WEST VIRGINIA CODE CHAPTER 31E ARTICLE 14

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§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;

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(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; and

(17) Applying for withholding tax on an employee residing in the State of West Virginia who works for the foreign corporation in another state.

(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 corporation in this state.

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§31E-14-1402. Consequences of conducting affairs without authority.

(a) A foreign corporation conducting affairs in this state without a certificate of authority may not maintain a proceeding in any circuit court in this state until it obtains a certificate of authority.

(b) The successor to a foreign corporation that conducted affairs in this state without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any circuit court in this state until the foreign corporation or its successor obtains a certificate of authority.

(c) A circuit court may stay a proceeding commenced by a foreign corporation, its successor, or assignee until it determines whether the foreign corporation or its successor requires a certificate of authority. If it so determines, the circuit court may further stay the proceeding until the foreign corporation or its successor obtains the certificate.

(d) A foreign corporation which conducts affairs or does or transacts business in this state without a certificate of authority is liable to this state, for the years or parts of years during which it conducted affairs or did or transacted business in this state without a certificate of authority in an amount equal to all fees and taxes which would have been imposed by this chapter, or by any other provision of this code, upon the corporation had it duly applied for and received a certificate of authority to conduct affairs or do or transact business in this state as required by this article and had filed all reports, statements or returns required by this chapter or by any other chapter of this code, plus all penalties imposed for failure to pay any fees and taxes.

(e) Notwithstanding subsections (a) and (b) of this section, the failure of a foreign corporation to obtain a certificate of authority does not impair the validity of its corporate acts or prevent it from defending any proceeding in this state.

(f) A foreign corporation conducting affairs in this state without a certificate of authority is conclusively presumed to have appointed the Secretary of State as its attorney-in-fact to accept service of process and notice on behalf of the foreign corporation as provided in subsection (d), section one thousand four hundred ten of this article.

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§31E-14-1403. Application for certificate of authority.

(a) A foreign corporation may apply for a certificate of authority to conduct affairs in this state by delivering an application to the Secretary of State for filing. The application must set forth:

(1) The name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of section one thousand four hundred six of this article;

(2) The name of the state or country under whose law it is incorporated;

(3) Its date of incorporation and period of duration;

(4) The mailing address of its principal office;

(5) The address of its registered office in this state, if any, and the name of its registered agent at that office, if any;

(6) The names and usual addresses of its current directors and officers;

(7) The purpose or purposes of the corporation which it proposes to pursue in conducting its affairs or doing or transacting its business in this state; and

(8) An e-mail address where informational notices and reminders of annual filings may be sent, unless there is a technical inability to comply.

(b) The foreign corporation shall deliver with the completed application a certificate of existence, or a document of similar import, duly authenticated by the Secretary of State or other official having custody of corporate records in the state or country under whose law it is incorporated.

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§31E-14-1404. Amended certificate of authority.

(a) A foreign corporation authorized to conduct affairs in this state must obtain an amended certificate of authority from the Secretary of State if it changes:

(1) Its corporate name;

(2) The period of its duration; or

(3) The state or country of its incorporation.

(b) The requirements of section one thousand four hundred three of this article for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

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§31E-14-1405. Effect of certificate of authority.

(a) A certificate of authority authorizes the foreign corporation to which it is issued to conduct affairs in this state subject to the right of the state to revoke the certificate as provided in this chapter.

(b) A foreign corporation with a valid certificate of authority has the same rights and has the same privileges as, and except as otherwise provided by this chapter is subject to the same duties, restrictions, penalties, and liabilities as, a domestic corporation of like character.

(c) This chapter does not authorize this state to regulate the organization or internal affairs of a foreign corporation authorized to conduct affairs in this state.

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§31E-14-1406. Corporate name of foreign corporation.

