, who ought to have made such return, of $20 for every month subsequent to the judgment that the failure shall continue, until it appear that the return cannot be made; or if it be the case of an execution or warrant of distress, until it appear that the amount thereof has been paid to the party entitled. Moreover, the court to which, or to the clerk's office of which, such return ought to be made, may, upon the motion of any party injured, and for his use, fine such officer and his sureties, or any one or more of them, or any deputy in default, a reasonable sum, and from time to time impose on him or them other reasonable fines, not exceeding altogether, in the case of an execution or warrant of distress, the rate of $5 for every $100 therein mentioned for each month that the failure to make such return shall have continued.

WV Legislature

§56-3-21. Alias process.

If, at the return day of any process, it be not returned executed, an alias or other proper process may be issued without waiting (where the first process is returnable to a term) for the subsequent process to be awarded at rules. And where, for want of a return of the first process against a defendant, any subsequent process is issued, if the former was executed, the officer shall not execute the latter, but shall return the former if it be in his possession, and if he has it not, shall return the latter with an indorsement of the execution of the former, and the proceedings thereupon shall be as if the first had been duly returned.

WV Legislature

§56-3-22. Judgment on return nihil.

No judgment shall be rendered on a scire facias, or in any other case, on returns of nihil.

WV Legislature

§56-3-23. Service by publication generally.

On affidavit that a defendant is a foreign corporation for which no statutory attorney-in-fact, officer, director or agent is found in this state upon whom service may be had, or is not a resident of this state, or that diligence has been used by or on behalf of the plaintiff to ascertain in what county he is, without effect, or that process, directed to the officer of the county in which he resides or is, has twice been delivered to such officer more than ten days before the return day, and been returned without being executed, an order of publication may be entered against such defendant. And in any suit in equity, where the bill states that there are or may be persons interested in the subject to be divided or disposed of, whose names are unknown, and makes such persons defendants by the general description of parties unknown, on affidavit of the fact that such parties are unknown, an order of publication may be entered against such unknown parties. Any order of publication under this section may be entered either in court or by the clerk at any time. In a proceeding by petition, there may be an order of publication in like manner as in a suit in equity.

WV Legislature

§56-3-24. Contents of order of publication; publishing.

Every order of publication shall give the style of the suit, state briefly its object, and require the defendants against whom it is entered, or the unknown parties, to appear within one month after the date of the first publication thereof and do what is necessary to protect their interests. It shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which the order is made or directed. The newspaper shall be designated by the party directing such order or his attorney, but if no paper be so designated, then in such paper as the court may direct, or if the court make no direction, then as the clerk of the court may prescribe. It shall be deemed to have been published on the date of the second publication thereof.

WV Legislature

§56-3-25. Failure to appear in response to publication; trial or hearing.

When such order shall have been so published, if the defendants against whom it is entered, or the known parties, shall not appear within the time specified in such order, the case may be tried or heard as to them at the next term of the court commencing not less than one month after the date of the first publication. Upon any trial or hearing under this section, such judgment, decree or order shall be entered as may appear just.

WV Legislature

§56-3-26. Rehearing in case of nonpersonal service.

Any unknown party or other defendant who was not served with process in this state, and did not appear in the case before the date of such judgment, decree or order or the representative of such, may, within two years from that date, if he be not served with a copy of such judgment, decree or order more than eight months before the end of such two years, and if he was so served, then within eight months from the time of such service, file his petition to have the proceedings reheard in the manner and form provided by section forty-three, article seven, chapter thirty- eight of this code, and not otherwise; and all the provisions of that section are hereby made applicable to proceedings under this section: Provided, however, That nothing contained in that section or in this section shall be so construed as to authorize any court or judge to include, in the decree granted in a divorce suit, any prohibition against the remarriage of either party thereto, except such prohibition as may be authorized by the provisions of section twenty-two, article two, chapter forty-eight of this code.

