WEST VIRGINIA CODE CHAPTER 31E

WV Legislature

PART 1. SHORT TITLE, RESERVATION OF POWERS AND CONSTRUCTION OF CHAPTER.

§31E-1-101. Short title.

This chapter is and may be cited as the "West Virginia Nonprofit Corporation Act."

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§31E-1-101a. Legislative acknowledgment.

The Legislature acknowledges the work and contribution to the drafting of this chapter of the late Ann Maxey, Professor of Law at the West Virginia University College of Law.

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§31E-1-102. Reservation of powers.

The West Virginia Legislature has power to amend or repeal all or part of this act at any time and all domestic and foreign corporations subject to this act are governed by the amendment or repeal.

WV Legislature

§31E-1-103. Construction of chapter.

In the event of any inconsistency between any of the provisions of this chapter and the provisions made for particular classes of corporations by chapter thirty-one, thirty-one-a or thirty-three of this code, the provisions contained in chapter thirty-one, thirty-one-a or thirty-three prevail to the extent of the inconsistency.

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§31E-1-120. Filing requirements.

(a) A document must satisfy the requirements of this section and any other provision of this code that adds to or varies these requirements to be entitled to filing by the Secretary of State.

(b) The document to be filed must be typewritten or printed or, if electronically transmitted, it must be in a format that can be retrieved or reproduced in typewritten or printed form.

(c) The document to be filed must be in the English language: Provided, That a corporate name is not required to be in the English language if it is written in English letters or Arabic or Roman numerals: Provided, however, That the certificate of existence required of foreign corporations is not required to be in the English language if it is accompanied by a reasonably authenticated English translation.

(d) The document to be filed must be executed:

(1) By the chairman of the board of directors of a domestic or foreign corporation, by its president or by another of its officers;

(2) If directors have not been selected or the corporation has not been formed, by an incorporator; or

(3) If the corporation is in the hands of a receiver, trustee or other court-appointed fiduciary, by that fiduciary.

(e) The person executing the document to be filed shall sign it and state beneath or opposite his or her signature, his or her name and the capacity in which he or she signs. The document may contain a corporate seal, attestation, acknowledgment or verification.

(f) The document to be filed must be delivered to the office of the Secretary of State for filing. Delivery may be made by electronic transmission as permitted by the Secretary of State. The Secretary of State may require one exact or conformed copy to be delivered with the document to be filed if the document is filed in typewritten or printed form and not transmitted electronically.

(g) When a document is delivered to the office of the Secretary of State for filing, the correct filing fee and any franchise tax, license fee or penalty required by this chapter or any other provision of this code must be paid or provision for payment made in a manner permitted by the Secretary of State.

(h) In the case of service of notice and process as permitted by subsection (c), section five hundred four, article five of this chapter and subsections (d) and (e), section one thousand four hundred ten, article fourteen of this chapter, the notice and process must be filed with the Secretary of State as one original, plus two copies for each person to be served or noticed.

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§31E-1-121. Forms.

(a) The Secretary of State may prescribe and, upon request, furnish forms for documents required or permitted to be filed by this chapter. Use of these forms is not mandatory.

(b) The Secretary of State may adopt procedural rules in accordance with the provisions of this article governing the form for filing with and delivery of documents to the office of the Secretary of State under this chapter by electronic means, including facsimile and computer transmission.

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§31E-1-122. Filing, service and copying fees.

The Secretary of State shall collect all fees required to be charged and collected in accordance with the provisions of section two, article one, chapter fifty-nine, and section one, article twelve-c, chapter eleven of this code.

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§31E-1-123. Effective time and date of document.

(a) Except as provided in subsection (b) of this section and subsection (c), section one hundred twenty-four of this article, a document accepted for filing is effective:

(1) At the date and time of filing, as evidenced by means the Secretary of State may use for the purpose of recording the date and time of filing; or

(2) At the time specified in the document as its effective time on the date it is filed.

(b) A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at the close of business on that date. A delayed effective date for a document may not be later than the ninetieth day after the date it is filed.

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§31E-1-124. Correcting filed document.

(a) A domestic or foreign corporation may correct a document filed by the Secretary of State if:

(1) The document contains an inaccuracy;

(2) The document was defectively executed, attested, sealed, verified or acknowledged; or

(3) The electronic transmission was defective.

(b) A document is corrected:

(1) By preparing articles of correction that:

(A) Describe the document, including its filing date, or attach a copy of the document to the articles;

(B) Specify the inaccuracy or defect to be corrected; and (C) Correct the inaccuracy or defect; and

(2) By delivering the articles to the Secretary of State for filing.

(c) Articles of correction are effective on the effective date of the document they correct: Provided, That articles of correction are effective when filed as to persons who have relied on the uncorrected document and have been adversely affected by the correction.

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§31E-1-125. Filing duty of Secretary of State.

(a) If a document delivered to the office of the Secretary of State for filing satisfies the requirements of section one hundred twenty of this article, the Secretary of State shall file it.

(b) The Secretary of State files a document by recording it as filed on the date and time of receipt, unless a delayed effective time is specified in the document. After filing a document, except as provided in section five hundred three, article five of this chapter and section one thousand four hundred nine, article fourteen of this chapter, the Secretary of State shall deliver to the domestic or foreign corporation or its representative a receipt for the record and the fees. Upon request and payment of a fee, the Secretary of State shall send to the requester a certified copy of the requested record.

(c) If the Secretary of State refuses to file a document, he or she shall return it to the domestic or foreign corporation or its representative within five days after the document was delivered, together with a brief, written explanation of the reason for his or her refusal.

(d) The Secretary of State's duty to file documents under this section is ministerial. His or her filing or refusing to file a document does not:

(1) Affect the validity or invalidity of the document in whole or part;

(2) Relate to the correctness or incorrectness of information contained in the document; or

(3) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

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§31E-1-126. Appeal from Secretary of State's refusal to file document.

(a) If the Secretary of State refuses to file a document delivered to his or her office for filing, the domestic or foreign corporation may appeal the refusal to the circuit court within thirty days after the return of the document to the corporation. The appeal is commenced by petitioning the court to compel filing the document and by attaching to the petition the document and the Secretary of State's explanation of his or her refusal to file.

(b) The circuit court may summarily order the Secretary of State to file the document or take other action the court considers appropriate.

(c) The circuit court's final decision may be appealed to the West Virginia Supreme Court of Appeals as in other civil proceedings.

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§31E-1-127. Evidentiary effect of copy of filed document.

All courts, public offices and official bodies shall take and receive copies of documents filed in the office of the Secretary of State and certified by him or her, in accordance with the provisions of this article, as conclusive evidence that the original document is on file with the Secretary of State.

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§31E-1-128. Certificate of existence.

(a) Any person may request a certificate of existence for a domestic corporation or a certificate of authorization for a foreign corporation from the Secretary of State.

(b) A certificate of existence or authorization provides the following information:

(1) The domestic corporation's corporate name or the foreign corporation's corporate name used in this state; and

(2) If the corporation is a domestic corporation, that the corporation is duly incorporated under the law of this state, the date of its incorporation, and the period of its duration if it is less than perpetual;

(3) If the corporation is a foreign corporation, that the corporation is authorized to transact business in this state; and

(4) If payment is reflected in the records of the Secretary of State and if nonpayment affects the existence or authorization of the domestic or foreign corporation, whether all fees, taxes, and penalties owed to this state have been paid.

(c) Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the Secretary of State may be relied upon as conclusive evidence that the domestic or foreign corporation is in existence or is authorized to transact business in this state.

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§31E-1-129. Penalty for signing false document.

Any person who signs a document he or she knows is false in any material respect and knows that the document is to be delivered to the Secretary of State for filing is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000, or confined in the county or regional jail not more than one year, or both.

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PART 3. SECRETARY OF STATE.

§31E-1-130. Powers.

The Secretary of State has the power reasonably necessary to perform the duties required of him or her by this chapter. The Secretary of State has the power and authority to propose legislative rules for promulgation in accordance with the provisions of chapter twenty-nine-a of this code in order to carry out and implement the provisions of this chapter.

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PART 4. VENUE.

§31E-1-140. Venue.

Unless otherwise provided by any provision of this code, any civil action or other proceeding brought pursuant to this chapter may be initiated in the circuit court of any county of this state as provided in section one, article one, chapter fifty-six of this code.

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§31E-1-150. Chapter definitions.

As used in this chapter, unless the context otherwise requires a different meaning, the term:

(1) "Articles of incorporation" includes, but is not limited to, amended and restated articles of incorporation and articles of merger.

(2) "Authorized shares" means the shares of all classes a domestic or foreign corporation is authorized to issue.

(3) "Board" or "board of directors" means the group of persons vested with management of the affairs of the corporation irrespective of the name by which the group is designated.

(4) "Business corporation" means a corporation with capital stock or shares incorporated for profit.

(5) "Conspicuous" means written so that a reasonable person against whom the writing is to operate should have noticed, including, but not limited to, printing in italics or boldface or contrasting color, or typing in capitals or underlined.

(6) "Corporation" or "domestic corporation" means a corporation without capital stock or shares, which is not a foreign corporation, incorporated under the laws of this state: Provided, That "corporation" or "domestic corporation" does not include towns, cities, boroughs or any municipal corporation or any department or any town, city, borough or municipal corporation.

(7) "Deliver" or "delivery" means any method of delivery used in conventional commercial practice, including, but not limited to, delivery by hand, mail, commercial delivery and electronic transmission.

(8) "Distribution" means a direct or indirect transfer of money or other property or incurrence of indebtedness by a corporation to or for the benefit of its members in respect of any of its membership interests or to or for the benefit of its officers or directors: Provided, That the payment of reasonable compensation for services rendered, the reimbursement of reasonable expenses, the granting of benefits to members in conformity with the corporation's nonprofit purposes and the making of distributions upon dissolution or final liquidation as provided by article thirteen of this chapter may not be deemed a distribution.

(9) "Effective date of notice" means the date as determined pursuant to section one hundred fifty-one of this article.

(10) "Electronic transmission" or "electronically transmitted" means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval and reproduction of information by the recipient.

(11) "Employee" includes an officer and may include a director: Provided, That the director

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has accepted duties that make him or her also an employee.

(12) "Entity" includes corporation and foreign corporations; business corporations and foreign business corporations; profit and nonprofit unincorporated associations; limited liability companies and foreign limited liability companies; business trusts, estates, partnerships, trusts and two or more persons having a joint or common economic interest; and state, United States and foreign government.

(13) "Foreign corporation" means any nonprofit corporation which is incorporated under a law other than the laws of this state.

(14) "Governmental subdivision" includes, but is not limited to, authorities, counties, districts and municipalities.

(15) "Individual" includes, but is not limited to, the estate of an incompetent or deceased individual.

(16) "Member" means a person having membership rights in a corporation in accordance with the provisions of its certificate of incorporation or bylaws.

(17) "Nonprofit corporation" means a corporation which may not make distributions to its members, directors or officers.

(18) "Person" includes, but is not limited to, an individual and an entity.

(19) "Principal office" means the office so designated in the return required pursuant to section three, article twelve-c, chapter eleven of this code, where the principal executive offices of a domestic or foreign corporation are located.

(20) "Proceeding" includes, but is not limited to, civil suits and criminal, administrative and investigatory actions.

(21) "Record date" means the date established under article six or seven of this chapter on which a corporation determines the identity of its members and their interests. The determinations are to be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed.

(22) "Registered agent" means the agent identified by the corporation pursuant to section five hundred one, article five of this chapter.

(23) "Registered office" means the address of the registered agent for the corporation, as provided in section five hundred one, article five of this chapter.

(24) "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under subsection (c), section eight hundred forty, article eight of this chapter for custody of the minutes of the meetings of the board of directors and the meetings of the

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members and for authenticating records of the corporation.

(25) "Sign" or "signature" includes, but is not limited to, any manual, facsimile, conformed or electronic signature with means to identify a record by a signature, mark or other symbol, with intent to authenticate it.

(26) "State", when referring to a part of the United States, includes a state, commonwealth and a territory and insular possession of the United States and their agencies and governmental subdivisions.

(27) "United States" includes, but is not limited to, districts, authorities, bureaus, commissions, departments and any other agency of the United States.

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§31E-1-151. Notice.

(a) Notice under this chapter must be in writing unless oral notice is reasonable under the circumstances. Notice by electronic transmission is to be considered written notice.

(b) Notice may be communicated in person; by mail or other method of delivery; or by telephone, voice mail or other electronic means. If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published, or by radio, television, or other form of public broadcast communication.

(c) Written notice by a domestic or foreign corporation to its member, if in a comprehensible form, is effective: (1) Upon deposit in the United States mail, if mailed postpaid and correctly addressed to the member's address shown in the corporation's current record of members; or (2) when electronically transmitted to the member in a manner authorized by the member.

(d) Written notice to a domestic or foreign corporation authorized to transact business in this state may be addressed to its registered agent at its registered office or to the corporation or its secretary 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 the case of a foreign corporation that has not yet delivered a return, in its application for a certificate of authority.

(e) Except as provided in subsection (c) of this section, written notice, if in a comprehensible form, is effective at the earliest of the following:

(1) When received;

(2) Five days after its deposit in the United States mail, if mailed postpaid and correctly addressed; or

(3) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

(f) Oral notice is effective when communicated, if communicated in a comprehensible manner.

(g) If other provisions of this chapter prescribe notice requirements for particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe notice requirements, not inconsistent with this section or other provisions of this chapter, those requirements govern.

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§31E-1-152. Number of members.

(a) For purposes of this chapter, the following identified as a member in a corporation's current record of members constitutes one member:

(1) Three or fewer coowners;

(2) A corporation, partnership, trust, estate, or other entity; or

(3) The trustees, guardians, custodians, or other fiduciaries of a single trust, estate, or account.