(a) If the corporate name of a foreign corporation does not satisfy the requirements of section four hundred one, article four of this chapter, the foreign corporation to obtain or maintain a certificate of authority to conduct affairs in this state:

(1) May add the word "corporation," "incorporated," "company," or "limited," or the abbreviation "corp.," "inc.," "co.," or "ltd.," to its corporate name for use in this state; or

(2) May use a fictitious name to transact business in this state if its real name is unavailable and it delivers to the Secretary of State for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

(b) Except as authorized by subsections (c) and (d) of this section, the corporate name, including a fictitious name, of a foreign corporation must be distinguishable upon the records of the Secretary of State from:

(1) The corporate name of a corporation incorporated or authorized to conduct affairs in this state;

(2) A corporate name reserved or registered under sections four hundred three or four hundred four, article four of this chapter;

(3) The fictitious name of another foreign corporation authorized to transact business in this state;

(4) The corporate name of a business corporation incorporated or authorized to transact business in this state; and

(5) The name of any other entity whose name is carried in the records of the Secretary of State.

(c) A foreign corporation may apply to the Secretary of State for authorization to use in this state the name of another corporation incorporated or authorized to transact business in this state that is not distinguishable upon his or her records from the name applied for. The Secretary of State shall authorize use of the name applied for if:

(1) The other corporation consents to the use in writing and submits an undertaking in form satisfactory to the Secretary of State to change the name so that it is distinguishable upon the records of the Secretary of State from the name applied for; or

(2) The applicant delivers to the Secretary of State a certified copy of a final judgment of a circuit court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(d) A foreign corporation may use in this state the name, including the fictitious name, of

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another domestic or foreign corporation that is used in this state if the other corporation is incorporated or authorized to conduct affairs in this state and the foreign corporation:

(1) Has merged with the other corporation;

(2) Has been formed by reorganization of the other corporation; or

(3) Has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(e) If a foreign corporation authorized to conduct affairs in this state changes its corporate name to one that does not satisfy the requirements of section four hundred one, article four of this chapter, it may not conduct affairs in this state under the changed name until it adopts a name satisfying the requirements of section four hundred one, article four of this chapter and obtains an amended certificate of authority under section one thousand four hundred four of this article.

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§31E-14-1407. Registered office and registered agent of foreign corporation.

Each foreign corporation authorized to conduct affairs in this state may continuously maintain in this state:

(1) A registered office that may be the same as any of its places of business; and

(2) A registered agent, who may be:

(A) An individual who resides in this state and whose business office is identical with the registered office;

(B) A domestic corporation or domestic business corporation whose business office is identical with the registered office; or

(C) A foreign corporation or foreign business corporation authorized to transact business in this state whose business office is identical with the registered office.

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§31E-14-1408. Change of registered office or registered agent of foreign corporation.

(a) A foreign corporation authorized to conduct affairs in this state may change its registered office or registered agent by delivering to the Secretary of State for filing a statement of change that sets forth:

(1) Its name;

(2) The mailing address of its current registered office;

(3) If the current registered office is to be changed, the mailing address of its new registered office;

(4) The name of its current registered agent;

(5) If the current registered agent is to be changed, the name of its new registered agent and the new agent's written consent, either on the statement or attached to it, to the appointment; and

(6) That after the change or changes are made, the mailing addresses of its registered office and the business office of its registered agent will be identical.

(b) If a registered agent changes the mailing address of his or her business office, he or she may change the mailing address of the registered office of any foreign corporation for which he or she is the registered agent by notifying the corporation in writing of the change and signing, either manually or in facsimile, and delivering to the Secretary of State for filing a statement of change that complies with the requirements of subsection (a) of this section and recites that the corporation has been notified of the change.

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§31E-14-1409. Resignation of registered agent of foreign corporation.

(a) The registered agent of a foreign corporation may resign his or her agency appointment by signing and delivering to the Secretary of State for filing a statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued.

(b) After filing the statement, the Secretary of State shall mail a copy of the filed statement of resignation and receipt to the corporation at its principal office.

(c) The agency appointment is terminated, and the registered office discontinued if provided in the statement of registration, on the thirty-first day after the date on which the statement was filed.

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§31E-14-1410. Service on foreign corporation.

(a) The registered agent of a foreign corporation authorized to conduct activities in this state is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the foreign corporation.