WV Legislature

§56-3-27. Order of publication in Supreme Court of Appeals.

When, by the return of any officer of process issued to answer any appeal, writ of error or supersedeas pending in the Supreme Court of Appeals of this state, or when, from affidavit filed with the clerk of said court, it shall appear that any appellee or defendant in error therein is a foreign corporation for which no statutory attorney-in-fact, officer, director or agent is found in this state upon whom service may be had, or is not a resident of this state, or that the name or place of residence of such party is unknown, so that process cannot be served upon him it shall be the duty of such clerk, upon application, to take and issue, on the first Monday in any month, an order of publication against such absent or unknown party or foreign corporation, requiring him or it to appear on a day to be designated in such order, to answer such appeal, writ of error or supersedeas and to have a rehearing of the whole matter therein contained.

WV Legislature

§56-3-28. Requisites of publication in Supreme Court of Appeals.

Such order of publication shall be entered by the clerk in a suitable book kept by him for the purpose and signed by him and a certified copy of such order shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. Both the newspaper and the publication area shall be designated in the order of publication. When it shall appear that such order of publication has been duly published as aforesaid, the court may proceed to hear and decide such cause in the same manner as if such parties had been personally served with process: Provided, however, That the order of publication shall have been executed, as aforesaid, at least ten days before the day on which any such cause may be called for hearing.

WV Legislature

§56-3-29. Rehearing in Supreme Court of Appeals.

Any unknown party or other defendant who was not served with process in this state, and did not appear in the cause, may have the same reheard and any injustice in the proceedings corrected within the time prescribed by section twenty-six of this article.

WV Legislature

§56-3-30.

Repealed.

Acts, 1967 Reg. Sess., Ch. 105.

WV Legislature

§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.

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

(b) For purposes of service of process as provided in this section, every insurance company shall be considered the agent or attorney-in-fact of every nonresident motorist insured by that company if the insured nonresident motorist is involved in any accident or collision in this state and service of process cannot be effected upon the nonresident through the office of the Secretary of State. Upon receipt of process as provided in this section, the insurance company may, within thirty days, file an answer or other pleading or take any action allowed by law on behalf of the defendant.

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

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

(d) Service of process upon a nonresident defendant shall be made by leaving the original and two copies of both the summons and complaint, together with the bond certificate of the clerk, and the fee required by section two, article one, chapter fifty-nine of this code with the Secretary of State, or in his or her office, and the service shall be sufficient upon the nonresident defendant or, if a natural person, his or her administrator, administratrix, executor or executrix: Provided, That notice of service and a copy of the summons and

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complaint shall be sent by registered or certified mail, return receipt requested, by a means which may include electronic issuance and acceptance of electronic return receipts, by the Secretary of State to the nonresident defendant. After receiving verification from the United States Postal Service that acceptance of process, notice or demand has been signed, the Secretary of State shall notify the clerk's office of the court from which the process, notice or demand was issued by a means which may include electronic notification. If the process, notice or demand was refused or undeliverable by the United States Postal Service the Secretary of State shall create a preservation duplicate from which a reproduction of the stored record may be retrieved which truly and accurately depicts the image of the original record. The Secretary of State may destroy or otherwise dispose of the original returned or undeliverable mail. Written notice of the action by the Secretary of State must then be provided by certified mail, return receipt requested, facsimile, or by electronic mail, to the clerk's office of the court from which the process, notice or demand was issued. The court may order any reasonable continuances to afford the defendant opportunity to defend the action.

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

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

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

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

(2) "Motor vehicle" means and includes any self-propelled vehicle, including a motorcycle,

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tractor and trailer, not operated exclusively upon stationary tracks.

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

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

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

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

(7) “Insurance company” means any firm, corporation, partnership or other organization which issues automobile insurance.

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

WV Legislature

§56-3-32. Process is part of record without oyer.

The writ or process commencing any action at law or suit in equity shall be a part of the record, without oyer thereof.