(b) For purposes of this chapter, interests registered in substantially similar names constitute one member if it is reasonable to believe that the names represent the same person.

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§31E-2-201. Incorporators.

One or more persons may act as the incorporator or incorporators of a corporation by delivering articles of incorporation to the Secretary of State for filing.

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§31E-2-202. Articles of incorporation.

(a) The articles of incorporation must set forth:

(1) A corporate name for the corporation that satisfies the requirements of section four hundred one, article four of this chapter;

(2) A statement that the corporation is nonprofit and that the corporation may not have or issue shares of stock or make distributions;

(3) Whether the corporation is to have members and, if it is to have members, the provisions required by section six hundred one, article six of this chapter to be set forth in the certificate of incorporation;

(4) The mailing address of the corporation's initial registered office, if any, and the name of its initial registered agent at that office, if any;

(5) The name and address of each incorporator;

(6) The mailing address of the corporation's principal office; and

(7) 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 articles of incorporation may set forth:

(1) The names and addresses of the individuals who are to serve as the initial directors;

(2) Provisions not inconsistent with law regarding:

(A) Managing and regulating the affairs of the corporation; or

(B) Defining, limiting and regulating the powers of the corporation, its board of directors and members or any class of members;

(3) Any provision that under this chapter is required or permitted to be set forth in the bylaws;

(4) A provision eliminating or limiting the personal liability of a director to the corporation or its members for monetary damages for any action taken, or any failure to take any action, as a director or member, except liability for: (A) The amount of a financial benefit received by a director or member to which he or she is not entitled; (B) an intentional infliction of harm on the corporation or the members; (C) a violation of section eight hundred thirty-three, article eight of this chapter regarding unlawful distributions; or (D) an intentional violation of criminal law; and

(5) A provision permitting or making obligatory indemnification of a director for liability as

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that term is defined in section eight hundred fifty, article eight of this chapter to any person for any action taken, or any failure to take any action, as a director, except liability for: (A) Receipt of a financial benefit to which he or she is not entitled; (B) an intentional infliction of harm on the corporation or its members; (C) a violation of section eight hundred thirty-three, article eight of this chapter for unlawful distributions; or (D) an intentional violation of criminal law.

(c) The articles of incorporation need not set forth any of the corporate powers enumerated in this chapter.

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§31E-2-203. Incorporation.

(a) Unless a delayed effective date is specified, the corporate existence begins when the articles of incorporation are filed.

(b) The Secretary of State's filing of the articles of incorporation is conclusive proof that the incorporators satisfied all conditions precedent to incorporation except in a proceeding by the state to cancel or revoke the incorporation or involuntarily dissolve the corporation.

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§31E-2-204. Organization of corporation.

(a) After incorporation:

(1) If initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws, and carrying on any other business brought before the meeting; or

(2) If initial directors are not named in the articles, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators:

(A) To elect directors and complete the organization of the corporation; or

(B) To elect a board of directors who shall complete the organization of the corporation.

(b) Action required or permitted by this chapter to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more written consents describing the action taken and signed by each incorporator.

(c) An organizational meeting may be held in or out of this state.

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§31E-2-205. Bylaws.

(a) The incorporators or board of directors of a corporation shall adopt initial bylaws for the corporation.

(b) The bylaws of a corporation may contain any provision for managing the business and regulating the affairs of the corporation that is not inconsistent with law or the articles of incorporation.

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§31E-2-206. Emergency bylaws.

(a) Unless the articles of incorporation provide otherwise, the board of directors of a corporation may adopt bylaws to be effective only in an emergency defined in subsection (d) of this section. The emergency bylaws, which are subject to amendment or repeal by the members, may make all provisions necessary for managing the corporation during the emergency, including:

(1) Procedures for calling a meeting of the board of directors;

(2) Quorum requirements for the meeting; and

(3) Designation of additional or substitute directors.

(b) All provisions of the regular bylaws consistent with the emergency bylaws remain effective during the emergency. The emergency bylaws are not effective after the emergency ends.

(c) Corporate action taken in good faith in accordance with the emergency bylaws:

(1) Binds the corporation; and

(2) May not be used to impose liability on a corporate director, officer, employee, or agent.

(d) An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

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§31E-3-301. Purposes.

Corporations may be organized under this chapter for any lawful purpose, including any one or more of the following purposes: Charitable, benevolent, eleemosynary, educational, civic, patriotic, political, religious, social, fraternal, literary, cultural, athletic, scientific, agricultural, horticultural, animal husbandry, and professional commercial, industrial or trade association.

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§31E-3-302. General powers.

Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including without limitation, power:

(1) To sue and be sued, complain and defend in its corporate name;

(2) To have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing it or in any other manner reproducing it;

(3) To make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for managing and regulating the affairs of the corporation;

(4) To purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located;

(5) To sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;

(6) To purchase, receive, subscribe for, or otherwise acquire; own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of; and deal in and with shares or other interests in, or obligations of, any other entity;

(7) To make contracts and guarantees; incur liabilities; borrow money; issue its notes, bonds, and other obligations, which may be convertible into or include the option to purchase other securities of the corporation; and secure any of its obligations by mortgage, deed of trust, or pledge of any of its property, franchises, or income;

(8) To lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;

(9) To be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity;

(10) To conduct its activities, locate offices, and exercise the powers granted by this chapter within or without this state;

(11) To elect directors and appoint officers, employees, and agents of the corporation, define their duties, and fix their compensation;

(12) To pay pensions and establish pension plans, pension trusts, profit sharing plans, share bonus plans, share option plans, and benefit or incentive plans for any or all of its current or former directors, officers, employees, and agents;

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(13) To make donations for the public welfare or for charitable, scientific, or educational purposes, and for other purposes that further the corporate interest;

(14) To transact any lawful activity that will aid governmental policy;

(15) To impose or levy fines, penalties, dues, assessments, admission and transfer fees upon its members;

(16) To establish conditions for admission of members, admit members and issue memberships and certificates evidencing membership;

(17) To carry on one or more businesses; and

(18) To make payments or donations, or do any other act, not inconsistent with law, that furthers the affairs of the corporation.

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§31E-3-303. Emergency powers.

(a) In anticipation of or during an emergency defined in subsection (d) of this section, the board of directors of a corporation may:

(1) Modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent; and

(2) Relocate the principal office, designate alternative principal offices or regional offices, or authorize the officers to do so.

(b) During an emergency defined in subsection (d) of this section, unless emergency bylaws provide otherwise:

(1) Notice of a meeting of the board of directors need be given only to those directors whom it is practicable to reach and may be given in any practicable manner, including by publication and radio; and

(2) One or more officers of the corporation present at a meeting of the board of directors may be deemed to be directors for the meeting, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum.

(c) Corporate action taken in good faith during an emergency under this section to further the ordinary affairs of the corporation:

(1) Binds the corporation; and

(2) May not be used to impose liability on a corporate director, officer, employee, or agent.

(d) An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

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§31E-3-304. Ultra vires.

(a) Except as provided in subsection (b) of this section, the validity of corporate action may not be challenged on the ground that the corporation lacks or lacked power to act.

(b) A corporation's power to act may be challenged:

(1) In a proceeding by a member or director against the corporation to enjoin the act;

(2) In a proceeding by the corporation, directly, derivatively, or through a receiver, trustee, or other legal representative, against an incumbent or former director, officer, employee, or agent of the corporation; or

(3) In a proceeding by the Attorney General to dissolve the corporation or to enjoin the corporation from the conduct of unauthorized affairs.

(c) In a member's or director's proceeding under subdivision (1), subsection (b) of this section to enjoin an unauthorized corporate act, the circuit court may enjoin or set aside the act, if equitable and if all affected persons are parties to the proceeding, and may award damages for loss, except loss of anticipated profits, suffered by the corporation or another party because of enjoining the unauthorized act.

(d) The Attorney General may, upon his or her own information or upon complaint of an interested party, bring an action in the name of the state to restrain any person from purporting to have, or exercising, corporate powers not granted.

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§31E-4-401. Corporate name.

(a) A corporate name:

(1) Must contain the word "corporation," "incorporated," "company," or "limited," or the abbreviation "corp.," "inc.," "co.," or "ltd.," or words or abbreviations of like import in another language; and

(2) May not contain language stating or implying that the corporation is organized for a purpose other than that permitted by section three hundred one, article three of this chapter and its articles of incorporation.

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

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

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

(3) The fictitious name adopted by a foreign corporation authorized to transact business in this state because its real name is unavailable;

(4) The corporate name of any foreign corporation authorized to transact business or conduct affairs in this state; and

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

(c) A corporation may apply to the Secretary of State for authorization to use a name that is not distinguishable upon his or her records from one or more of the names described in subsection (b) of this section. 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 the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(d) A corporation may use the name, including the fictitious name, of another domestic or foreign corporation that is used in this state if the other corporation is incorporated or authorized to transact business in this state and the proposed user corporation:

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(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) This chapter does not control the use of fictitious names.

(f) Notwithstanding the provisions of subsection (a) of this section, any domestic nonprofit corporation and any foreign nonprofit corporation, if permitted by the law of the state of its incorporation, may include in its name the word "foundation" in lieu of or in addition to the word "corporation", "company", "incorporated" or "limited" or an abbreviation of these words.

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§31E-4-402. Use of the words "corporation", "incorporated" or "limited"; prohibitions; penalties.

(a) No person may use the word "corporation" or "incorporated" or any abbreviation of these words, in any trade name, business or other organization name unless the name is used by a domestic or foreign corporation authorized by the Secretary of State to transact business in West Virginia under the provisions of this chapter or chapter thirty-one-d of this code.

(b) No person may use the word "limited" or any abbreviation of the word "limited" in any trade name, business or other organization name unless the name is used by a domestic or foreign corporation authorized by the Secretary of State to transact business in West Virginia under the provisions of this chapter, chapters thirty-one-b, thirty-one-d or forty-seven of this code.

(c) The Tax Commissioner may not issue any business registration certificate under the provisions of article twelve, chapter eleven of this code to any business if the business name includes any of the words or their abbreviations as set forth in subsection (a) or (b) of this section unless the business is a domestic or foreign corporation or domestic or foreign business corporation.

(d) Any person who unlawfully uses any one or more of the prescribed words or their abbreviations as set forth in subsection (a) or (b) of this section is to be deemed to be acting as a corporation without authority of law and subject to an action in quo warranto as provided in article two, chapter fifty-three of this code.

(e) Any person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $500 nor more than $1,000, or confined in the county or regional jail not more than thirty days, or both.

(f) The provisions of this section do not apply to businesses in existence prior to July 1, 1988.

WV Legislature

§31E-4-403. Reserved name.

(a) A person may reserve the exclusive use of a corporate name, including a fictitious name for a foreign corporation whose corporate name is not available, by delivering an application to the Secretary of State for filing. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the Secretary of State finds that the corporate name applied for is available, he or she shall reserve the name for the applicant's exclusive use for a nonrenewable one hundred twenty-day period.

(b) The owner of a reserved corporate name may transfer the reservation to another person by delivering to the Secretary of State a signed notice of the transfer that states the name and address of the transferee.

WV Legislature

§31E-4-404. Registered name.

(a) A foreign corporation may register its corporate name, or its corporate name with any addition required by section one thousand four hundred six, article fourteen of this chapter, if the name is distinguishable upon the records of the Secretary of State from the corporate names that are not available under subsection (b), section four hundred one of this article.

(b) A foreign corporation registers its corporate name, or its corporate name with any addition required by section one thousand four hundred six, article fourteen of this chapter, by delivering to the Secretary of State for filing an application:

(1) Setting forth its corporate name, or its corporate name with any addition required by section one thousand four hundred six, article fourteen of this chapter, the state or country and date of its incorporation, and a brief description of the nature of the business in which it is engaged; and

(2) Accompanied by a certificate of existence, or a document of similar import, from the state or country of incorporation.

(c) The name is registered for the applicant's exclusive use upon the effective date of the application.

(d) A foreign corporation whose registration is effective may renew it for successive years by delivering to the Secretary of State for filing a renewal application, which complies with the requirements of subsection (b) of this section, between October 1, and December 31, of the preceding year. The renewal application when filed renews the registration for the following calendar year.

(e) A foreign corporation whose registration is effective may qualify as a foreign corporation under the registered name or consent in writing to the use of that name by a corporation incorporated under this chapter or by another foreign corporation authorized to transact business in this state. The registration terminates when the domestic corporation is incorporated or the foreign corporation qualifies or consents to the qualification of another foreign corporation under the registered name.

WV Legislature

§31E-5-501. Registered office and registered agent.

Each corporation 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;

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

(D) A foreign limited liability company or domestic limited liability company authorized to transact business in this state whose business office is identical with the registered office.

WV Legislature

§31E-5-502. Change of registered office or registered agent.

(a) A corporation 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) The name of the corporation;

(2) The mailing address or description of physical location of its current registered office;

(3) If the current registered office is to be changed, the street address or description of physical location of the new registered office;

(4) The name of its current registered agent;

(5) If the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent to the appointment either printed on the statement or attached to it; 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 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 that complies with the requirements of subsection (a) of this section and recites that the corporation has been notified of the change.

WV Legislature

§31E-5-503. Resignation of registered agent.

(a) A registered agent may resign his or her agency appointment by signing and delivering to the Secretary of State for filing the statement of resignation. The statement 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 to the registered office if the registered office is not discontinued and the other copy to the corporation at its principal office.

(c) The agency appointment is terminated, and the registered office is discontinued if provision for its discontinuation is made, on the thirty-first day after the date on which the statement was filed.

WV Legislature

§31E-5-504. Service on corporation.