(b) A foreign corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the foreign corporation at its principal office shown in its application for a certificate of authority or in its most recent return required pursuant to section three, article twelve-c, chapter eleven of this code if the foreign corporation:

(1) Has no registered agent or its registered agent cannot with reasonable diligence be served;

(2) Has withdrawn from conducting activities in this state under section one thousand four hundred twenty of this article; or

(3) Has had its certificate of authority revoked under section one thousand four hundred thirty-one of this article.

(c)Service is perfected under subsection (b) of this section at the earliest of:

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

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

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

(d) In addition to the methods of service on a foreign corporation provided in subsections (a) and (b) of this section, the Secretary of State is hereby constituted the attorney-in-fact for and on behalf of each foreign corporation authorized to conduct affairs in this state pursuant to the provisions of this chapter. The Secretary of State has the authority to accept service of notice and process on behalf of each corporation and is an agent of the corporation upon whom service of notice and process may be made in this state for and upon each corporation. No act of a corporation appointing the Secretary of State as attorney-in-fact is necessary. Service of any process, notice or demand on the Secretary of State may be made by delivering to and leaving with the Secretary of State the original process, notice or demand and two copies of the process, notice or demand for each defendant, along with the fee required by section two, article one, chapter fifty-nine of this code. Immediately after being served with or accepting any process or notice, the Secretary of State shall: (1) File in his or her office a copy of the process or notice, endorsed as of the time of service, or acceptance; (2) transmit one copy of the process or notice by registered or certified mail, return receipt requested, by a means which may include electronic issuance and acceptance of electronic return receipts, to: (A) The foreign corporation's registered agent; or (B) if there is no registered agent, to the individual whose name and address was last given to the

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Secretary of State's office as the person to whom notice and process are to be sent, and if no person has been named, to the principal office of the foreign corporation as that address was last given to the Secretary of State's office. If no address is available on record with the Secretary of State, then to the address provided on the original process, notice or demand, if available; and (3) transmit the original process, notice or demand to the clerk's office of the court from which the process, notice or demand was issued. Service or acceptance of process or notice is sufficient if return receipt is signed by an agent or employee of the corporation, or the registered or certified mail sent by the Secretary of State is refused by the addressee and the registered or certified mail is returned to the Secretary of State, or to his or her office, showing the stamp of the United States postal service that delivery has been refused, and the return receipt or registered or certified mail is received by the Secretary of State by a means which may include electronic issuance and acceptance of electronic return receipts. After receiving verification from United States postal service that acceptance of process, notice or demand has been accepted, the Secretary of State shall notify the clerk's office of the court from which the process, notice or demand was issued by means which may include electronic notification. If the process, notice or demand was refused or undeliverable by the United States postal service the Secretary of State shall return the refused or undeliverable mail to the clerk's office of the court from which the process, notice or demand was issued. No process or notice may be served on the Secretary of State or accepted by him or her less than ten days before the return day of the process or notice. The court may order continuances as may be reasonable to afford each defendant opportunity to defend the action or proceedings.

(e) Any foreign corporation conducting affairs in this state without having been authorized to do so pursuant to the provisions of this chapter is conclusively presumed to have appointed the Secretary of State as its attorney-in-fact with authority to accept service of notice and process on behalf of the corporation and upon whom service of notice and process may be made in this state for and upon the corporation in any action or proceeding arising from activities described in section one thousand four hundred one of this article. No act of a corporation appointing the Secretary of State as its attorney-in-fact is necessary. Immediately after being served with or accepting any process or notice, of which process or notice two copies for each defendant are to be furnished to the Secretary of State with the original notice or process, together with the fee required by section two, article one, chapter fifty-nine of this code, the Secretary of State shall file in his or her office a copy of the process or notice, with a note endorsed of the time of service or acceptance, and transmit one copy of the process or notice by registered or certified mail, return receipt requested, by a means which may include electronic issuance and acceptance of electronic return receipts, to the corporation at the address of its principal office, which address shall be stated in the process or notice. The service or acceptance of process or notice is sufficient if the return receipt is signed by an agent or employee of the corporation, or the registered or certified mail sent by the Secretary of State is refused by the addressee and the registered or certified mail is returned to the Secretary of State, or to his or her office, showing thereon the stamp of the United States postal service that delivery thereof has been refused, and the return receipt or registered or certified mail is received by the Secretary of State by a means