WV Legislature

§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.

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

(1) Transacting any business in this state;

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

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

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

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

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

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

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

(c) Service shall be made:

By leaving the original and two copies of both the summons and the complaint, and the fee

required by §59-1-2 of this code with the Secretary of State, or in his or her office, and this service shall be sufficient upon the nonresident: *Provided,* That notice of the service and a copy of the summons and complaint shall forthwith be sent by registered or certified mail, return receipt requested, by a means which may include electronic issuance and acceptance of electronic return receipts, by the Secretary of State to the defendant at his or her nonresident address and the defendant's return receipt signed by himself or herself or his or her duly authorized agent or the registered or certified mail so sent by the Secretary of State which is refused by the addressee and which registered or certified mail is returned to the Secretary of State, or to his or her office, showing thereon the stamp of the post-office department that delivery has been refused. After receiving verification from the United States Postal Service that acceptance of process, notice, or demand has been signed, the Secretary of State shall notify the clerk's office of the court from which the process, notice, or demand was issued by a means which may include electronic notification. If the process, notice, or demand was refused or undeliverable by the United States Postal Service, the Secretary of State shall create a preservation duplicate from which a reproduction of the stored record may be retrieved which truly and accurately depicts the image of the original record. The Secretary of State may destroy or otherwise dispose of the original returned or undeliverable mail. Written notice of the action by the Secretary of State must then be provided by certified mail, return receipt requested, facsimile, or by electronic mail, to the clerk's office of the court from which the process, notice, or demand was issued. If any defendant served with summons and complaint fails to appear and defend within 30 days of service, judgment by default may be rendered against him or her at any time thereafter. The court may order such continuances as may be reasonable to afford the defendant opportunity to defend the action or proceeding. If the certified mail was returned by the United States Postal Service as unclaimed, unable to forward, or with any other notation other than "accepted" or "refused", notice may be served as follows:

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

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

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

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

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

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

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

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

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

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

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§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.

(a) Any person who is:

(1) Not a resident of this state; or

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

(3) A person whose residence is unknown shall be considered to have submitted to the jurisdiction of the courts of this state as to any action arising from the conduct specified in subsection (b) of this section, if such conduct was:

(A) Committed in this state; or

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

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

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

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

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

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

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

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

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this state.

(A) Such service shall be made by leaving two copies of both the petition and order, with the Secretary of State, or in his or her office, and such service shall be sufficient upon such nonresident: Provided, That notice of such service and a copy of the petition and order shall forthwith be sent by registered or certified mail, return receipt requested, by a means which may include electronic issuance and acceptance of electronic return receipts, by the Secretary of State to the respondent at his or her nonresident address and the respondent's return receipt signed by himself or herself or his or her duly authorized agent or the registered or certified mail so sent by the Secretary of State which is refused by the addressee and which registered or certified mail is returned to the Secretary of State, or to his or her office, showing thereon the stamp of the post-office department that delivery has been refused. After receiving verification from the United States Postal Service that acceptance of the notice, petition and order has been signed, the Secretary of State shall notify the clerk's office of the court from which the petition and order were issued by a means which may include electronic notification. If the notice, petition and order were refused or undeliverable by the United States Postal Service, the Secretary of State shall create a preservation duplicate from which a reproduction of the stored record may be retrieved which truly and accurately depicts the image of the original record. The Secretary of State may destroy or otherwise dispose of the original returned or undeliverable mail. Written notice of the action by the Secretary of State must then be provided by certified mail, return receipt requested, facsimile, or by electronic mail, to the clerk's office of the court from which the process, notice or demand was issued. If any respondent served with a petition and order fails to appear and defend at the time and place set forth in the order, judgment may be rendered against him or her at any time thereafter. The court may order such continuances as may be reasonable to afford the respondent an opportunity to defend the action or proceeding.