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

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

(1) The date the corporation receives the mail;

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

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

(c) In addition to the methods of service on a 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 corporation created 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 corporation's registered agent; or (B) if there is no registered agent, to the individual whose name and address was last given to the 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 corporation as that address was last given to the Secretary of State's office; and 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

WV Legislature

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 create a preservation duplicate from which a reproduction of the stored record may be retrieved which truly and accurately depicts the image of the original record. The Secretary of State may destroy or otherwise dispose of the original returned or undeliverable mail. Written notice of the action by the Secretary of State shall be provided by certified mail, return receipt requested, facsimile, or by electronic 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.

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

WV Legislature

§31E-6-601. Classes of members.

A corporation may have one or more classes of members or may have no members. If the corporation has one or more classes of members, the designation of a class or classes is to be set forth in the articles of incorporation and the manner of election or appointment and the qualifications and rights of the members of each class is to be set forth in the articles of incorporation or bylaws. If the corporation has no members, or only members not entitled to vote, that is to be set forth in the articles of incorporation and the corporation is to operate under the management of its board of directors. A corporation may issue articles evidencing membership.

WV Legislature

§31E-6-602. Rules for membership.

(a) Membership is to be governed by rules of admission, retention, withdrawal and expulsion as the bylaws prescribe, provided all bylaws are to be reasonable, germane to the purposes of the corporation, and equally enforced as to all members.

(b) Unless otherwise provided in the articles of incorporation or the bylaws, another entity, foreign or domestic, may become a member of a corporation.

(c) Membership may be limited to persons who are members in good standing of another corporation, organization or association, if provided for in the articles of incorporation. If membership is limited, the articles of incorporation may provide that failure on the part of any member to keep in good standing with the other corporation, organization or association is sufficient cause for expulsion.

(d) Unless otherwise provided in the articles of incorporation or bylaws, a member may not voluntarily or involuntarily transfer his or her membership or any rights arising from his or her membership.

(e) Unless otherwise provided in the articles of incorporation or bylaws, membership is terminated by death, voluntary withdrawal or expulsion, and all rights and privileges of the member in the corporation and its property cease.

WV Legislature

§31E-6-603. Imposition of fines and penalties; levy of dues and assessments.

(a) A corporation may impose fines or penalties on members if provided in bylaws duly adopted by a two-thirds vote of members entitled to vote and, if the fine or penalty applies to members not entitled to vote, by a two-thirds vote as a class of the members not otherwise entitled to vote. The fine or penalty may not exceed the higher of the: (1) Annual dues or assessment; or (2) initiation fee, if any.

(b) A corporation may levy dues or assessments against members if provided in a bylaw provision duly adopted: (1) By the affirmative vote of at least two thirds of the members of each class of members, voting as a class, to which the levy applies, even though a class of members is not otherwise entitled to vote; or (2) by the directors if the directors are authorized by a bylaw provision adopted by the affirmative vote of at least two thirds of the members of each class of members, voting as a class, to which a levy may apply, even though a class of members is not otherwise entitled to vote.

(c) For purposes of this section, the corporation's initial bylaws adopted by: (1) The incorporators; or (2) the board of directors is deemed to have been adopted by all the members entitled to vote thereon, if any.

(d) Notwithstanding any limitation on the amount of a fine or penalty set forth in subsection (a) of this section, a corporation organized under this chapter, or any predecessor statutes, that is a trade association or other professional organization exempt from taxation under Section 501(c)(6) of the Internal Revenue Code may impose a fine on a member, not to exceed the amount set forth in the bylaws, for the violation of a code of ethics or other code of conduct upon majority vote of its board of directors in accordance with its bylaws, provided the articles of corporation or bylaws of the corporation contain a written provision whereby members agree to be bound by a code of ethics or code of conduct as a condition of membership.

WV Legislature

§31E-6-604. Liability of members.

(a) A member of a corporation is not liable to the corporation or its creditors with respect to his or her membership except for the obligation to pay in full any fines or penalties duly imposed against him or her and any dues and assessments levied against him or her to which he or she has assented, or imposed or levied against him or her in accordance with the provisions of section six hundred three of this article.

(b) Any member who receives any distribution of income or assets from a corporation in violation of this chapter or of the articles of incorporation, whether by dividend, in liquidation or otherwise, and who accepted or received the distribution knowing it to be improper, is liable for the amount so received: (1) To any creditors existing at the time of the distribution who obtain a judgment against the corporation on which execution is returned unsatisfied; and (2) to the corporation.

WV Legislature

PART 1. MEETINGS.

§31E-7-701. Annual meeting; regular meeting.

(a) A corporation that has members entitled to vote for the election of directors must hold a meeting of these members annually at a time stated in or fixed in accordance with the bylaws.

(b) Annual meetings of members may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual meetings are to be held at the corporation's principal office.

(c) A corporation that has members entitled to vote may hold regular meetings of these members in or out of this state at the places and times stated in or fixed in accordance with the bylaws.

(d) The failure to hold an annual or regular meeting at the time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

WV Legislature

§31E-7-702. Special meeting.

(a) A corporation that has members entitled to vote must hold a special meeting of members entitled to vote at the meeting: (1) On call of its board of directors or the person or persons authorized to do so by the articles of incorporation or the bylaws; or (2) if the members holding at least five percent, or other number or proportion as is provided in the bylaws, of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting sign, date and deliver to the corporation one or more written demands for the meeting describing the purpose or purposes for which it is to be held. If a call for a special meeting is not issued within fifteen days after receipt of a members' request, members may call the meeting.

(b) If not otherwise fixed under section seven hundred three or seven hundred seven of this article, the record date for determining members entitled to demand a special meeting is the date the first member signs the demand.

(c) Special meetings of members may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated or fixed in accordance with the bylaws, special meetings are to be held at the corporation's principal office.

(d) Only business within the purpose or purposes described in the meeting notice required by subsection (c), section seven hundred five of this article may be conducted at a special meeting of members.

WV Legislature

§31E-7-703. Court-ordered meeting.

(a) The circuit court may summarily order a meeting to be held:

(1) On application of any member entitled to vote at an annual meeting if an annual meeting was not held within the earlier of six months after the end of the corporation's fiscal year or fifteen months after its last annual meeting; or

(2) On application of a member who signed a demand for a special meeting valid under section seven hundred two of this article, if:

(A) Notice of the special meeting was not given within thirty days after the date the demand was delivered to the corporation's secretary; or

(B) The special meeting was not held in accordance with the notice.

(b) The court may fix the time and place of the meeting; determine the members entitled to vote at the meeting; specify a record date for determining members entitled to notice of and to vote at the meeting; prescribe the form and content of the meeting notice; fix the quorum required for specific matters to be considered at the meeting, or direct that the votes represented at the meeting constitute a quorum for action on those matters; and enter other orders necessary to accomplish the purpose or purposes of the meeting.

WV Legislature

§31E-7-704. Action without meeting; validity of actions at meetings not properly called.

(a) Any action which, under any provision of this chapter, may be taken at a meeting of members may be taken without a meeting if one or more members consents in writing, setting forth the action taken or to be taken, signed by all of the persons who would be entitled to vote upon the action at a meeting, or by their duly authorized attorneys which action for purposes of this subsection is to be referred to as "unanimous written consent". The secretary shall file the consent or consents, or certify the tabulation of the consents and file the articles, with the minutes of the meetings of the members. A unanimous written consent must have the same force and effect as a vote of the members at a meeting duly held, and may be stated as having the same force and effect as a vote of the members in any articles or document filed under this chapter.

(b) Where directors or officers are to be elected by members or any other action is to be voted upon by members, the articles of incorporation or bylaws may provide that the elections may be conducted and the actions voted upon by mail or electronic means in a manner provided in the articles of incorporation or bylaws. The vote of members, or of the members of any particular class, is to be determined from the total number of members who actually vote by mail, rather than from the total number of members entitled to vote, unless the articles of incorporation otherwise provide. A ballot signed under this section has the same force and effect as a vote of the member who signed it at a meeting duly held, and may be stated as having the same force and effect in any certificate or document filed under this chapter.

(c) If not otherwise fixed under section seven hundred three or seven hundred seven of this article, the record date for determining members entitled to take action without a meeting is the date the first member signs the consent or ballot under subsection (a) or (b) of this section.

(d) The absence from the minutes of any indication that a member objected to holding the meeting prima facie establishes that no objection was made.

WV Legislature

§31E-7-705. Notice of meeting.

(a) A corporation is to notify members entitled to vote of the date, time and place of each annual, regular and special meeting no fewer than ten nor more than sixty days before the meeting date. Unless this chapter, or the articles of incorporation require otherwise, the corporation is required to give notice only to members entitled to vote at the meeting.

(b) Unless this chapter, the articles of incorporation or bylaws require otherwise, notice of an annual or regular meeting need not include a description of the purpose or purposes for which the meeting is called, except that, unless stated in a written notice of the meeting: (1) No bylaw may be brought up for adoption, amendment or repeal; and (2) no matter, other than the election of directors at an annual meeting, may be brought up which expressly requires the vote of members.

(c) Notice of a special meeting of members must include a description of the purpose or purposes for which the meeting is called.

(d) If not otherwise fixed under section seven hundred three or seven hundred seven of this article, the record date for determining members entitled to notice of and to vote at an annual, regular or special meeting is the day before the first notice is delivered to members.

(e) Unless the bylaws require otherwise, if an annual, regular or special meeting of members is adjourned to a different date, time or place, notice need not be given of the new date, time or place if the new date, time or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under section seven hundred seven of this article, notice of the adjourned meeting must be given under this section to persons who are members entitled to vote as of the new record date.

(f) Unless the articles of incorporation or bylaws provide otherwise, any member may participate in a regular or special meeting by any means of communication by which all members participating may simultaneously hear each other during the meeting. A member participating in a meeting by this means is deemed to be present in person at the meeting.

WV Legislature

§31E-7-706. Waiver of notice.

(a) A member may waive any notice required by this chapter, the articles of incorporation or bylaws before or after the date and time stated in the notice. The waiver must be in writing, be signed by the member entitled to the notice and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(b) A member's attendance at a meeting:

(1) Waives objection to lack of notice or defective notice of the meeting, unless the member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting; and

(2) Waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the member objects to considering the matter when it is presented.

WV Legislature

§31E-7-707. Record date.

(a) The bylaws may fix or provide the manner of fixing the record date for one or more classes of members in order to determine the members entitled to notice of a meeting of members, to demand a special meeting, to vote or to take any other action. If the bylaws do not fix or provide for fixing a record date, the board of directors of the corporation may fix a future date as the record date.

(b) A record date fixed under this section may not be more than seventy days before the meeting or action requiring a determination of members.

(c) A determination of members entitled to notice of or to vote at a meeting of members is effective for any adjournment of the meeting unless the board of directors fixes a new record date, which it must do if the meeting is adjourned to a date more than one hundred twenty days after the date fixed for the original meeting.

(d) If a court orders a meeting adjourned to a date more than one hundred twenty days after the date fixed for the original meeting, it may provide that the original record date continues in effect or it may fix a new record date.

WV Legislature

§31E-7-708. Conduct of the meeting

(a) At each meeting of members, a chair must preside. The chair is to be appointed as provided in the bylaws or, in the absence of a provision in the bylaws, by the board of directors.

(b) The chairperson, unless the articles of incorporation or bylaws provide otherwise, shall determine the order of business and has the authority to establish rules for the conduct of the meeting.

(c) Any rules adopted for, and the conduct of, the meeting are to be fair to members.

(d) The chair of the meeting shall announce at the meeting when the polls close for each matter voted upon. If no announcement is made, the polls are to be deemed to have closed upon the final adjournment of the meeting. After the polls close, no ballots, proxies or votes, nor any revocations or changes to a ballot, proxy or vote, may be accepted.

(e) Any member may participate in any meeting of members by means of remote communication to the extent the board of directors authorizes such participation for members. Participation as a member by means of remote communication shall be subject to such guidelines and procedures as the board of directors adopts.

(f) Members participating in a members' meeting by means of remote communication shall be deemed present and may vote at such a meeting if the corporation has implemented reasonable measures to:

(1) Verify that each person participating remotely as a member is a member or a member's proxy; and

(2) Provide such members a reasonable opportunity to participate in the meeting and to vote on matters submitted to the members, including an opportunity to read or hear the proceedings of the meetings, in a manner substantially concurrent with such proceedings.

(g) Unless expressly prohibited by the articles of incorporation or bylaws, the board of directors may determine that any meeting of members shall not be held at any place and shall instead be held solely by means of remote communication in conformity with subsection (f).

(h) Amendments to this § 31E-7-708 passed during the regular session of the 2021 Legislative Session shall be effective upon passage and shall apply to all such member meetings held on or after March 1, 2020.

WV Legislature

PART 2. VOTING.

§31E-7-720. Members' list for meeting.

(a) After fixing a record date for a meeting, a corporation must prepare an alphabetical list of the names of all its members who are entitled to notice of the meeting. The list must be arranged by classes of members, if any, and show the address of and number of votes to which each member is entitled.

(b) The members' list must be available for inspection by any member entitled to vote at the meeting, beginning two business days after notice of the meeting is given for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. A member entitled to vote at the meeting or his or her agent or attorney is entitled on written demand to inspect and, subject to the requirements of section one thousand five hundred two, article fifteen of this chapter, to copy the list, during regular business hours and at his or her expense, during the period it is available for inspection.

(c) The corporation must make the members' list available at the meeting, and any member entitled to vote at the meeting or his or her agent or attorney is entitled to inspect the list at any time during the meeting or any adjournment.

(d) If the corporation refuses to allow a member entitled to vote at the meeting or his or her agent or attorney to inspect the members' list before or at the meeting, or copy the list as permitted by subsection (b) of this section, the circuit court, on application of the member, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete.