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which may include electronic issuance and acceptance of electronic return receipts. After receiving verification from the United States postal service that acceptance of process, notice or demand has been signed, the Secretary of State shall notify the clerk's office of the court from which the process, notice or demand was issued by a means which may include electronic notification. If the process, notice or demand was refused or undeliverable by the United States postal service the Secretary of State shall return refused or undeliverable mail to the clerk's office of the court from which the process, notice or demand was issued. No process or notice may be served on the Secretary of State or accepted by him or her less than ten days before the return date thereof. The court may order continuances as may be reasonable to afford each defendant opportunity to defend the action or proceedings.

(f) This section does not prescribe the only means, or necessarily the required means, of serving a foreign corporation.

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PART 2. WITHDRAWAL.

§31E-14-1420. Withdrawal of foreign corporation.

(a) A foreign corporation authorized to conduct activities in this state may not withdraw from this state until it obtains a certificate of withdrawal from the Secretary of State.

(b) A foreign corporation authorized to conduct activities in this state may apply for a certificate of withdrawal by delivering an application to the Secretary of State for filing. The application must set forth:

(1) The name of the foreign corporation and the name of the state or country under whose law it is incorporated;

(2) That it is not conducting activities in this state and that it surrenders its authority to conduct activities in this state;

(3) That it revokes the authority of its registered agent to accept service on its behalf and appoints the Secretary of State as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to conduct activities in this state;

(4) A mailing address to which the Secretary of State may mail a copy of any process served on him or her under subdivision (3) of this subsection; and

(5) A commitment to notify the Secretary of State in the future of any change in its mailing address.

(c) After the withdrawal of the corporation is effective, service of process on the Secretary of State under this section is service on the foreign corporation. Upon receipt of process, the Secretary of State shall mail a copy of the process to the foreign corporation at the mailing address set forth under subsection (b) of this section.

(d) The Secretary of State shall withhold the issuance of any certificate of withdrawal until the receipt by the Secretary of State of a notice from the Tax Commissioner and Bureau of Employment Programs to the effect that all taxes due from the corporation under the provisions of chapter eleven of this code, including, but not limited to, taxes withheld under the provisions of section seventy-one, article twenty-one, chapter eleven of this code, all business and occupation taxes, motor carrier and transportation privilege taxes, gasoline taxes, consumer sales taxes and any and all license franchise or other excise taxes and corporate net income taxes, and employment security payments levied or assessed against the corporation seeking to dissolve have been paid or that payment has been provided for, or until the Secretary of State received a notice from the Tax Commissioner or Bureau of Employment Programs, as the case may be, stating that the corporation in question is not subject to payment of any taxes or to the making of any employment security payments or

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assessments.

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§31E-14-1421. Revocation of withdrawal.

(a) A corporation may revoke its withdrawal within one hundred twenty days of its effective date.

(b) Revocation of withdrawal must be authorized in the same manner as the withdrawal was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the withdrawal without shareholder action.

(c) After the revocation of withdrawal is authorized, the corporation may revoke the withdrawal by delivering to the Secretary of State for filing articles of revocation of withdrawal, together with a copy of its application of withdrawal, that sets forth:

(1) The name of the corporation;

(2) The effective date of the withdrawal that was revoked;

(3) The date that the revocation of withdrawal was authorized;

(4) If the corporation's board of directors or incorporators revoked the withdrawal, a statement to that effect; and

(5) If the corporation's board of directors revoked the withdrawal authorized by the shareholders, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization.

(d) Revocation of withdrawal is effective upon the effective date of the articles of revocation of withdrawal.

(e) When the revocation of withdrawal is effective, it relates back to and takes effect as of the effective date of the withdrawal and the corporation resumes carrying on its business as if withdrawal had never occurred.

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§31E-14-1430. Grounds for revocation.

