

SB 531 s

FILED

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
**SEVENTY-EIGHTH LEGISLATURE**  
**REGULAR SESSION, 2007**

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**ENROLLED**

**Senate Bill No. 531**

(BY SENATOR KESSLER)

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[Passed March 2, 2007; in effect ninety days from passage.]

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AN ACT to amend and reenact §31D-5-504 of the Code of West Virginia, 1931, as amended, relating to the process of filing with the office of the Secretary of State service of process on corporations in class action suits.

*Be it enacted by the Legislature of West Virginia:*

That §31D-5-504 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 5. OFFICE AND AGENT.**

**§31D-5-504. Service on corporation.**

1 (a) A corporation's registered agent is the  
2 corporation's agent for service of process, notice or  
3 demand required or permitted by law to be served on  
4 the corporation.

5 (b) If a corporation has no registered agent, or the  
6 agent cannot with reasonable diligence be served, the  
7 corporation may be served by registered or certified  
8 mail, return receipt requested, addressed to the  
9 secretary of the corporation at its principal office.  
10 Service is perfected under this subsection at the earliest  
11 of:

12 (1) The date the corporation receives the mail;

13 (2) The date shown on the return receipt, if signed on  
14 behalf of the corporation; or

15 (3) Five days after its deposit in the United States  
16 mail, as evidenced by the postmark, if mailed postpaid  
17 and correctly addressed.

18 (c) In addition to the methods of service on a  
19 corporation provided in subsections (a) and (b) of this  
20 section, the Secretary of State is hereby constituted the  
21 attorney-in-fact for and on behalf of each corporation  
22 created pursuant to the provisions of this chapter. The  
23 Secretary of State has the authority to accept service of  
24 notice and process on behalf of each corporation and is  
25 an agent of the corporation upon whom service of notice  
26 and process may be made in this state for and upon each  
27 corporation. No act of a corporation appointing the  
28 Secretary of State as attorney-in-fact is necessary.  
29 Service of any process, notice or demand on the  
30 Secretary of State may be made by delivering to and  
31 leaving with the Secretary of State the original process,

32 notice or demand and two copies of the process, notice  
33 or demand for each defendant, along with the fee  
34 required by section two, article one, chapter fifty-nine  
35 of this code: *Provided*, That with regard to a class  
36 action suit in which all defendants are to be served with  
37 the same process, notice or demand, service may be  
38 made by filing with the Secretary of State the original  
39 process, notice or demand and one copy for each named  
40 defendant. Immediately after being served with or  
41 accepting any process or notice, the Secretary of State  
42 shall: (1) File in his or her office a copy of the process or  
43 notice, endorsed as of the time of service or acceptance;  
44 and (2) transmit one copy of the process or notice by  
45 registered or certified mail, return receipt requested, to:  
46 (A) The corporation's registered agent; or (B) if there is  
47 no registered agent, to the individual whose name and  
48 address was last given to the Secretary of State's office  
49 as the person to whom notice and process are to be sent  
50 and if no person has been named, to the principal office  
51 of the corporation as that address was last given to the  
52 Secretary of State's office. Service or acceptance of  
53 process or notice is sufficient if return receipt is signed  
54 by an agent or employee of the corporation, or the  
55 registered or certified mail sent by the Secretary of  
56 State is refused by the addressee and the registered or  
57 certified mail is returned to the Secretary of State, or to  
58 his or her office, showing the stamp of the United States  
59 Postal Service that delivery has been refused, and the  
60 return receipt or registered or certified mail is appended  
61 to the original process or notice and filed in the clerk's  
62 office of the court from which the process or notice was  
63 issued. No process or notice may be served on the  
64 Secretary of State or accepted by him or her less than  
65 ten days before the return day of the process or notice.  
66 The court may order continuances as may be reasonable  
67 to afford each defendant opportunity to defend the

68 action or proceedings.

69 (d) This section does not prescribe the only means, or  
70 necessarily the required means, of serving a  
71 corporation.

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

*Candy White*  
.....  
Chairman Senate Committee

*[Signature]*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*Russell Holmes*  
.....  
Clerk of the Senate

*Suzanne S. Smith*  
.....  
Clerk of the House of Delegates

*Carl Ray Tomblin*  
.....  
President of the Senate

*[Signature]*  
.....  
Speaker House of Delegates

The within *is approved* ..... this  
the *16<sup>th</sup>* Day of *March* ..... 2007.

*[Signature]*  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

MAR 14 2007

Time 3:15 pm