(e) Refusal or failure to prepare or make available the members' list does not affect the validity of action taken at the meeting.

WV Legislature

§31E-7-721. Members' voting rights.

(a) Unless the articles of incorporation provide otherwise, each member, regardless of class, is entitled to one vote on each matter voted on at a meeting of members. Voting rights of members of any class may be increased, limited or denied by the articles of incorporation.

(b) Members otherwise entitled to vote, but disqualified from voting for any reason, may not be considered for the purpose of a quorum or of computing the voting power of the corporation or of members of any class.

(c) A corporate member's vote may be cast by the president of the member corporation or by any other officer of the corporation in the absence of express notice of the designation of some other person by the board of directors or bylaws of the member corporation.

WV Legislature

§31E-7-722. Proxies.

(a) Unless the articles of incorporation or bylaws provide otherwise, a member entitled to vote may vote in person or by proxy.

(b) A member entitled to vote by proxy or his or her agent or attorney-in-fact may appoint a proxy to vote or otherwise act for the member by signing an appointment form or by an electronic transmission of the appointment. An electronic transmission must contain or be accompanied by information from which one can determine that the member, the member's agent or the member's attorney-in-fact authorized the electronic transmission.

(c) An appointment of a proxy is effective when a signed appointment form or an electronic transmission of the appointment is received by the inspector of election or the officer or agent of the corporation authorized to tabulate votes. A photographic or similar reproduction of an appointment, or a telegram, cablegram, facsimile transmission, wireless or similar transmission of an appointment received by the inspector of election or the officer or agent of the corporation authorized to tabulate votes is sufficient to effect an appointment. An appointment is valid for eleven months unless a longer period is expressly provided in the appointment form.

(d) An appointment of a proxy is revocable by the member.

(e) The death or incapacity of the member appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises his or her authority under the appointment.

(f) Subject to section seven hundred twenty-three of this article and to any express limitation on the proxy's authority stated in the appointment form or electronic transmission of the appointment, a corporation is entitled to accept the proxy's vote or other action as that of the member making the appointment.

WV Legislature

§31E-7-723. Corporation's acceptance or rejection of votes.

(a) If the name signed on a vote, consent, waiver or proxy appointment corresponds to the name of a member, the corporation if acting in good faith is entitled to accept the vote, consent, waiver or proxy appointment and give it effect as the act of the member.

(b) If the name signed on a vote, consent, waiver or proxy appointment does not correspond to the name of a member, the corporation if acting in good faith is entitled to accept the vote, consent, waiver or proxy appointment and give it effect as the act of the member if:

(1) The member is an entity and the name signed purports to be that of an officer or agent of the entity;

(2) The name signed purports to be that of an attorney-in-fact, administrator, executor, guardian or conservator representing the member and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver or proxy appointment;

(3) The name signed purports to be that of a receiver or trustee in bankruptcy of the member and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver or proxy appointment; or

(4) Two or more persons are comembers or fiduciaries and the name signed purports to be the name of at least one of the comembers or fiduciaries and the person signing appears to be acting on behalf of all of the comembers or fiduciaries.

(c) The corporation is entitled to reject a vote, consent, waiver or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the member.

(d) The corporation and its officer or agent who accepts or rejects a vote, consent, waiver or proxy appointment in good faith and in accordance with the standards of this section or subsection (b), section seven hundred twenty-two of this article are not liable in damages to the member for the consequences of the acceptance or rejection.

(e) Corporate action based on the acceptance or rejection of a vote, consent, waiver or proxy appointment under this section or subsection (b), section seven hundred twenty-two of this article is valid unless a court of competent jurisdiction determines otherwise.

WV Legislature

§31E-7-724. Quorum and voting requirements.

(a) Members entitled to vote on a matter may take action on the matter at a meeting only if a quorum of those members exists with respect to that matter. If there are no members entitled to vote as a separate class, unless this chapter, the articles of incorporation or bylaws provide otherwise, the members entitled to vote on the matter who are present at the meeting, either in person or by proxy, if voting by proxy is permitted pursuant to section seven hundred twenty-two of this article, constitute a quorum for action on the matter. If there are members entitled to vote on a matter as a separate class, the members entitled to vote as a separate class may take action on the matter at a meeting only if a quorum of that class exists with respect to that matter. Unless this chapter, the articles of incorporation or bylaws provide otherwise, the members of a class entitled to vote on the matter who are present at the meeting, either in person or by proxy, if voting by proxy is permitted pursuant to section seven hundred twenty-two of this article constitute a quorum of that class for action on that matter.

(b) Once a member is represented for any purpose at a meeting, the member is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be set for that adjourned meeting.

(c) Where any of this chapter, requires for any purpose the vote of a designated proportion of the voting power of members entitled to vote on a matter, or of the members of any particular class entitled to vote on a matter as a class, if a quorum exists, action on the matter, other than the election of directors, by these members or by the members of a class, is approved if the votes cast favoring the action by the members voting or by the members of a class voting, are in a designated proportion of the total votes cast by the members or by the members of a class, unless the articles of incorporation require a greater vote.

(d) Where subsection (c) of this section is not applicable, if a quorum exists, action on a matter, other than the election of directors, by the members entitled to vote on the matter, or by the members of any particular class entitled to vote on the matter as a class, is approved if the votes cast by the members voting, or by the members of a class voting, favoring the action exceed the votes cast by the members, or by the members of a class, opposing the action, unless the articles of incorporation require a greater vote.

(e) An amendment of the articles of incorporation adding, changing or deleting a voting requirement is governed by section seven hundred twenty-six of this article. An amendment of the articles of incorporation or bylaws adding, changing or deleting a quorum requirement is governed by section seven hundred twenty-six of this article.

(f) The election of directors is governed by section seven hundred twenty-seven of this article.

WV Legislature

§31E-7-725. Action by single and multiple classes of members.

(a) If the articles of incorporation or this chapter, provide for voting by a single class on a matter, action on that matter is taken when voted upon by that class as provided in section seven hundred twenty-four of this article.

(b) If the articles of incorporation or this chapter, provide for voting by two or more classes on a matter, action on that matter is taken only when voted upon by each of those classes counted separately as provided in section seven hundred twenty-four of this article. Action may be taken by one class on a matter even though no action is taken by another class entitled to vote on the matter.

WV Legislature

§31E-7-726. Other quorum or voting requirement.

(a) The articles of incorporation may provide for a greater voting requirement for members, or classes of members, than is provided by this chapter. The articles of incorporation or the bylaws may provide for a greater quorum requirement for members, or classes of members, than is provided by this chapter.

(b) The articles of incorporation may, except where expressly prohibited by this chapter, or where action is required by this chapter to be unanimous, provide for a lesser voting requirement, but unless expressly permitted by a particular section of this chapter, not less than a majority of the votes cast by the members, or by the members of a particular class, entitled to vote on the matter.

(c) An amendment to the articles of incorporation that adds, changes or deletes a greater quorum or voting requirement must meet the same quorum requirement and be adopted by the same vote and classes required to take action under the quorum and voting requirements then in effect or proposed to be adopted, whichever is greater.

WV Legislature

§31E-7-727. Voting for directors; cumulative voting.

(a) Unless otherwise provided in the articles of incorporation, directors are elected by a plurality of the votes cast by the members entitled to vote in the election at a meeting at which a quorum is present, or if voting by mail is permitted pursuant to section seven hundred four of this article in an election in which the total number of members who vote is not less than the number required for a quorum.

(b) Members do not have a right to cumulate their votes for directors unless this is provided for in the articles of incorporation.

(c) A statement included in the articles of incorporation that "all or a designated class of members are entitled to cumulate their votes for directors", or words of similar import, means that the members designated are entitled to multiply the number of votes they are entitled to cast by the number of directors for whom they are entitled to vote and cast the product for a single candidate or distribute the product among two or more candidates.

(d) Members otherwise entitled to vote cumulatively may not vote cumulatively at a particular meeting unless: (1) The meeting notice states conspicuously that cumulative voting is authorized; (2) a member who has the right to cumulate his or her votes gives notice to the corporation not less than forty-eight hours before the time set for the meeting of his or her intent to cumulate his or her votes during the meeting, and if one member gives this notice all other members in the same class participating in the election are entitled to cumulate their votes without giving further notice; or (3) if voting is to be by mail or electronic means pursuant to section seven hundred four of this article: (A) The bylaws specify how election of directors are to be conducted if members vote cumulatively by mail; (B) the notice of the meeting states conspicuously that cumulative voting is authorized and how the election is to be conducted; and (C) the mail ballot provides for cumulative voting.

WV Legislature

§31E-7-728. Inspectors of election.

(a) A corporation may appoint one or more inspectors to act at a meeting of members and make a written report of the inspectors' determinations. Each inspector shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of the inspector's ability.

(b) The inspectors shall: (1) Ascertain the number of members entitled to vote and the voting power of each; (2) determine the members represented at a meeting; (3) determine the validity of proxies and ballots; (4) count all votes; and (5) determine the result.

(c) An inspector may be an officer or employee of the corporation.

WV Legislature

PART 1. BOARD OF DIRECTORS.

§31E-8-801. Requirement for and duties of board of directors.

(a) Each corporation must have a board of directors.

(b) All corporate powers are to be exercised by or under the authority of, and the activities, property and affairs of the corporation managed under the direction of, its board of directors, subject to any limitation set forth in the articles of incorporation.

WV Legislature

§31E-8-802. Qualifications of directors.

(a) The articles of incorporation or bylaws may prescribe qualifications for directors. A director need not be a resident of this state or a member of the corporation unless the articles of incorporation or bylaws require he or she to be a member.

(b) The directors and board of directors may be designated by other names as may be provided in the articles of incorporation or bylaws.

WV Legislature

§31E-8-803. Number and election of directors.

(a) A board of directors must consist of three or more individuals, with the number specified in or fixed in accordance with the articles of incorporation or bylaws.

(b) The number of directors may be increased or decreased from time to time by amendment to, or in the manner provided in, the articles of incorporation or bylaws.

(c) The initial board of directors is to be designated in the articles of incorporation or elected at the organizational meeting of the corporation. Thereafter, if the corporation has members entitled to vote for directors, directors are to be elected at the first meeting of the members held for that purpose and at each subsequent annual meeting, except as provided in section eight hundred four of this article.

WV Legislature

§31E-8-804. Special provisions regarding directors.

(a) The articles of incorporation may provide that the entire membership, or a certain class of members, shall constitute the board of directors.

(b) The articles of incorporation may provide that persons occupying certain positions within or without the corporation are ex officio directors, but, unless otherwise provided in the articles of incorporation or bylaws, ex officio directors may not be counted in determining a quorum nor may they be entitled to a vote. An ex officio director shall continue to be a director so long as he or she continues to hold the office from which his or her ex officio status derives, and shall cease to be an ex officio director immediately and automatically upon ceasing to hold the office, without the need for any action by the corporation, its directors or its members. The provisions of sections eight hundred six and eight hundred eight of this article do not apply to ex officio directors.

(c) In the cases of corporations without members and corporations without members entitled to vote for directors, the articles of incorporation may provide for a self-perpetuating board of directors.

WV Legislature

§31E-8-805. Election of directors by certain classes of members.

If the articles of incorporation authorize classes of members, the articles may also authorize the election of all or a specified number of directors by members in one or more authorized classes of members.

WV Legislature

§31E-8-806. Terms of directors generally.

(a) The terms of the initial directors of a corporation expire at the first members' meeting at which directors are elected or, in the case of a corporation without members entitled to vote for directors, at the first annual meeting of the board of directors, unless their terms are staggered pursuant to section eight hundred seven of this article.

(b) The terms of all other directors expire at the next annual meeting of members or the annual meeting of the directors if the corporation does not have members entitled to vote for directors, as the case may be, following their election unless their terms are staggered under section eight hundred seven of this article.

(c) A decrease in the number of directors does not shorten an incumbent director's term.

(d) The term of a director elected to fill a vacancy expires at the next meeting at which directors are elected.

(e) Despite the expiration of a director's term, he or she continues to serve until his or her successor is elected and qualifies or until there is a decrease in the number of directors.

WV Legislature

§31E-8-807. Staggered terms for directors.

(a) The articles of incorporation may provide for staggering the terms of directors, other than ex officio directors, by dividing the total number of directors, other than ex officio directors, into up to five groups, with each group containing approximately the same percentage of the total number of directors, as possible. In that event, the terms of directors in the first group expire at the first annual meeting of members or, in the case of a corporation without members entitled to vote for directors, at the first annual meeting of the board of directors, after their election, the terms of the second group expire at the second annual meeting of members or directors after their election, the terms of the third group, if any, expire at the third annual meeting of members or directors after their election, the terms of the fourth group, if any, expire at the fourth annual meeting of members or directors after their election, and the terms of the fifth group, if any, expire at the fifth annual meeting of members or directors after their election. At each annual meeting thereafter, directors are to be chosen for a term of two years, three years, four years or five years, as the case may be, to succeed those whose terms expire.

(b) If a corporation has cumulative voting pursuant to section seven hundred twenty-seven, article seven of this chapter, this section applies only if there are at least three directors in each group.

WV Legislature

§31E-8-808. Resignation of directors.

(a) A director may resign at any time by delivering written notice to the board of directors, the chair of the board of directors or the corporation.

(b) A resignation is effective when the notice is delivered unless the board of directors agree to a later effective date.

WV Legislature

§31E-8-809. Removal of directors by members or directors.

(a) The members entitled to vote for the election of directors or, if there are no members entitled to vote for the election of directors, the directors, may remove one or more directors with or without cause unless the articles of incorporation provide that directors may be removed only for cause.

(b) If a director is elected by a class of members only the members of that class may participate in the vote to remove him or her.

