WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2003

ENROLLED
COMMITTEE SUBSTITUTE
FOR
House Bill No. 2239
(By Delegates Boggs and Kuhn)

Passed March 8, 2003
In Effect Ninety Days from Passage
AN ACT to amend and reenact section one thousand five hundred one, article fifteen, chapter thirty-one-d of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section one thousand four hundred one, article fourteen, chapter thirty-one-e of said code; and to amend and reenact section two, article sixteen, chapter forty-seven of said code, all relating to the reporting procedures of collection agencies; providing that certain entities collecting debts originally owed them is not defined as a collection agency; and providing that a foreign corporation may not transact business in this state until it obtains a certificate of authority from the secretary of state, if their business is defined as a collection agency.

Be it enacted by the Legislature of West Virginia:
That section one thousand five hundred one, article fifteen, chapter thirty-one-d of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section one thousand four hundred one, article fourteen, chapter thirty-one-e of said code be amended and reenacted; and that section two, article sixteen, chapter forty-seven of said code be amended and reenacted, all to read as follows:

CHAPTER 31D. WEST VIRGINIA BUSINESS CORPORATION ACT.

ARTICLE 15. FOREIGN CORPORATIONS.


(a) A foreign corporation may not conduct affairs in this state until it obtains a certificate of authority from the secretary of state.

(b) The following activities, among others, do not constitute conducting affairs within the meaning of subsection (a) of this section:

(1) Maintaining, defending or settling any proceeding;

(2) Holding meetings of the board of directors or shareholders or carrying on other activities concerning internal corporate affairs;

(3) Maintaining bank accounts;

(4) Selling through independent contractors;

(5) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;
(6) Creating or acquiring indebtedness, mortgages and security interests in real or personal property;

(7) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts: Provided, That this exemption does not include debts collected by collection agencies as defined in subdivision (b), section two, article sixteen, chapter forty-seven of this code;

(8) Owning, without more, real or personal property;

(9) Conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like nature;

(10) Conducting affairs in interstate commerce;

(11) Granting funds or other gifts;

(12) Distributing information to its shareholders or members;

(13) Effecting sales through independent contractors;

(14) The acquisition by purchase of lands secured by mortgage or deeds;

(15) Physical inspection and appraisal of property in West Virginia as security for deeds of trust, or mortgages and negotiations for the purchase of loans secured by property in West Virginia; and

(16) The management, rental, maintenance and sale or the operating, maintaining, renting or otherwise dealing with selling or disposing of property acquired under foreclosure sale or by agreement in lieu of foreclosure sale.
(c) The list of activities in subsection (b) of this section is not exhaustive.

(d) A foreign corporation is deemed to be transacting business in this state if:

1. The corporation makes a contract to be performed, in whole or in part, by any party thereto in this state;

2. The corporation commits a tort, in whole or in part, in this state; or

3. The corporation manufactures, sells, offers for sale or supplies any product in a defective condition and that product causes injury to any person or property within this state notwithstanding the fact that the corporation had no agents, servants or employees or contacts within this state at the time of the injury.

(e) A foreign corporation’s making of a contract, the committing of a manufacture or sale, offer of sale or supply of defective product as described in subsection (d) of this section is deemed to be the agreement of that foreign corporation that any notice or process served upon, or accepted by, the secretary of state in a proceeding against that foreign corporation arising from, or growing out of, contract, tort or manufacture or sale, offer of sale or supply of the defective product has the same legal force and validity as process duly served on that corporation in this state.

CHAPTER 31E. WEST VIRGINIA NONPROFIT CORPORATION ACT.

ARTICLE 14. FOREIGN CORPORATIONS.

§31E-14-1401. Authority to conduct affairs required.
(a) A foreign corporation may not conduct affairs in this state until it obtains a certificate of authority from the secretary of state.

(b) The following activities, among others, do not constitute conducting affairs within the meaning of subsection (a) of this section:

1. Maintaining, defending, or settling any proceeding;
2. Holding meetings of the board of directors or members or carrying on other activities concerning internal corporate affairs;
3. Maintaining bank accounts;
4. Selling through independent contractors;
5. Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;
6. Creating or acquiring indebtedness, mortgages, and security interests in real or personal property: Provided, That this exemption does not include debts collected by collection agencies as defined in subdivision (b), section two, article sixteen, chapter forty-seven of this code;
7. Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;
8. Owning, without more, real or personal property;
9. Conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like nature;
10. Conducting affairs in interstate commerce;
(11) Granting funds or other gifts;

(12) Distributing information to its shareholders or members;

(13) Effecting sales through independent contractors;

(14) The acquisition by purchase of lands secured by mortgage or deeds;

(15) Physical inspection and appraisal of property in West Virginia as security for deeds of trust, or mortgages and negotiations for the purchase of loans secured by property in West Virginia; and

(16) The management, rental, maintenance and sale; or the operating, maintaining, renting or otherwise, dealing with selling or disposing of property acquired under foreclosure sale or by agreement in lieu of foreclosure sale.

