

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1957

ENROLLED

SENATE BILL NO. 129

(By Mr. Martin)

PASSED March 8 1957

In Effect 9 days from Passage



ENROLLED

Senate Bill No. 179

(By MR. MARTIN)

[Passed March 8, 1957; in effect ninety days from passage.]

AN ACT to amend and reenact section seventy-one, article one, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the designation of a state official, in some cases the auditor and in other cases the secretary of state, as attorney in fact for all corporations created by virtue of the laws of the state of West Virginia and for all foreign corporations doing business in the state of West Virginia, whether or not authorized to do business herein, with authority to accept service of notices and process on behalf of such corporations and upon whom service of notice and process may be made in this State for and upon every such corporation in

suits or proceedings instituted against such corporations; and prescribing what constitutes doing business by a non-authorized foreign corporation for purposes of serving notices and process upon the auditor and the acceptance thereof by the auditor on behalf of such corporation.

Be it enacted by the Legislature of West Virginia:

That section seventy-one, article one, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 71. *Auditor Attorney in Fact for All Corporations; Manner of Service of Notices and Process Upon Auditor and the Acceptance Thereof; What Constitutes Doing Business in This State for Purposes of This Section; Purposes for Which Secretary of State Constituted Such Attorney in Fact.*

7 The auditor of this state is hereby constituted the
8 attorney in fact for and on behalf of every corporation
9 created by virtue of the laws of this state and every for-
10 eign corporation authorized to do business herein pur-
11 suant to the provisions of sections seventy-nine of this
12 article, with authority to accept service of notice and

13 process on behalf of and upon whom service of notice and
14 process may be made in this state for and upon every
15 such corporation. No act of such corporation appointing
16 the auditor such attorney in fact shall be necessary.
17 Immediately after being served with or accepting any
18 such process or notice, of which process or notice two
19 copies for each defendant shall be furnished the auditor
20 with the original notice or process, the auditor shall file
21 in his office a copy of such process or notice, with a note
22 thereon endorsed of the time of service, or acceptance,
23 as the case may be, and transmit one copy of such process
24 or notice by registered mail to such corporation at the
25 address last furnished by it, as required by law. But no
26 process or notice shall be served on the auditor or ac-
27 cepted by him less than ten days before the return day
28 thereof. Such corporation shall pay the annual fee pre-
29 scribed in article twelve, chapter eleven of this code for
30 the services of the auditor as its attorney in fact.

31 Any foreign corporation which shall do any busi-
32 ness in this state without having been authorized so
33 to do pursuant to the provisions of section seventy-nine

34 of this article shall be conclusively presumed to have
35 appointed the auditor of the state as its attorney in fact
36 with authority to accept service of notice and process on
37 behalf of and upon whom service of notice and process
38 may be made in this state for and upon every such cor-
39 poration in any action or proceeding described in the
40 next following paragraph of this section. No act of such
41 corporation appointing the auditor such attorney in fact
42 shall be necessary. Immediately after being served with
43 or accepting any such process or notice, of which process
44 or notice two copies for each defendant shall be furnished
45 the auditor with the original notice or process, together
46 with a fee of two dollars, the auditor shall file in his
47 office a copy of such process or notice, with a note thereon
48 endorsed of the time of service or acceptance as the case
49 may be, and transmit one copy of such process or notice
50 by registered mail, return receipt requested, to such cor-
51 poration at the address of its principal place of business,
52 which address shall be stated in such process or notice.
53 Such service or acceptance of such process or notice shall
54 be sufficient: *Provided*, That such return receipt shall be

55 signed by an agent or employee of such corporation, or
56 the registered mail so sent by said auditor is refused by
57 the addressee and the registered mail is returned to said
58 auditor, or to his office, showing thereon the stamp of the
59 post office department that delivery thereof has been re-
60 fused, and such return receipt or registered mail is ap-
61 pended to the original process or notice and filed there-
62 with in the clerk's office of the court from which such
63 process or notice was issued. But no such process or no-
64 tice shall be served on the auditor or accepted by him
65 less than ten days before the return date thereof. The
66 court may order such continuances as may be reasonable
67 to afford each defendant opportunity to defend the action
68 or proceeding.

69 For the purposes of this section a foreign corporation
70 not authorized ² to do business in this state pursuant to
71 the provisions of section seventy-nine of this article shall
72 nevertheless be deemed to be doing business herein if
73 such corporation makes a contract to be performed, in
74 whole or in part, by any party thereto, in this state, or
75 if such corporation commits a tort in whole or in part in

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76 this state. The making of such contract or the committing
77 of such tort shall be deemed to be the agreement of such
78 corporation that any notice or process served upon, or
79 accepted by, the auditor pursuant to the next preceding
80 paragraph of this section in any action or proceeding
81 against such corporation arising from, or growing out of,
82 such contract or such tort shall be of the same legal force
83 and validity as process duly served on such corporation
84 in this state.

85 For the purpose of all suits or proceedings instituted,
86 for the collection of license taxes due the state, pursuant
87 to the provisions of section eighty-six, article twelve,
88 chapter eleven of this code, as amended, and for the pur-
89 pose of all other cases where it is the duty of the auditor
90 to collect a debt or claim due the state from corporations,
91 the secretary of state, in lieu of the auditor, is hereby
92 constituted the attorney in fact for such corporations. No
93 act of any such corporation appointing the secretary of
94 state such attorney in fact shall be necessary. All pro-
95 visions in this section relating to the service of process
96 on, or acceptance of process by, the auditor, and the duties

97 imposed upon the auditor, shall apply to the secretary of
98 state in such cases.

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

E. H. McCourt
Chairman Senate Committee

Whittaker
Chairman House Committee

Originated in the Senate.

Takes effect 90 days from passage.

Thomas Hayes
Clerk of the Senate

A. Blankenship
Clerk of the House of Delegates

Ralph J. Bean
President of the Senate

W. Deane
Speaker House of Delegates

The within approved this the 15th
day of March, 1957.

Jeff. Haden
Governor



Filed in the Office of the Secretary of State
of West Virginia MAR 15 1957

D. PITT O'BRIEN
SECRETARY OF STATE