(c) If cumulative voting is authorized, a director may not be removed if the number of votes sufficient to elect him or her under cumulative voting is voted against his or her removal. If cumulative voting is not authorized, a director may be removed only if the number of votes cast to remove him or her exceeds the number of votes cast not to remove him or her.

(d) A director may be removed by the members entitled to vote for directors or, if there are no members entitled to vote for directors, the directors, only at a meeting called for the purpose of removing him or her and the meeting notice must state that the purpose, or one of the purposes, of the meeting is removal of the director.

WV Legislature

§31E-8-810. Removal of directors by judicial proceeding.

(a) The circuit court may remove a director of the corporation from office in a proceeding commenced either by the corporation or by its members holding at least ten percent of the voting power of any class if the court finds that: (1) The director engaged in fraudulent or dishonest conduct or gross abuse of authority or discretion, with respect to the corporation; and (2) removal is in the best interest of the corporation.

(b) The court that removes a director may bar the director from serving on the board for a period prescribed by the court.

(c) If members commence a proceeding under subsection (a) of this section, they must make the corporation a party defendant.

WV Legislature

§31E-8-811. Vacancy on board.

(a) Unless the articles of incorporation provide otherwise, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:

(1) The members entitled to vote for directors may fill the vacancy;

(2) The board of directors may fill the vacancy; or

(3) If the directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

(b) If the vacant office was held by a director elected by a class of members and if the vacancy is to be filled by the members entitled to vote for directors as provided in subdivision (1), subsection (a) of this section, only the members of that class are entitled to vote to fill the vacancy.

(c) A vacancy that will occur at a specific later date, by reason of a resignation effective at a later date under subsection (b), section eight hundred eight of this article or otherwise, may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs.

(d) If the board of directors ceases to exist and there are no members having the right to vote for the election of directors, members not entitled to vote are entitled to elect a new board of directors.

WV Legislature

§31E-8-812. Compensation of directors.

Unless the articles of incorporation or bylaws provide otherwise, the board of directors may fix the compensation of directors, including reasonable allowance for expenses actually incurred in connection with their duties.

WV Legislature

PART 2. MEETINGS AND ACTION OF THE BOARD.

§31E-8-820. Meetings.

(a) The board of directors may hold regular or special meetings in or out of this state.

(b) Unless the articles of incorporation or bylaws provide otherwise, the board of directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

WV Legislature

§31E-8-821. Action without meeting.

(a) Unless the articles of incorporation or bylaws provide otherwise, action required or permitted by this chapter to be taken at a board of directors' meeting may be taken without a meeting if the action is taken by all members of the board. The action must be evidenced by one or more written consents describing the action taken, signed by each director, and included in the minutes or filed with the corporate records reflecting the action taken.

(b) Action taken under this section is effective when the last director signs the consent, unless the consent specifies a different effective date.

(c) A consent signed under this section has the effect of a meeting vote and may be described as having the effect of a meeting vote in any document.

WV Legislature

§31E-8-822. Notice of meeting.

(a) Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting.

(b) Unless the articles of incorporation or bylaws provide for a longer or shorter period, special meetings of the board of directors must be preceded by at least two days' notice of the date, time, and place of the meeting. The notice need not describe the purpose of the special meeting unless required by the articles of incorporation or bylaws.

WV Legislature

§31E-8-823. Waiver of notice.

(a) A director may waive any notice required by this chapter, the articles of incorporation, or bylaws before or after the date and time stated in the notice. Except as provided by subsection (b) of this section, the waiver must be in writing, signed by the director entitled to the notice, and filed with the minutes or corporate records.

(b) A director's attendance at or participation in a meeting waives any required notice to him or her of the meeting unless the director at the beginning of the meeting or promptly upon his or her arrival objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

WV Legislature

§31E-8-824. Quorum and voting.

(a) Unless the articles of incorporation or bylaws require a greater number or unless otherwise specifically provided in this chapter, a quorum of a board of directors consists of:

(1) A majority of the fixed number of directors if the corporation has a fixed board size; or

(2) A majority of the number of directors prescribed, or if no number is prescribed the number in office immediately before the meeting begins, if the corporation has a variable-range size board.

(b) The articles of incorporation or bylaws may authorize a quorum of a board of directors to consist of no fewer than one third of the fixed or prescribed number of directors determined under subsection (a) of this section.

(c) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number of directors.

(d) A director who is present at a meeting of the board of directors or a committee of the board of directors when corporate action is taken is deemed to have assented to the action taken unless: (1) He or she objects at the beginning of the meeting or promptly upon his or her arrival to holding it or transacting business at the meeting; (2) his or her dissent or abstention from the action taken is entered in the minutes of the meeting; or (3) he or she delivers written notice of his or her dissent or abstention to the presiding officer of the meeting before its adjournment or to the corporation immediately after adjournment of the meeting. The right of dissent or abstention is not available to a director who votes in favor of the action taken.

WV Legislature

§31E-8-825. Committees.

(a) Unless the articles of incorporation or bylaws provide otherwise, a board of directors may create one or more committees and appoint members of the board of directors to serve on them. Each committee must have two or more members, who serve at the pleasure of the board of directors.

(b) The creation of a committee and appointment of members to it must be approved by the greater of: (1) A majority of all the directors in office when the action is taken; or (2) the number of directors required by the articles of incorporation or bylaws to take action under section eight hundred twenty-four of this article.

(c) Sections eight hundred twenty, eight hundred twenty-one, eight hundred twenty-two, eight hundred twenty-three and eight hundred twenty-four of this article, which govern meetings, action without meetings, notice and waiver of notice, and quorum and voting requirements of the board of directors, apply to committees and their members as well.

(d) To the extent specified by the board of directors or in the articles of incorporation or bylaws, each committee may exercise the authority of the board of directors under section eight hundred one of this article.

(e) A committee may not, however:

(1) Approve or propose to members action that this chapter requires be approved by members;

(2) Fill vacancies on the board of directors or on any of its committees;

(3) Amend articles of incorporation pursuant to section one thousand two, article ten of this chapter;

(4) Adopt, amend, or repeal bylaws;

(5) Approve a plan of merger;

(6) Approve a sale, lease, exchange or other disposition of all, or substantially all, of the property of a corporation; or

(7) Approve a proposal to dissolve.

(f) The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in section eight hundred thirty of this article.

WV Legislature

§31E-8-826. Court-ordered meeting of directors.

(a) The circuit court of the county where a corporation's principal office is located or, if none, where its registered office is located, or if the corporation has no principal or registered office in this state, the circuit court satisfying the venue requirements found in section one, article one, chapter fifty-six of this code, may summarily order a meeting of the board of directors to be held: (1) On application of any director of the corporation if no meeting of the board of directors has been held for a period of twelve months or more; or (2) on application of a director who signed a demand for a special meeting valid under the bylaws if: (A) Notice of the special meeting was not given within thirty days after the date the demand was delivered to the corporation's secretary; or (B) the special meeting was not held in accordance with the notice.

(b) The circuit court may fix the time and place of the meeting, determine the directors entitled to participate in the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting, or direct that the votes represented at the meeting constitute a quorum for action on those matters, and enter other orders necessary to accomplish the purpose or purposes of the meeting.

WV Legislature

PART 3. DIRECTORS.

§31E-8-830. Standards of conduct for directors.

(a) Each member of the board of directors, when discharging the duties of a director, shall act: (1) In good faith; and (2) in a manner the director reasonably believes to be in the best interests of the corporation.

(b) The members of the board of directors or a committee of the board, when becoming informed in connection with their decision-making function or devoting attention to their oversight function, shall discharge their duties with the care that a person in a like position would reasonably believe appropriate under similar circumstances.

(c) In discharging board or committee duties a director, who does not have knowledge that makes reliance unwarranted, is entitled to rely on the performance by any of the persons specified in subdivisions (1) or (3), subsection (e) of this section to whom the board may have delegated, formally or informally by course of conduct, the authority or duty to perform one or more of the board's functions that are delegable under applicable law.

(d) In discharging board or committee duties a director, who does not have knowledge that makes reliance unwarranted, is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, prepared or presented by any of the persons specified in subsection (e) of this section.

(e) A director is entitled to rely, in accordance with subsection (c) or (d) of this section, on:

(1) One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the functions performed or the information, opinions, reports or statements provided;

(2) Legal counsel, public accountants, or other persons retained by the corporation as to matters involving skills or expertise the director reasonably believes are matters: (A) Within the particular person's professional or expert competence; or (B) as to which the particular person merits confidence; or

(3) A committee of the board of directors of which the director is not a member if the director reasonably believes the committee merits confidence.

WV Legislature

§31E-8-831. Standards of liability for directors.

(a) A director is not liable to the corporation or its members for any decision to take or not to take action, or any failure to take any action, as a director, unless the party asserting liability in a proceeding establishes that:

(1) Any provision in the articles of incorporation authorized by subdivision (4), subsection (b), section two hundred two, article two of this chapter or the protections afforded by section eight hundred sixty of this article or article seven-c, chapter fifty-five of this code, if interposed as a bar to the proceeding by the director, does not preclude liability; and

(2) The challenged conduct consisted or was the result of:

(A) Action not in good faith; or

(B) A decision: (i) Which the director did not reasonably believe to be in the best interests of the corporation; or (ii) as to which the director was not informed to an extent the director reasonably believed appropriate in the circumstances; or

(C) A lack of objectivity due to the director's familial, financial or business relationship with, or a lack of independence due to the director's domination or control by, another person having a material interest in the challenged conduct: (i) Which relationship or which domination or control could reasonably be expected to have affected the director's judgment respecting the challenged conduct in a manner adverse to the corporation; and (ii) after a reasonable expectation has been established, the director does not establish that the challenged conduct was reasonably believed by the director to be in the best interests of the corporation; or

(D) A sustained failure of the director to devote attention to ongoing oversight of the affairs of the corporation, or a failure to devote timely attention, by making or causing to be made appropriate inquiry, when particular facts and circumstances of significant concern materialize that would alert a reasonably attentive director to the need to make inquiry; or

(E) Receipt of a financial benefit to which the director was not entitled or any other breach of the director's duties to deal fairly with the corporation and its members that is actionable under applicable law.

(b) The party seeking to hold the director liable:

(1) For money damages, has the burden of establishing that:

(A) Harm to the corporation or its members has been suffered; and

(B) The harm suffered was proximately caused by the director's challenged conduct; or

(2) For other money payment under a legal remedy, including compensation for the

WV Legislature

unauthorized use of corporate assets, has whatever persuasion burden may be called for to establish that the payment sought is appropriate in the circumstances; or

(3) For other money payment under an equitable remedy, including profit recovery by or disgorgement to the corporation, has whatever persuasion burden may be called for to establish that the equitable remedy sought is appropriate in the circumstances.

(c) Nothing contained in this section may: (1) In any instance where fairness is at issue, including consideration of the fairness of a transaction to the corporation under section eight hundred sixty of this article, alter the burden of proving the fact or lack of fairness otherwise applicable; (2) alter the fact or lack of liability of a director under another section of this chapter, including the provisions governing the consequences of an unlawful distribution under section eight hundred thirty-three of this article or a transactional interest under section eight hundred sixty of this article; or (3) affect any rights to which the corporation or a member may be entitled under another provision of this code or the United States code.

WV Legislature

§31E-8-832. [RESERVED]

WV Legislature

§31E-8-833. Directors' liability for unlawful distributions.

(a) A director who votes for or assents to a distribution in violation of this chapter or the articles of incorporation is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating this chapter if the party asserting liability establishes that when taking the action the director did not comply with section eight hundred thirty of this article.

(b) A director held liable under subsection (a) of this section for an unlawful distribution is entitled to:

(1) Contribution from every other director who could be held liable under subsection (a) of this section for the unlawful distribution; and

(2) Recoupment from each recipient for the amount the recipient accepted, knowing the distribution was made in violation of this chapter or the articles of incorporation.

(c) A proceeding to enforce the liability of a director under subsection (a) of this section is barred unless it is commenced within two years after the date on which the distribution was made.

(d) For purposes of this section, a director is deemed to have voted for a distribution if the director was present at the meeting of the board of directors at the time the distribution was authorized and did not vote in dissent, or if the director consented to the vote pursuant to section eight hundred twenty-one of this article.

WV Legislature

PART 4. OFFICERS.

§31E-8-840. Required officers.

(a) A corporation has the officers described in its bylaws or appointed by the board of directors in accordance with the bylaws.

(b) A duly appointed officer may appoint one or more officers or assistant officers if authorized by the bylaws or the board of directors.

(c) The bylaws or the board of directors must delegate to one of the officers responsibility for preparing minutes of the directors' and members' meetings and for authenticating records of the corporation.

(d) The same individual may simultaneously hold more than one office in a corporation.

WV Legislature

§31E-8-841. Duties of officers.

Each officer has the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties prescribed by the board of directors or by direction of an officer authorized by the board of directors to prescribe the duties of other officers.

WV Legislature

§31E-8-842. Standards of conduct for officers.

(a) An officer, when performing in his or her official capacity, shall act:

(1) In good faith;

(2) With the care that a person in a like position would reasonably exercise under similar circumstances; and

(3) In a manner the officer reasonably believes to be in the best interests of the corporation.

WV Legislature

§31E-8-843. Resignation and removal of officers.

(a) An officer may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is delivered unless the board of directors agree to a later effective date. If a resignation is made effective at a later date and the corporation accepts the future effective date, its board of directors may fill the pending vacancy before the effective date if the board of directors provides that the successor does not take office until the effective date.

(b) A board of directors may remove any officer at any time with or without cause.

WV Legislature

§31E-8-844. Contract rights of officers.

(a) The appointment of an officer does not itself create contract rights.

(b) An officer's removal does not affect the officer's contract rights, if any, with the corporation. An officer's resignation does not affect the corporation's contract rights, if any, with the officer.