(c) The list of activities in subsection (b) of this section is not exhaustive.

(d) A foreign corporation is to be deemed to be conducting affairs in this state if:

(1) The corporation makes a contract to be performed, in whole or in part, by any party thereto, in this state;

(2) The corporation commits a tort, in whole or in part, in this state; or

(3) The corporation manufactures, sells, offers for sale or supplies any product in a defective condition and that product causes injury to any person or property within this state notwithstanding the fact that the corporation had no agents, servants or employees or contacts within this state at the time of the injury.
(e) A foreign corporation’s making of a contract, the
committing of a manufacture or sale, offer of sale or supply of
defective product as described in subsection (d) of this section
is deemed to be the agreement of that foreign corporation that
any notice or process served upon, or accepted by, the secretary
of state in a proceeding against that foreign corporation arising
from, or growing out of, contract, tort, or manufacture or sale,
offer of sale or supply of the defective product has the same
legal force and validity as process duly served on that corpora-
tion in this state.

CHAPTER 47. REGULATION OF TRADE.

ARTICLE 16. COLLECTION AGENCIES.

§47-16-2. Definitions.

1 The following words and terms as used in this article shall
2 be construed as follows:

3 (a) “Claim” means any obligation for the payment of
4 money due or asserted to be due to another person, firm,
corporation or association.

5 (b) “Collection agency” means and includes all persons,
6 firms, corporations and associations: (1) Directly or indirectly
7 engaged in the business of soliciting from or collecting for
8 others any account, bill or indebtedness originally due or
9 asserted to be owed or due another and all persons, firms,
corporations and associations directly or indirectly engaged in
10 asserting, enforcing or prosecuting those claims; (2) which, in
11 attempting to collect or in collecting his, or her or its own
12 accounts or claims uses a fictitious name or names other than
13 his, or her or its own name; (3) which attempts to or does give
14 away or sell to others any system or series of letters or forms
15 for use in the collection of accounts or claims which assert or
16 indicate directly or indirectly that the claims or accounts are
being asserted or collected by any person, firm, corporation or association other than the creditor or owner of the claim or account; or (4) directly or indirectly engaged in the business of soliciting, or who holds himself or herself out as engaged in the business of soliciting, debts of any kind owed or due, or asserted to be owed or due, to any solicited person, firm, corporation or association for fee, commission or other compensation.

The term “collection agency” shall not mean or include: (1) Regular employees of a single creditor or of a collection agency licensed hereunder; (2) banks; (3) trust companies; (4) savings and loan associations; (5) building and loan associations; (6) industrial loan companies; (7) small loan companies; (8) abstract companies doing an escrow business; (9) duly licensed real estate brokers or agents when the claims or accounts being handled by such broker or agent are related to or in connection with such brokers’ or agents’ regular real estate business; (10) express and telegraph companies subject to public regulation and supervision; (11) attorneys-at-law handling claims and collections in their own names and not operating a collection agency under the management of a layman; (12) any person, firm, corporation or association acting under the order of any court of competent jurisdiction; or (13) any person collecting a debt owed to another person only where: (A) Both persons are related by wholly-owned, common ownership or affiliated by wholly-owned corporate control; (B) the person collecting the debt acts only on behalf of persons related as described in paragraph (A) of this subdivision; and (C) debt collection is not the principal business of the person collecting the debt.

(c) “Commissioner” means the state tax commissioner or his or her agent.
(d) "Customer" means any person, firm, corporation or association who has filed, assigned or sold any claim or chose in action with or to a collection agency for collection.

(e) "Licensee" means any person holding a business franchise registration certificate under section two, article twelve, chapter eleven of this code and under the provisions of this article.

(f) "Trust account" means a special account established by a collection agency with a banking institution in this state, wherein funds collected on behalf of a customer shall be deposited.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect ninety days from passage

Chair of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within approved this the 27th day of March 2003.

Governor