(B) As provided in section three hundred eight, article twenty-seven, chapter forty-eight of this code regarding domestic violence proceedings and in section thirteen, article eight, chapter fifty-three of this code regarding personal safety proceedings, no fees may be charged for service of petitions or orders until the matter is brought before the appropriate court for final resolution. Any fees ordinarily remitted to the Secretary of State or to a law-enforcement agency at the time of service shall be deferred and taxed in the costs of the action or proceeding.

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

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

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

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

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§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.

(a) Every nonresident bail bond enforcer or bail bondsman, for the privilege of entering this state to act in the capacity of a bail bond enforcer, either personally or through an agent, appoints the Secretary of State, or his or her successor in office, to be his or her agent or attorney-in-fact upon whom may be served all lawful process in any action or proceeding against him or her in any court of record in this state for any act occurring within this state resulting in injury arising out of any breach of the applicable standard of care with respect to any person other than a defendant whose custody or appearance the bail bond enforcer secures or attempts to secure, or with respect to the property of any person other than a defendant whose custody or appearance the bail bond enforcer secures or attempts to secure; or for enforcement of any civil penalty for breach of a duty imposed by this code with respect to bail bondsmen employing or contracting with bail bond enforcers: Provided, That in the event process against a nonresident defendant cannot be effected through the Secretary of State, as provided by this section, for the purpose only of service of process, the nonresident bail bond enforcer or bondsman shall be deemed to have appointed as his or her agent or attorney-in-fact any insurance company which has a contract of liability insurance for his or her activities.

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

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

Any action or proceeding may be instituted, continued or maintained on behalf of or against

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the administrator, administratrix, executor or executrix of any nonresident who dies subsequent to bail bond enforcement activity in this state by the nonresident or his or her duly authorized agent.

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

(e) Service of process upon a nonresident defendant shall be made by leaving the original and two copies of both the summons and complaint, together with the bond certificate of the clerk, and the fee required by section two, article one, chapter fifty-nine of this code with the Secretary of State, or in his or her office, and said service shall be sufficient upon the nonresident defendant or, if a natural person, his or her administrator, administratrix, executor or executrix: Provided, That notice of service and a copy of the summons and complaint shall be sent by registered or certified mail, return receipt requested, by the Secretary of State to the nonresident defendant. The return receipt signed by the defendant or his or her duly authorized agent shall be attached to the original summons and complaint and filed in the office of the clerk of the court from which the process is issued. In the event the registered or certified mail sent by the Secretary of State is refused or unclaimed by the addressee or if the addressee has moved without any forwarding address, the registered or certified mail returned to the Secretary of State, or to his or her office, showing thereon the stamp of the post-office department that delivery has been refused or not claimed or that the addressee has moved without any forwarding address, the Secretary of State shall create a preservation duplicate from which a reproduction of the stored record may be retrieved which truly and accurately depicts the image of the original record. The Secretary of State may destroy or otherwise dispose of the original returned or undeliverable mail. Written notice of the action by the Secretary of State must then be provided by certified mail, return receipt requested, facsimile, or by electronic mail, to the clerk’s office of the court from which the process, notice or demand was issued. The court may order such continuances as may be reasonable to afford the defendant opportunity to defend the action.

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

(g) In the event service of process upon a nonresident defendant cannot be effected through the Secretary of State as provided by this section, service may be made upon the defendant’s insurance company. The plaintiff must file with the clerk of the circuit court an affidavit alleging that the defendant is not a resident of this state; that process directed to the

Secretary of State was sent by registered or certified mail, return receipt requested; that the registered or certified mail was returned to the office of the Secretary of State showing the stamp of the post-office department that delivery was refused or that the notice was unclaimed or that the defendant addressee moved without any forwarding address; and that the Secretary of State has complied with the provisions of subsection (e) of this section. Upon receipt of process the insurance company may, within thirty days, file an answer or other pleading and take any action allowed by law in the name of the defendant.

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

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

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

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

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

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

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

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