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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2015



ENROLLED

COMMITTEE SUBSTITUTE
FOR

House Bill No. 2586

(By Delegate(s) Shott, Lane, Miller, Frich,
Rowan, Fleischauer, Sobonya, Border, Pasdon,
Waxman and Summers)

(By Request of the Supreme Court)



Passed March 11, 2015

In effect ninety days from passage.

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H. B. 2586

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ROWAN, FLEISCHAUER, SOBONYA, BORDER, PASDON,
WAXMAN AND SUMMERS)

[BY REQUEST OF THE SUPREME COURT]

[Passed March 11, 2015;
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AN ACT to amend and reenact §48-27-311 of the Code of West Virginia, 1931, as amended, and to amend said code by adding thereto a new section, designated §56-3-33a, all relating to service of process; actions against nonresident persons by petitioners seeking domestic violence or personal safety relief; and authorizing the Secretary of State to receive process against nonresidents.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.

§48-27-311. Service of process.

1 A protective order may be served:

2 (1) On the respondent by means of a Class I legal
3 advertisement published notice, with the publication area being
4 the most current known county in which the respondent resides,
5 published in accordance with the provisions of section two,
6 article three, chapter fifty-nine of this code if personal service by
7 law-enforcement has been unsuccessful. Simultaneously with the
8 publication, the respondent shall be served with the protective
9 order and the order of publication by first class mail to the
10 respondent's most current known residential address.

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

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

CHAPTER 56. PLEADING AND PRACTICE.

ARTICLE 3. WRITS, PROCESS AND ORDER OF PUBLICATION.

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

8 (A) Committed in this state; or

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

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

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

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

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

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

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

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

43 (A) Such service shall be made by leaving two copies of
44 both the petition and order, with the Secretary of State, or in his
45 or her office, and such service shall be sufficient upon such
46 nonresident: *Provided*, That notice of such service and a copy of
47 the petition and order shall forthwith be sent by registered or
48 certified mail, return receipt requested, by a means which may
49 include electronic issuance and acceptance of electronic return
50 receipts, by the Secretary of State to the respondent at his or her
51 nonresident address and the respondent's return receipt signed
52 by himself or herself or his or her duly authorized agent or the
53 registered or certified mail so sent by the Secretary of State
54 which is refused by the addressee and which registered or
55 certified mail is returned to the Secretary of State, or to his or her
56 office, showing thereon the stamp of the post-office department
57 that delivery has been refused. After receiving verification from
58 the United States Postal Service that acceptance of the notice,
59 petition and order has been signed, the Secretary of State shall
60 notify the clerk's office of the court from which the petition and
61 order were issued by a means which may include electronic
62 notification. If the notice, petition and order were refused or
63 undeliverable by the United States Postal Service, the Secretary
64 of State shall return refused or undeliverable mail to the clerk's

65 office of the court from which the petition and order were issued.
66 If any respondent served with a petition and order fails to appear
67 and defend at the time and place set forth in the order, judgment
68 may be rendered against him or her at any time thereafter. The
69 court may order such continuances as may be reasonable to
70 afford the respondent an opportunity to defend the action or
71 proceeding.

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

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

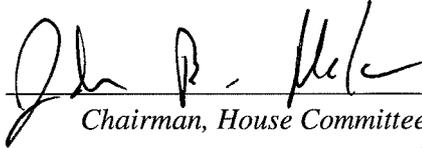
86 (d) The following words and phrases, when used in this
87 section, shall for the purpose of this section and unless a
88 different intent be apparent from the context, have the following
89 meanings:

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

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

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

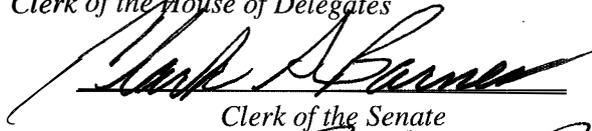

Chairman, House Committee


Chairman, Senate Committee

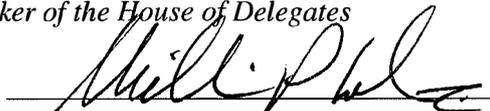
Originating in the House.

In effect ninety days from passage.


Clerk of the House of Delegates


Clerk of the Senate


Speaker of the House of Delegates


President of the Senate

The within is approved this the 27th
day of March, 2015.


Governor

PRESENTED TO THE GOVERNOR

MAR 16 2015

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