WV Legislature

PART 5. INDEMNIFICATION AND ADVANCE FOR EXPENSES.

§31E-8-850. Part definitions.

In this part:

(1) "Corporation" includes any domestic or foreign predecessor entity of a corporation in a merger.

(2) "Director" or "officer" means an individual who is or was a director or officer, respectively, of a corporation or who, while a director or officer of the corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee, or agent of another domestic or foreign corporation, partnership, joint venture, trust, employee benefit plan, or other entity. A director or officer is considered to be serving an employee benefit plan at the corporation's request if his or her duties to the corporation also impose duties on, or otherwise involve services by, him or her to the plan or to participants in or beneficiaries of the plan. "Director" or "officer" includes, unless the context requires otherwise, the estate or personal representative of a director or officer.

(3) "Disinterested director" means a director who, at the time of a vote referred to in subsection (c), section eight hundred fifty-three of this article or a vote or selection referred to in subsection (b) or (c), section eight hundred fifty-five of this article, is not: (A) A party to the proceeding; or (B) an individual having a familial, financial, professional or employment relationship with the director whose indemnification or advance for expenses is the subject of the decision being made, which relationship would, in the circumstances, reasonably be expected to exert an influence on the director's judgment when voting on the decision being made.

(4) "Expenses" includes counsel fees.

(5) "Liability" means the obligation to pay a judgment; settlement; penalty; fine, including an excise tax assessed with respect to an employee benefit plan; or reasonable expenses incurred with respect to a proceeding.

(6) "Official capacity" means:

(A) When used with respect to a director, the office of director in a corporation; and

(B) When used with respect to an officer, as contemplated in section eight hundred fifty-six of this article, the office in a corporation held by the officer. "Official capacity" does not include service for any other domestic or foreign corporation or any partnership, joint venture, trust, employee benefit plan, or other entity.

(7) "Party" means an individual who was, is, or is threatened to be made, a defendant or respondent in a proceeding.

WV Legislature

(8) "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, arbitrative, or investigative and whether formal or informal.

WV Legislature

§31E-8-851. Permissible indemnification.

(a) Except as otherwise provided in this section, a corporation may indemnify an individual who is a party to a proceeding because he or she is a director against liability incurred in the proceeding if:

(1) (A) He or she conducted himself or herself in good faith; and

(B) He or she reasonably believed: (i) In the case of conduct in his or her official capacity, that his or her conduct was in the best interests of the corporation; and (ii) in all other cases, that his or her conduct was at least not opposed to the best interests of the corporation; and

(C) In the case of any criminal proceeding, he or she had no reasonable cause to believe his or her conduct was unlawful; or

(2) He or she engaged in conduct for which broader indemnification has been made permissible or obligatory under a provision of the articles of incorporation, as authorized by subdivision (5), subsection (b), section two hundred two, article two of this chapter.

(b) A director's conduct with respect to an employee benefit plan for a purpose he or she reasonably believed to be in the interests of the participants in, and the beneficiaries of, the plan is conduct that satisfies the requirement of subparagraph (ii), paragraph (B), subdivision (1), subsection (a) of this section.

(c) The termination of a proceeding by judgment, order, settlement, or conviction, or upon a plea of nolo contendere or its equivalent, is not, determinative that the director did not meet the relevant standard of conduct described in this section.

(d) Unless ordered by a circuit court under subdivision (3), subsection (a), section eight hundred fifty-four of this article, a corporation may not indemnify a director:

(1) In connection with a proceeding by or in the right of the corporation, except for reasonable expenses incurred in connection with the proceeding if it is determined that the director has met the relevant standard of conduct under subsection (a) of this section; or

(2) In connection with any proceeding with respect to conduct for which he or she was adjudged liable on the basis that he or she received a financial benefit to which he or she was not entitled, whether or not involving action in his or her official capacity.

WV Legislature

§31E-8-852. Mandatory indemnification.

A corporation must indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which he or she was a party because he or she was a director of the corporation against reasonable expenses incurred by him or her in connection with the proceeding.

WV Legislature

§31E-8-853. Advance for expenses.

(a) A corporation may, before final disposition of a proceeding, advance funds to pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding because he or she is a director if he or she delivers to the corporation:

(1) A written affirmation of his or her good faith belief that he or she has met the relevant standard of conduct described in section eight hundred fifty-one of this article or that the proceeding involves conduct for which liability has been eliminated under a provision of the articles of incorporation as authorized by subdivision (4), subsection (b), section two hundred two, article two of this chapter; and

(2) His or her written undertaking to repay any funds advanced if he or she is not entitled to mandatory indemnification under section eight hundred fifty-two of this article and it is ultimately determined under sections eight hundred fifty-four or eight hundred fifty-five of this article that he or she has not met the relevant standard of conduct described in section eight hundred fifty-one of this article.

(b) The undertaking required by subdivision (2), subsection (a) of this section must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to the financial ability of the director to make repayment.

(c) Authorizations under this section are to be made:

(1) By the board of directors:

(A) If there are two or more disinterested directors, by a majority vote of all the disinterested directors, a majority of whom constitute a quorum for this purpose, or by a majority of the members of a committee of two or more disinterested directors appointed by a vote; or

(B) If there are fewer than two disinterested directors, by the vote necessary for action by the board in accordance with subsection (c), section eight hundred twenty-four of this article, in which authorization directors who do not qualify as disinterested directors may participate; or

(2) By special legal counsel:

(A) Selected in the manner prescribed in subdivision (1) of this subsection;

(B) If there are fewer than two disinterested directors, selected by the board of directors in which selection directors who do not qualify as disinterested directors may participate; or

(3) By the members, if the members have a right to vote.

WV Legislature

§31E-8-854. Circuit court-ordered indemnification and advance for expenses.

(a) A director who is a party to a proceeding because he or she is a director may apply for indemnification or an advance for expenses to the circuit court conducting the proceeding or to another circuit court of competent jurisdiction. After receipt of an application and after giving any notice it considers necessary, the circuit court shall:

(1) Order indemnification if the circuit court determines that the director is entitled to mandatory indemnification under section eight hundred fifty-two of this article;

(2) Order indemnification or advance for expenses if the circuit court determines that the director is entitled to indemnification or advance for expenses pursuant to a provision authorized by subsection (a), section eight hundred fifty-eight of this article; or

(3) Order indemnification or advance for expenses if the circuit court determines, in view of all the relevant circumstances, that it is fair and reasonable;

(A) To indemnify the director; or

(B) To advance expenses to the director, even if he or she has not met the relevant standard of conduct set forth in subsection (a), section eight hundred fifty-one of this article, failed to comply with section eight hundred fifty-three of this article or was adjudged liable in a proceeding referred to in subdivision (1) or (2), subsection (d), section eight hundred fifty-one of this article, but if he or she was adjudged so liable his or her indemnification is to be limited to reasonable expenses incurred in connection with the proceeding.

(b) If the circuit court determines that the director is entitled to indemnification under subdivision (1), subsection (a) of this section or to indemnification or advance for expenses under subdivision (2), subsection (a) of this section, it shall also order the corporation to pay the director's reasonable expenses incurred in connection with obtaining circuit court-ordered indemnification or advance for expenses. If the circuit court determines that the director is entitled to indemnification or advance for expenses under subdivision (3), subsection (a) of this section, it may also order the corporation to pay the director's reasonable expenses to obtain circuit court-ordered indemnification or advance for expenses.

WV Legislature

§31E-8-855. Determination and authorization of indemnification.

(a) A corporation may not indemnify a director under section eight hundred fifty-one of this article unless authorized for a specific proceeding after a determination has been made that indemnification of the director is permissible because he or she has met the relevant standard of conduct set forth in section eight hundred fifty-one of this article.

(b) The determination is to be made:

(1) If there are two or more disinterested directors, by the board of directors by a majority vote of all the disinterested directors, a majority of whom constitute a quorum for this purpose, or by a majority of the members of a committee of two or more disinterested directors appointed by a vote;

(2) By special legal counsel:

(A) Selected in the manner prescribed in subdivision (1) of this subsection; or

(B) If there are fewer than two disinterested directors, selected by the board of directors in which selection directors who do not qualify as disinterested directors may participate; or

(3) By the members, if the members have a right to vote.

(c) Authorization of indemnification is to be made in the same manner as the determination that indemnification is permissible, except that if there are fewer than two disinterested directors or if the determination is made by special legal counsel, authorization of indemnification is to be made by those entitled under paragraph (B), subdivision (2), subsection (b) of this section to select special legal counsel.

WV Legislature

§31E-8-856. Indemnification of officers.

(a) A corporation may indemnify and advance expenses under this part to an officer of the corporation who is a party to a proceeding because he or she is an officer of the corporation:

(1) To the same extent as a director; and

(2) If he or she is an officer but not a director, to a further extent as may be provided by the articles of incorporation, the bylaws, a resolution of the board of directors, or contract except for:

(A) Liability in connection with a proceeding by or in the right of the corporation other than for reasonable expenses incurred in connection with the proceeding; or

(B) Liability arising out of conduct that constitutes:

(i) Receipt by him or her of a financial benefit to which he or she is not entitled;

(ii) An intentional infliction of harm on the corporation or the members; or

(iii) An intentional violation of criminal law.

(b) The provisions of subdivision (2), subsection (a) of this section apply to an officer who is also a director if the basis on which he or she is made a party to the proceeding is an act or omission solely as an officer.

(c) An officer of a corporation who is not a director is entitled to mandatory indemnification under section eight hundred fifty-two of this article, and may apply to a circuit court under section eight hundred fifty-four of this article for indemnification or an advance for expenses, in each case to the same extent to which a director may be entitled to indemnification or advance for expenses under those provisions.

WV Legislature

§31E-8-857. Insurance.

A corporation may purchase and maintain insurance on behalf of an individual who is a director or officer of the corporation, or who, while a director or officer of the corporation, serves at the corporation's request as a director, officer, partner, trustee, employee, or agent of another domestic or foreign corporation, partnership, joint venture, trust, employee benefit plan, or other entity, against liability asserted against or incurred by him or her in that capacity or arising from his or her status as a director or officer, whether or not the corporation would have power to indemnify or advance expenses to him or her against the same liability under this part.

WV Legislature

§31E-8-858. Variation by corporate action; application of part.

(a) A corporation may, by a provision in its articles of incorporation or bylaws or in a resolution adopted or a contract approved by its board of directors or members, obligate itself in advance of the act or omission giving rise to a proceeding to provide indemnification in accordance with section eight hundred fifty-one of this article or advance funds to pay for or reimburse expenses in accordance with section eight hundred fifty-three of this article. Any obligatory provision is deemed to satisfy the requirements for authorization referred to in subsection (c), section eight hundred fifty-three and in subsection (c), section eight hundred fifty-five of this article. Any provision that obligates the corporation to provide indemnification to the fullest extent permitted by law is deemed to obligate the corporation to advance funds to pay for or reimburse expenses in accordance with section eight hundred fifty-three of this article to the fullest extent permitted by law, unless the provision specifically provides otherwise.

(b) Any provision pursuant to subsection (a) of this section may not obligate the corporation to indemnify or advance expenses to a director of a predecessor of the corporation, pertaining to conduct with respect to the predecessor, unless otherwise specifically provided. Any provision for indemnification or advance for expenses in the articles of incorporation, bylaws, or a resolution of the board of directors or members of a predecessor of the corporation in a merger or in a contract to which the predecessor is a party, existing at the time the merger takes effect, is to be governed by section one thousand one hundred and three, article eleven of this chapter.

(c) A corporation may, by a provision in its articles of incorporation, limit any of the rights to indemnification or advance for expenses created by or pursuant to this part.

(d) This part does not limit a corporation's power to pay or reimburse expenses incurred by a director or an officer in connection with his or her appearance as a witness in a proceeding at a time when he or she is not a party.

(e) This part does not limit a corporation's power to indemnify, advance expenses to or provide or maintain insurance on behalf of an employee or agent.

WV Legislature

§31E-8-859. Exclusivity of part.

A corporation may provide indemnification or advance expenses to a director or an officer only as permitted by this part.

WV Legislature

PART 6. DIRECTORS' CONFLICTING INTEREST TRANSACTIONS.

§31E-8-860. Directors' conflicting interest transactions.

(a) No contract or transaction between a corporation and one or more of its directors or officers, or between a corporation and any other corporation, partnership, association, or other organization in which one or more of its directors or officers are directors or officers, or have a financial interest, is void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the board or committee thereof which authorizes the contract or transaction, or solely because any director's or officer's votes are counted for the purpose, if:

(1) The material facts as to the director's or officer's relationship or interest and as to the contract or transaction are disclosed or are known to the board of directors or the committee, and the board or committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum; or

(2) The material facts as to the director's or officer's relationship or interest and as to the contract or transaction are disclosed or are known to the members entitled to vote on the contract or transaction, and the contract or transaction is specifically approved in good faith by vote of the members entitled to vote; or

(3) The contract or transaction is fair as to the corporation as of the time it is authorized, approved or ratified, by the board of directors, a committee of the board of directors, or the members.

(b) Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board of directors or of a committee which authorizes the contract or transaction.

WV Legislature

PART 1. AMENDMENT OF ARTICLES OF INCORPORATION.

§31E-10-1001. Authority to amend.

(a) A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles of incorporation or to delete a provision not required in the articles of incorporation. Whether a provision is required or permitted in the articles of incorporation is determined as of the effective date of the amendment.

(b) A member of the corporation does not have a vested property right resulting from any provision in the articles of incorporation, including provisions relating to management, control, purpose or duration of the corporation.

WV Legislature

§31E-10-1002. Certain amendments by board of directors.

Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt one or more amendments to the corporation's articles of incorporation without member action:

(1) To extend the duration of the corporation if it was incorporated at a time when limited duration was required by law;(2) To delete the names and addresses of the initial directors;

(3) To delete the name and address of the initial registered agent or registered office, if any, if a statement of change is on file with the Secretary of State;

(4) To change the corporate name by substituting the word "corporation," "incorporated" or "company", or the abbreviation "corp.", "inc." or "co.", for a similar word or abbreviation in the name, or by adding, deleting or changing a geographical attribution to the name; or

(5) To make any other change expressly permitted by this chapter to be made without member action.

WV Legislature

§31E-10-1003. Amendment by board of directors and members.

(a) A corporation's board of directors may propose one or more amendments to the articles of incorporation for submission to those members who are entitled to vote on amendments, if any.

(b) For the amendment to be adopted: (1) The board of directors must approve the amendment; (2) the board of directors must recommend the amendment to the members entitled to vote on the amendment, if any, unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the members entitled to vote on the amendment with the submission of the amendment; and (3) the members entitled to vote on the amendment must approve the amendment, either before or after the actions required in subdivisions (1) and (2) of this subsection, as provided in subsection (e) of this section.

(c) The board of directors may condition its submission of the proposed amendment on any basis.

(d) The corporation shall notify each member entitled to vote on the amendment, if any, of the proposed meeting of members in accordance with section seven hundred five, article seven of this chapter. The notice of meeting must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed amendment and contain or be accompanied by a copy or summary of the amendment.

(e) Unless this chapter, the articles of incorporation or the board of directors acting pursuant to subsection (c) of this section requires a greater vote or a vote by class of members, the amendment to be adopted must be approved by: (1) If no class of members is entitled to vote separately on the amendment as a class, at least two thirds of the votes cast by the members entitled to vote on the amendment; and (2) if any class of members is entitled to vote on the amendment separately as a class, at least two thirds of the votes cast by the members of each class.

(f) If the corporation has no members, or no members entitled to vote, the proposed amendment must be adopted by vote of at least two thirds of the directors present at a meeting of the board of directors at which a quorum is present.

WV Legislature

§31E-10-1004. Amendment by incorporators.

If a corporation has no members entitled to vote on the proposed amendment to the articles of incorporation, the incorporators may, at any time and from time to time, before the corporation has directors amend the articles of incorporation by resolution adopted by a vote of at least two thirds of the incorporators.

WV Legislature

§31E-10-1005. Articles of amendment.

A corporation amending its articles of incorporation shall deliver to the Secretary of State for filing articles of amendment setting forth:

(1) The name of the corporation;

(2) The text of each amendment adopted;

(3) The date of each amendment's adoption;

(4) A statement that the amendment was approved by the board of directors as required under section one thousand three of this article or, if approval of members was not required, a statement to that effect and a statement that the amendment was approved by a sufficient vote of either: (A) The incorporators, if the vote was before the corporation had directors; or (B) the board of directors, in either case in accordance with section one thousand two or one thousand four of this article; and

(5) If approval by members was required: (A) The designation of each class of members entitled to vote separately on the amendment; and (B) the total number of votes cast for and against the amendment by each class of members entitled to vote separately on the amendment and a statement that the number cast for the amendment by each class was sufficient for approval by that class.

WV Legislature

§31E-10-1006. Restated articles of incorporation.

(a) A corporation's board of directors may restate its articles of incorporation at any time with or without member action.

(b) The restatement may include one or more amendments to the articles. If the restatement includes an amendment requiring member approval, it must be adopted as provided in section one thousand three of this article. If the restatement includes an amendment which does not require member approval, it must be adopted as provided in section one thousand two or one thousand four of this article.

(c) If the board of directors submits a restatement for member action, the corporation shall notify each member entitled to vote on the proposed amendment of the proposed members' meeting in accordance with section seven hundred five, article seven of this chapter. The notice of meeting must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed restatement and contain or be accompanied by a copy of the restatement that identifies any amendment or other change it would make in the articles.

(d) A corporation restating its articles of incorporation shall deliver to the Secretary of State for filing articles of restatement setting forth the name of the corporation and the text of the restated articles of incorporation together with a statement setting forth: (1) Whether the restatement contains an amendment to the articles of incorporation requiring member approval and, if it does not, that the board of directors, or the incorporators before the corporation had directors, adopted the restatement; or (2) if the restatement contains an amendment to the articles of incorporation requiring member approval, the information required by section one thousand five of this article.

(e) Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to it.

(f) The Secretary of State may certify a restated articles of incorporation, as the articles of incorporation currently in effect, without including the statement information required by subsection (d) of this section.

WV Legislature

§31E-10-1007. Amendment pursuant to reorganization.

(a) A corporation's articles of incorporation may be amended without action by the board of directors or the members to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under federal statute if the articles of incorporation after amendment contains only provisions required or permitted by section two hundred two, article two of this chapter.

(b) The individual or individuals designated by the court shall deliver to the Secretary of State for filing articles of amendment setting forth:

(1) The name of the corporation;

(2) The text of each amendment approved by the court;

(3) The date of the court's order or decree approving the articles of amendment;

(4) The title of the reorganization proceeding in which the order or decree was entered; and

(5) A statement that the court had jurisdiction of the proceeding under federal law.

(c) This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

WV Legislature

§31E-10-1008. Effect of amendment.

An amendment to the articles of incorporation does not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party or the existing rights of persons other than members of the corporation. An amendment changing a corporation's name does not abate a proceeding brought by or against the corporation in its former name.

WV Legislature

PART 2. AMENDMENT OF BYLAWS.

§31E-10-1020. Amendment by board of directors or members.

(a) A corporation's members entitled to vote may amend or repeal the corporation's bylaws.

(b) A corporation's board of directors may amend or repeal the corporation's bylaws, unless:

(1) The articles of incorporation or section one thousand twenty-one of this article reserve that power exclusively to the members in whole or part; or

(2) The members in amending, repealing, or adopting a bylaw expressly provide that the board of directors may not amend, repeal, or reinstate that bylaw.

WV Legislature

§31E-10-1021. Bylaw increasing quorum or voting requirement for directors.

(a) A bylaw that increases a quorum or voting requirement for the board of directors may be amended or repealed:

(1) If adopted by the members, only by the members, unless the bylaw otherwise provides; or

(2) If adopted by the board of directors, either by the members or by the board of directors.

(b) A bylaw adopted or amended by the members that increases a quorum or voting requirement for the board of directors may provide that it can be amended or repealed only by a specified vote of either the members or the board of directors.

(c) Action by the board of directors under subsection (a) of this section to amend or repeal a bylaw that changes the quorum or voting requirement for the board of directors must meet the same quorum requirement and be adopted by the same vote required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

WV Legislature

§31E-10-1022. Bylaw increasing quorum or voting requirement for members.

(a) If authorized by the articles of incorporation, the members may adopt or amend a bylaw that fixes a greater quorum or voting requirement for members or classes of members than is required by this chapter. The adoption or amendment of a bylaw that adds, changes or deletes a greater quorum requirement for members must meet the same quorum requirement and be adopted by the same vote and classes of members required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

(b) A bylaw that fixes a greater quorum or voting requirement for members under subsection (a) of this section may not be adopted, amended or repealed by the board of directors.

WV Legislature

§31E-11-1101. Merger.

(a) One or more domestic corporations may merge with a domestic or foreign corporation or other entity pursuant to a plan of merger.

(b) A foreign corporation, or a domestic or foreign other entity, may be a party to the merger, or may be created by the terms of the plan of merger, only if:

(1) The merger is permitted by the laws under which the corporation or other entity is organized or by which it is governed; and

(2) In effecting the merger, the corporation or other entity complies with the laws under which the corporation or other entity is organized or by which it is governed and with its articles of incorporation or organizational documents.

(c) The plan of merger must include:

(1) The name of each corporation or other entity that will merge and the name of the corporation or other entity that will be the survivor of the merger;

(2) The terms and conditions of the merger;

(3) The manner and basis of converting the memberships, if any, of each merging corporation and interests of each merging entity, interests, obligations, cash, other property, or any combination of the foregoing;

(4) The articles of incorporation of any corporation, or the organizational documents of any other entity, to be created by the merger, or if a new corporation or other entity is not to be created by the merger, any amendments to the survivor's articles of incorporation or organizational documents; and

(5) Any other provisions required by the laws under which any party to the merger is organized or by which it is governed, or by the articles of incorporation or organizational documents of any party to the merger.

(d) The terms described in subdivisions (2) and (3), subsection (c) of this section may be made dependent on facts ascertainable outside the plan of merger, provided that those facts are objectively ascertainable. The term "facts" includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation.

(e) The plan of merger may also include a provision that the plan may be amended prior to filing the articles of merger with the Secretary of State: Provided, That if the members of a domestic corporation that is a party to the merger are required or permitted to vote on the plan, the plan must provide that subsequent to approval of the plan by the members the plan may not be amended to:

WV Legislature

(1) Change the manner and basis of converting the memberships, if any;

(2) Change the articles of incorporation of any corporation, or the organizational documents of any other entity, that will survive or be created as a result of the merger, except for changes permitted by section one thousand five, article ten of this chapter or by comparable provisions of the laws under which the foreign corporation or other entity is organized or governed; or

(3) Change any of the other terms or conditions of the plan if the change would adversely affect the members in any material respect.

WV Legislature

§31E-11-1102. Action on plan of merger.

(a) After adopting a plan of merger, the board of directors of each corporation party to the merger shall submit the plan of merger, except as provided in subsection (h) of this section, for approval by those members who are entitled to vote on a plan of merger, if any.

(b) For a plan of merger to be approved: (1) The board of directors must approve the plan of merger; (2) the board of directors must recommend the plan of merger to the members entitled to vote on the plan of merger, if any, unless the board of directors determines that because of conflicts of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the members entitled to vote on the plan of merger with the submission of the plan; and (3) the members entitled to vote on the plan must approve the plan, either before or after the actions required in subdivisions (1) and (2) of this subsection, as provided in subsection (e) of this section.

(c) The board of directors may condition its submission of the proposed merger on any basis.

(d) The corporation shall notify each member, entitled to vote on the plan, if any, of the proposed members' meeting in accordance with section seven hundred five, article seven of this chapter. The notice is also to state that the purpose, or one of the purposes, of the meeting is to consider the plan of merger and contain or be accompanied by a copy or summary of the plan.

(e) Unless this chapter, the articles of incorporation or the board of directors acting pursuant to subsection (c) of this section requires a greater vote or a vote by class of members, the plan of merger to be adopted must be approved by: (1) If no class of members is entitled to vote separately on the plan as a class, at least two thirds of the votes cast by the members entitled to vote; and (2) if any class of members is entitled to vote on the plan separately as a class, at least two thirds of the votes cast by the members of each class whose members are entitled to vote.

(f) Separate voting by class of members is required on a plan of merger if the plan contains a provision that, if contained in a proposed amendment to articles of incorporation, would require action by one or more separate classes of members on the proposed amendment under the articles of incorporation of the corporation.

(g) Approval of the plan of merger by the corporation requires a greater or additional vote if:

(1) In the case of the surviving corporation, a plan of merger contains any provision which, if contained in a proposed amendment to its articles of incorporation would require a greater vote than, or additional vote to, that otherwise required to approve the plan of merger; or

(2) In the case of any terminating corporation, a sale of all or substantially all assets, or dissolution, would under the circumstances require a greater vote than, or additional vote to, that otherwise required to approve the plan of merger.

WV Legislature

(h) Action by the members of the surviving corporation on a plan of merger is not required if:

(1) The articles of incorporation of the surviving corporation will not differ, except for amendments enumerated in section one thousand two, article ten of this chapter from its articles of incorporation before the merger; and

(2) Each member of the surviving corporation immediately before the effective date of the merger will be a member with identical designations, qualifications, privileges and rights immediately after the merger.

(i) After a merger is authorized, and at any time before the articles of merger is filed, the planned merger may be abandoned, subject to any contractual rights, without further member action, in accordance with the procedure set forth in the plan of merger or, if none is set forth, in the manner determined by the board of directors.

(j) If any merging corporation has no members, or no members entitled to vote on the merger, a plan of merger is to be adopted by the board of directors.

WV Legislature

§31E-11-1103. Articles of merger.

(a) After a plan of merger is approved as required by section one thousand one hundred two of this article, the surviving corporation shall deliver to the Secretary of State for filing articles of merger setting forth: (1) The plan of merger; (2) a statement to the effect that the plan of merger was adopted by the board of directors of each corporation party to the merger; (3) if member approval was not required, a statement to that effect; and (4) if approval of members of one or more corporations party to the merger was required: (A) The designation of each class of members entitled to vote separately on the plan as to each corporation; and (B) the total number of votes cast for and against the plan by each class of members entitled to vote separately on the plan as to each corporation and a statement that the number cast for the plan by each class of members was sufficient for approval by that class.

(b) A merger takes effect upon issuance by the Secretary of State of a certificate of merger to the survivor corporation.

(c) The Secretary of State shall withhold the issuance of any certificate of merger in the case where the new or surviving corporation will be a foreign corporation which has not qualified to conduct affairs or do or transact business or hold property in this state 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 said 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 the payment has been provided for, or until the Secretary of State received a notice from the Tax Commissioner or Bureau of Employment Programs stating that the corporation in question is not subject to payment of any taxes or to the making of any employment security payments or assessments.

WV Legislature

§31E-11-1104. Effect of merger.

When a merger takes effect:

(1) Every other corporation party to the merger merges into the surviving corporation and the separate existence of every corporation except the surviving corporation ceases;

(2) All property owned by, and every contract right possessed by, each corporation or other entity that merges into the survivor is vested in the survivor without reversion or impairment;

(3) All real property located in the state owned by each corporation or other entity that merges into the survivor passes by operation of law and the transfer is evidenced by recording a confirmation deed in each county in which the real property is located. No transfer or excise taxes may be assessed for the recording of the confirmation deeds.

