

HB # 2239

FILED
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OFFICE WEST VIRGINIA
SECRETARY OF STATE

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



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OFFICE WEST VIRGINIA
SECRETARY OF STATE

E N R O L L E D

COMMITTEE SUBSTITUTE

FOR

H. B. 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.

**§31D-15-1501. Authority to transact business and jurisdiction
over foreign corporations.**

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

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

7 (1) Maintaining, defending or settling any proceeding;

8 (2) Holding meetings of the board of directors or sharehold-
9 ers or carrying on other activities concerning internal corporate
10 affairs;

11 (3) Maintaining bank accounts;

12 (4) Selling through independent contractors;

13 (5) Soliciting or obtaining orders, whether by mail or
14 through employees or agents or otherwise, if the orders require
15 acceptance outside this state before they become contracts;

16 (6) Creating or acquiring indebtedness, mortgages and
17 security interests in real or personal property;

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

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

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

27 (10) Conducting affairs in interstate commerce;

28 (11) Granting funds or other gifts;

29 (12) Distributing information to its shareholders or mem-
30 bers;

31 (13) Effecting sales through independent contractors;

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

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

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

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

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

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

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

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

56 (e) A foreign corporation's making of a contract, the
57 committing of a manufacture or sale, offer of sale or supply of
58 defective product as described in subsection (d) of this section
59 is deemed to be the agreement of that foreign corporation that
60 any notice or process served upon, or accepted by, the secretary
61 of state in a proceeding against that foreign corporation arising
62 from, or growing out of, contract, tort or manufacture or sale,
63 offer of sale or supply of the defective product has the same
64 legal force and validity as process duly served on that corpora-
65 tion in this state.

CHAPTER 31E. WEST VIRGINIA NONPROFIT CORPORATION ACT.

ARTICLE 14. FOREIGN CORPORATIONS.

§31E-14-1401. Authority to conduct affairs required.

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

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

7 (1) Maintaining, defending, or settling any proceeding;

8 (2) Holding meetings of the board of directors or members
9 or carrying on other activities concerning internal corporate
10 affairs;

11 (3) Maintaining bank accounts;

12 (4) Selling through independent contractors;

13 (5) Soliciting or obtaining orders, whether by mail or
14 through employees or agents or otherwise, if the orders require
15 acceptance outside this state before they become contracts;

16 (6) Creating or acquiring indebtedness, mortgages, and
17 security interests in real or personal property: *Provided*, That
18 this exemption does not include debts collected by collection
19 agencies as defined in subdivision (b), section two, article
20 sixteen, chapter forty-seven of this code;

21 (7) Securing or collecting debts or enforcing mortgages and
22 security interests in property securing the debts;

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

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

27 (10) Conducting affairs in interstate commerce;

28 (11) Granting funds or other gifts;

29 (12) Distributing information to its shareholders or mem-
30 bers;

31 (13) Effecting sales through independent contractors;

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

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

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

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

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

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

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

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

56 (e) A foreign corporation's making of a contract, the
57 committing of a manufacture or sale, offer of sale or supply of
58 defective product as described in subsection (d) of this section
59 is deemed to be the agreement of that foreign corporation that
60 any notice or process served upon, or accepted by, the secretary
61 of state in a proceeding against that foreign corporation arising
62 from, or growing out of, contract, tort, or manufacture or sale,
63 offer of sale or supply of the defective product has the same
64 legal force and validity as process duly served on that corpora-
65 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,
5 corporation or association.

6 (b) "Collection agency" means and includes all persons,
7 firms, corporations and associations: (1) Directly or indirectly
8 engaged in the business of soliciting from or collecting for
9 others any account, bill or indebtedness originally due or
10 asserted to be owed or due another and all persons, firms,
11 corporations and associations directly or indirectly engaged in
12 asserting, enforcing or prosecuting those claims; (2) which, in
13 attempting to collect or in collecting his, or her or its own
14 accounts or claims uses a fictitious name or names other than
15 his, or her or its own name; (3) which attempts to or does give
16 away or sell to others any system or series of letters or forms
17 for use in the collection of accounts or claims which assert or
18 indicate directly or indirectly that the claims or accounts are

19 being asserted or collected by any person, firm, corporation or
20 association other than the creditor or owner of the claim or
21 account; or (4) directly or indirectly engaged in the business of
22 soliciting, or who holds himself or herself out as engaged in the
23 business of soliciting, debts of any kind owed or due, or
24 asserted to be owed or due, to any solicited person, firm,
25 corporation or association for fee, commission or other com-
26 pensation.

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

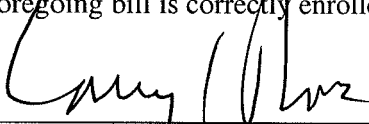
48 (c) “Commissioner” means the state tax commissioner or
49 his or her agent.

50 (d) "Customer" means any person, firm, corporation or
51 association who has filed, assigned or sold any claim or chose
52 in action with or to a collection agency for collection.

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

57 (f) "Trust account" means a special account established by
58 a collection agency with a banking institution in this state,
59 wherein funds collected on behalf of a customer shall be
60 deposited.

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



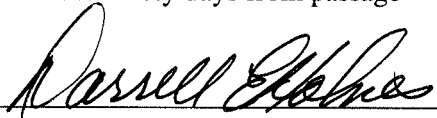
Chairman Senate Committee



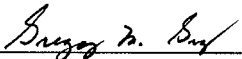
Chairman House Committee

Originating in the House.

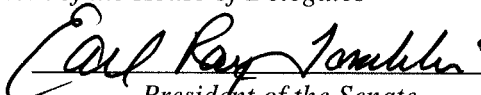
In effect ninety days from passage



Clerk of the Senate



Clerk of the House of Delegates

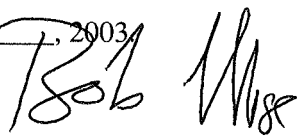


President of the Senate



Speaker of the House of Delegates

The within is approved this the 27th
day of March, 2003



Governor

PRESENTED TO THE
GOVERNOR

Date 3/24/03

Time 10:35hr