The Secretary of State may commence a proceeding under section one thousand four hundred thirty-one of this article to revoke the certificate of authority of a foreign corporation authorized to conduct activities in this state if:

(1) The foreign corporation does not pay within sixty days after they are due any fees, franchise taxes or penalties imposed by this chapter or other law;

(2) The foreign corporation does not inform the Secretary of State under sections one thousand four hundred eight or one thousand four hundred nine of this article that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within sixty days of the change, resignation or discontinuance;

(3) An incorporator, director, officer or agent of the foreign corporation signed a document he or she knew was false in any material respect with intent that the document be delivered to the Secretary of State for filing;

(4) The Secretary of State receives a duly authenticated certificate from the Secretary of State or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or disappeared as the result of a merger;

(5) The professional license of one or more of the license holders is revoked by a professional licensing board and the license is or all the licenses are required for the continued operation of the corporation; or

(6) The foreign corporation is in default with the Bureau of Employment Programs as provided in section six, article two, chapter twenty-one-a of this code.

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§31E-14-1431. Procedure for and effect of revocation.

(a) If the Secretary of State determines that one or more grounds exist under section one thousand four hundred thirty of this article for revocation of a certificate of authority, he or she shall serve the foreign corporation with written notice of his or her determination pursuant to section one thousand four hundred ten of this article.

(b) If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within sixty days after service of the notice is perfected pursuant to section one thousand four hundred ten of this article, the Secretary of State may revoke the foreign corporation's certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the foreign corporation pursuant to section one thousand four hundred ten of this article.

(c) The authority of a foreign corporation to transact business in this state ceases on the date shown on the certificate revoking its certificate of authority.

(d) The Secretary of State's revocation of a foreign corporation's certificate of authority appoints the Secretary of State the foreign corporation's agent for service of process in any proceeding based on a cause of action which arose during the time the foreign corporation was authorized to transact business in this state. Service of process on the Secretary of State under this subsection is service on the foreign corporation. Upon receipt of process, the Secretary of State shall mail a copy of the process to the secretary of the foreign corporation at its principal office shown in its most recent return required pursuant to section three, article twelve-c, chapter eleven of this code or in any subsequent communication received from the corporation stating the current mailing address of its principal office, or, if none are on file, in its application for a certificate of authority.

(e) Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the corporation.

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§31E-14-1432. Reinstatement following administrative revocation.

(a) A corporation that has had its certificate of authority administratively revoked under section one thousand four hundred thirty-one of this article may apply to the Secretary of State for reinstatement within two years after the effective date of revocation. The application must:

(1) Recite the name of the corporation and the effective date of the administrative revocation;

(2) Demonstrate that the ground or grounds for revocation have been eliminated;

(3) Demonstrate that the corporation's name satisfies the requirements of section one thousand four hundred six, article fifteen of this chapter; and

(4) Obtain a certificate from the Tax Commissioner reciting that all taxes owed by the corporation have been paid.

(b) If the Secretary of State determines that the application contains the information required by subsection (a) of this section and that the information is accurate, the Secretary of State shall cancel the Certificate of Revocation and prepare a Certificate of Reinstatement that recites the Secretary of State's determination and the effective date of reinstatement. The Secretary of State shall send notice of the reinstatement to the corporation within thirty days of the determination.

(c) When a reinstatement is granted, the reinstatement relates back to and takes effect as of the effective date of the administrative revocation and the corporation resumes its business as if the administrative revocation had never occurred.

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§31E-14-1533. Appeal from denial of reinstatement.

(a) If the Secretary of State denies a corporation's application for reinstatement following administrative revocation, the Secretary of State shall notify the corporation within thirty days of application by written notice that explains the reason or reasons for denial.

(b) The corporation may appeal the denial of reinstatement to the circuit court of Kanawha County within thirty days after service of the notice of denial.

(c) The corporation may appeal by petitioning the circuit court of Kanawha County to set aside the revocation and attaching to the petition copies of the Secretary of State's Certificate of Revocation, the corporation's application for reinstatement and the Secretary of State's notice of denial.

(d) The circuit court's final decision may be appealed to the West Virginia Supreme Court of Appeals in accordance with article six, chapter twenty-nine-a of this code.

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