

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1969



ENROLLED

HOUSE BILL No. 831

(By Mr. Watson)



PASSED March 7, 1969

In Effect ninty day f Passage



831

FILED IN THE OFFICE
JOHN D. ROCKEFELLER, IV
SECRETARY OF STATE
THIS DATE 3-12-69

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House Bill No. 831
(By MR. WATSON)

[Passed March 7, 1969; 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 service of process on corporations.

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:

**ARTICLE 1. PROVISIONS RELATING TO CORPORATIONS
GENERALLY.**

§31-1-71. Auditor constituted attorney in fact for all corporations; manner of acceptance or service of notices and process upon auditor; what constitutes doing business in this state for purposes of this section; secretary of state constituted such attorney in fact in proceedings brought by auditor.

1 The auditor of this state is hereby constituted the

2 attorney in fact for and on behalf of every corporation
3 created by virtue of the laws of this state and every
4 foreign corporation authorized to do business herein
5 pursuant to the provisions of section seventy-nine of
6 this article, with authority to accept service of notice
7 and process on behalf of and upon whom service of notice
8 and process may be made in this state for and upon
9 every such corporation. No act of such corporation
10 appointing the auditor such attorney in fact shall be
11 necessary. Immediately after being served with or ac-
12 cepting any such process or notice, of which process
13 or notice two copies for each defendant shall be fur-
14 nished the auditor with the original notice or process,
15 the auditor shall file in his office a copy of such process
16 or notice, with a note thereon endorsed of the time of
17 service, or acceptance, as the case may be, and trans-
18 mit one copy of such process or notice by registered mail
19 to such corporation at the address last furnished by it,
20 as required by law. But no process or notice shall be
21 served on the auditor or accepted by him less than ten
22 days before the return day thereof. Such corporation

23 shall pay the annual fee prescribed in article twelve,
24 chapter eleven of this code for the services of the auditor
25 as its attorney in fact.

26 Any foreign corporation which shall do any business
27 in this state without having been authorized so to do
28 pursuant to the provisions of section seventy-nine of
29 this article shall be conclusively presumed to have ap-
30 pointed the auditor of the state as its attorney in fact
31 with authority to accept service of notice and process
32 on behalf of and upon whom service of notice and
33 process may be made in this state for and upon every
34 such corporation in any action or proceeding described
35 in the next following paragraph of this section. No act
36 of such corporation appointing the auditor such attorney
37 in fact shall be necessary. Immediately after being
38 served with or accepting any such process or notice, of
39 which process or notice two copies for each defendant
40 shall be furnished the auditor with the original notice
41 or process, together with a fee of two dollars, the auditor
42 shall file in his office a copy of such process or notice,
43 with a note thereon endorsed of the time of service or

44 acceptance, as the case may be, and transmit one copy
45 of such process or notice by registered mail, return re-
46 ceipt requested, to such corporation at the address of its
47 principal place of business, which address shall be stated
48 in such process or notice. Such service or acceptance
49 of such process or notice shall be sufficient: *Provided,*
50 That such return receipt shall be signed by an agent
51 or employee of such corporation, or the registered mail
52 so sent by said auditor is refused by the addressee and
53 the registered mail is returned to said auditor, or to his
54 office, showing thereon the stamp of the post office
55 department that delivery thereof has been refused, and
56 such return receipt or registered mail is appended to
57 the original process or notice and filed therewith in the
58 clerk's office of the court from which such process or
59 notice was issued. But no such process or notice shall
60 be served on the auditor or accepted by him less than
61 ten days before the return date thereof. The court may
62 order such continuances as may be reasonable to afford
63 each defendant opportunity to defend the action or
64 proceeding.

65 For the purposes of this section, a foreign corporation
66 not authorized to do business in this state pursuant to
67 the provisions of section seventy-nine of this article
68 shall nevertheless be deemed to be doing business here-
69 in (a) if such corporation makes a contract to be per-
70 formed, in whole or in part, by any party thereto, in
71 this state, (b) if such corporation commits a tort in
72 whole or in part in this state, or, (c) if such corporation
73 manufactures, sells, offers for sale or supplies any
74 product in a defective condition and such product causes
75 injury to any person or property within this state not-
76 withstanding the fact that such corporation had no
77 agents, servants or employees or contracts within this
78 state at the time of said injury. The making of such
79 contract, the committing of such tort or the manufacture
80 or sale, offer of sale or supply of such defective product
81 as hereinabove described shall be deemed to be the
82 agreement of such corporation that any notice or process
83 served upon, or accepted by, the auditor pursuant to
84 the next preceding paragraph of this section in any ac-
85 tion or proceeding against such corporation arising from,

86 or growing out of, such contract, tort, or manufacture
87 or sale, offer of sale or supply of such defective product
88 shall be of the same legal force and validity as process
89 duly served on such corporation in this state.

90 For the purpose of all suits or proceedings instituted
91 for the collection of license taxes due the state, pursuant
92 to the provisions of section eighty-six, article twelve, chap-
93 ter eleven of this code, as amended, and for the purpose
94 of all other cases where it is the duty of the auditor to
95 collect a debt or claim due the state from corporations,
96 the secretary of state, in lieu of the auditor, is hereby
97 constituted the attorney in fact for such corporations.
98 No act of any such corporation appointing the secretary
99 of state such attorney in fact shall be necessary. All
100 provisions in this section relating to the service of pro-
101 cess on, or acceptance of process by, the auditor, and
102 the duties imposed upon the auditor, shall apply to the
103 secretary of state in such cases.

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

William Tompa
Chairman Senate Committee

Phyllis J. Rutledge
Vice Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

Howard Myers
Clerk of the Senate

W.A. Blankenship
Clerk of the House of Delegates

Lloyd Garrison
President of the Senate

Ivor F. Boarsky
Speaker House of Delegates

The within approved this the 14th
day of March, 1969.

Arch W. Shaver, Jr.
Governor



PRESENTED TO THE
GOVERNOR

Date 3/11/69

Time 2:00 p.m.

RECEIVED

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OFFICE OF
SECRETARY OF STATE
STATE OF WEST VIRGINIA