(4) The surviving corporation has all liabilities of each corporation party to the merger;

(5) A proceeding pending against any corporation party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the corporation whose existence ceased;

(6) The articles of incorporation of the surviving corporation is amended to the extent provided in the plan of merger;

(7) The memberships, if any, of each corporation party to the merger that are to be converted into memberships of the surviving corporation are converted, and the former members in the membership classes are entitled only to the designation, qualifications, privileges and rights of the class of members to which they are converted, as provided in the articles of incorporation of the surviving corporation as the articles may be amended by the plan of merger; and

(8) Any devise, bequest, gift or grant, contained in any will or in any other instrument, made before or after the merger, to or for the benefit of any of the merging corporations inures to the benefit of the surviving corporation, and so far as is necessary for that purpose, the existence of each merging corporation is deemed to continue in and through the surviving or new corporation.

WV Legislature

§31E-12-1201. Disposition of assets not requiring member approval.

No approval of the members of a corporation is required, unless the articles of incorporation otherwise provide:

(1) To sell, lease, exchange, or otherwise dispose of any or all of the corporation's assets in the usual and regular course of business;

(2) To mortgage, pledge, dedicate to the repayment of indebtedness with or without recourse, or otherwise encumber any or all of the corporation's assets, whether or not in the usual and regular course of business; or

(3) To transfer any or all of the corporation's assets to one or more corporations or other entities all of the shares or interests of which are owned by the corporation.

WV Legislature

§31E-12-1202. Member approval of certain dispositions.

(a) If the corporation has members entitled to vote on the transaction, a sale, lease, exchange, or other disposition of assets, other than a disposition described in section one thousand two hundred one of this article, requires approval of the corporation's members if the disposition would leave the corporation without a significant continuing business activity. If a corporation retains an activity that represented at least twenty-five percent of total assets at the end of the most recently completed fiscal year, and twenty-five percent of either income from continuing operations before taxes or revenues from continuing operations for that fiscal year, in each case of the corporation and its subsidiaries on a consolidated basis, the corporation will conclusively be deemed to have retained a significant continuing activity.

(b) A disposition that requires approval of the members under subsection (a) of this section must be initiated by a resolution by the board of directors authorizing the disposition. After adoption of a resolution, the board of directors shall submit the proposed disposition to the members for their approval. The board of directors shall also transmit to the members a recommendation that the members approve the proposed disposition, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make a recommendation that the members approve the disposition, in which case the board of directors shall transmit to the members the basis for that determination.

(c) The board of directors may condition its submission of a disposition to the members under subsection (b) of this section on any basis.

(d) If a disposition is required to be approved by the members under subsection (a) of this section, and if the approval is to be given at a meeting, the corporation shall notify each member entitled to vote of the meeting of members at which the disposition is to be submitted for approval. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the disposition and is to contain a description of the disposition, including the terms and conditions of the disposition and the consideration to be received by the corporation.

(e) Unless this chapter or the articles of incorporation or the board of directors acting pursuant to subsection (c) of this section requires a greater vote, or a greater number of votes to be present, the approval of a disposition by the members requires the approval of the members at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast on the disposition exists.

(f) After a disposition has been approved by the members under subsection (b) of this section, and at any time before the disposition has been consummated, it may be abandoned by the corporation without action by the members, subject to any contractual rights of other parties to the disposition.

WV Legislature

(g) A disposition of assets in the course of dissolution under article thirteen of this chapter is not governed by this section.

(h) The assets of a direct or indirect consolidated subsidiary are to be deemed the assets of the parent corporation for the purposes of this section.

WV Legislature

PART 1. VOLUNTARY DISSOLUTION.

§31E-13-1301. Dissolution by incorporators or initial directors.

A majority of the incorporators or initial directors of a corporation that has not commenced activities may dissolve the corporation by delivering to the Secretary of State for filing articles of dissolution that set forth:

(1) The name of the corporation;

(2) The date of its incorporation;

(3) That the corporation has no member entitled to vote;

(4) That the corporation has not commenced the activities for which it was incorporated;

(5) That no debt of the corporation remains unpaid;

(6) That the net assets of the corporation remaining after winding up have been distributed as required by this chapter; and

(7) That a majority of the incorporators or initial directors authorized the dissolution.

WV Legislature

§31E-13-1302. Dissolution by board of directors and members.

(a) A corporation's board of directors may propose dissolution for submission to those members entitled to vote on the dissolution.

(b) For a proposal to dissolve to be adopted:

(1) The board of directors must recommend dissolution to the members unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the members; and

(2) The members entitled to vote must approve the proposal to dissolve as provided in subsection (e) of this section.

(c) The board of directors may condition its submission of the proposal for dissolution on any basis.

(d) The corporation shall notify each member entitled to vote of the proposed members' meeting. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation.

(e) Unless the articles of incorporation or the board of directors acting pursuant to subsection (c) of this section require a greater vote, adoption of the proposal to dissolve requires the approval of the members at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast exists.

(f) If the corporation has no members, or no members entitled to vote upon dissolution, dissolution must be authorized by resolution of the board of directors.

WV Legislature

§31E-13-1303. Articles of dissolution.

(a) At any time after dissolution is authorized, the corporation may dissolve by delivering to the Secretary of State for filing articles of dissolution setting forth:

(1) The name of the corporation;

(2) The date dissolution was authorized; and

(3) If dissolution was approved by the members, a statement that the proposal to dissolve was duly approved by the members in the manner required by this chapter and by the articles of incorporation.

(b) A corporation is dissolved upon the receipt by the corporation of a certificate of dissolution from the Secretary of State.

(c) The Secretary of State shall issue a certificate of dissolution to the corporation delivering articles of dissolution upon 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 of said 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 the 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 assessments.

WV Legislature

§31E-13-1304. Revocation of dissolution.

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

(b) Revocation of dissolution must be authorized in the same manner as the dissolution 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 dissolution without member action.

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

(1) The name of the corporation;

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

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

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

(5) If the corporation's board of directors revoked a dissolution authorized by the members, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and

(6) If member action was required to revoke the dissolution, the information required by subdivision (3), subsection (a), section one thousand three hundred three of this article.

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

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

WV Legislature

§31E-13-1305. Effect of dissolution.

(a) A dissolved corporation continues its corporate existence but may not carry on any activities except those appropriate to wind up and liquidate its activities and affairs, including:

(1) Adopting a plan providing for the distribution of assets under section one thousand three hundred eight of this article.

(2) Collecting its assets;

(3) Disposing of its properties that will not be distributed in kind pursuant to the plan of distribution consistent with the requirements of section one thousand three hundred eight of this article;

(4) Discharging or making provision for discharging its liabilities;

(5) Distributing its remaining assets in accordance with sections one thousand three hundred eight and one thousand three hundred nine of this article; and

(6) Doing every other act necessary to wind up and liquidate its activities and affairs.

(b) Dissolution of a corporation does not:

(1) Transfer title to the corporation's property;

(2) Prevent transfer of its transferable membership interests, if any, although the authorization to dissolve may provide for closing the corporation's membership records;

(3) Subject its directors or officers to standards of conduct different from those prescribed in article eight of this chapter;

(4) Change quorum or voting requirements for its board of directors or members; change provisions for selection, resignation, or removal of its directors or officers or both; or change provisions for amending its bylaws;

(5) Prevent commencement of a proceeding by or against the corporation in its corporate name;

(6) Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution;

(7) Terminate the authority of the registered agent of the corporation; or

(8) Of itself, render the members liable for any liability or other obligations of the corporation or vest title to the property of the corporation in the members.

WV Legislature

§31E-13-1306. Known claims against dissolved corporation.

(a) A dissolved corporation may dispose of the known claims against it by following the procedure described in this section.

(b) The dissolved corporation shall notify its known claimants in writing of the dissolution at any time after its effective date. The written notice must:

(1) Describe information that must be included in a claim;

(2) Provide a mailing address where a claim may be sent;

(3) State the deadline, which may not be fewer than one hundred twenty days from the effective date of the written notice, by which the dissolved corporation must receive the claim; and

(4) State that the claim will be barred if not received by the deadline.

(c) A claim against the dissolved corporation is barred:

(1) If a claimant who was given written notice under subsection (b) of this section does not deliver the claim to the dissolved corporation by the deadline; or

(2) If a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within ninety days from the effective date of the rejection notice.

(d) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

WV Legislature

§31E-13-1307. Unknown claims against dissolved corporation.

(a) A dissolved corporation may also publish notice of its dissolution and request that persons with claims against the corporation present them in accordance with the notice.

(b) The notice must:

(1) Be published one time in a newspaper of general circulation in the county where the dissolved corporation's principal office, or if the corporation had no principal office in this state, in any county where it conducts its affairs;

(2) Describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

(3) State that a claim against the corporation will be barred unless a proceeding to enforce the claim is commenced within five years after the publication of the notice.

(c) If the dissolved corporation publishes a newspaper notice in accordance with subsection (b) of this section, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within five years after the publication date of the newspaper notice:

(1) A claimant who did not receive written notice under section one thousand three hundred six of this article;

(2) A claimant whose claim was timely sent to the dissolved corporation but not acted on; and

(3) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(d) A claim may be enforced under this section:

(1) Against the dissolved corporation, to the extent of its undistributed assets; or

(2) If the assets have been distributed in liquidation, against a member of the dissolved corporation to the extent of his or her pro rata share of the claim or the corporate assets distributed to him or her in liquidation, whichever is less, but a member's total liability for all claims under this section may not exceed the total amount of assets distributed to him or her.

WV Legislature

§31E-13-1308. Adoption of plan for distribution of assets.

A plan providing for the distribution of assets, not inconsistent with the provisions of this chapter is to be adopted by a corporation for the purpose of authorizing any transfer or conveyance of assets for which section one thousand three hundred nine of this article requires a plan of distribution, in the following manner:

(1) Where there are members of any class entitled to vote on dissolution, the board of directors shall adopt a resolution recommending a plan of distribution and directing the submission of the plan to a vote of each class of members entitled to vote. Written notice setting forth the proposed plan of distribution or a summary of the plan is to be given to each member entitled to vote in accordance with section seven hundred five, article seven of this chapter. The plan of distribution is to be adopted upon receiving the approval of a majority of the votes cast by each class of members voting as a class.

(2) Where there are no members entitled to vote on dissolution, a plan of distribution is to be adopted by resolution of the board of directors, or, if directors have not yet been appointed, by resolution approved by a majority of the incorporators.

WV Legislature

§31E-13-1309. Liquidating distribution of assets.

(a) The assets of a corporation in the process of dissolution are to be applied and distributed as follows: (1) All liabilities and other obligations of the corporation are to be paid, satisfied and discharged, or adequate provision made for their payment, satisfaction and discharge; (2) assets held by the corporation upon condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution, are to be returned, transferred or conveyed in accordance with the conditions; (3) assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational or similar purposes, but not held upon a condition requiring return, transfer or conveyance by reason of the dissolution, are to be transferred or conveyed to one or more domestic or foreign corporations, societies or organizations engaged in activities substantially similar to those of the dissolving corporation, pursuant to a plan of distribution adopted as provided in section one thousand three hundred eight of this article; (4) other assets, if any, are to be distributed pro rata among the members of the corporation except to the extent that the articles of incorporation determines the distributive rights of members, or any class or classes of members, or provides for distribution to others; and (5) any remaining assets may be distributed to persons, societies, organizations or domestic or foreign corporations, whether for profit or nonprofit, as may be specified in a plan of distribution adopted as provided in section one thousand three hundred eight of this article.

(b) No final liquidating distribution of assets may be made by a dissolved corporation until the corporation has obtained a current statement or statements 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 of said 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 the 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 assessments.

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§31E-13-1320. Grounds for administrative dissolution.

(a) The Secretary of State may commence a proceeding under §31E-13-1321 of this code to administratively dissolve a nonprofit corporation if:

(1) The nonprofit corporation does not pay within 60 days after they are due any fees, franchise taxes, or penalties imposed by this chapter or other law;

(2) The nonprofit corporation does not notify the Secretary of State within 60 days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued;

(3) The nonprofit corporation's period of duration stated in its articles of incorporation expires;

(4) 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 nonprofit entity;

(5) The nonprofit corporation is in default with the Bureau of Employment Programs as provided in §21A-2-6 of this code; or

(6) A misrepresentation has been made of any material matter in any application, report, affidavit, or other record submitted by the nonprofit corporation pursuant to this chapter.

(b) A nonprofit corporation administratively dissolved may apply to the Secretary of State for reinstatement within two years after the effective date of dissolution pursuant to the procedure in §31E-13-1322 of this code or appeal the Secretary of State's denial of reinstatement pursuant to the procedure in §31E-13-1323 of this code.

WV Legislature

§31E-13-1321. Procedure for and effect of administrative dissolution.

(a) If the Secretary of State determines that one or more grounds exist under §31E-13-1320 of this code for administratively dissolving a corporation, the Secretary of State shall notify the corporation by certified mail with written notice of the determination pursuant to §31E-5-504 of this code.

(b) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within 60 days after service of the notice is perfected under §31E-5-504 of this code, the Secretary of State shall administratively dissolve the corporation by signing and filing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The Secretary of State shall send electronic notice to the corporation with a copy of the certificate of dissolution if the Secretary of State has an email address on file for the corporation.

(c) A corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under §31E-13-1305 of this code and notify claimants pursuant to §31E-13-1306 and §31E-13-1307 of this code.

(d) The administrative dissolution of a corporation does not terminate the authority of its registered agent.

WV Legislature

§31E-13-1322. Reinstatement following administrative dissolution.

(a) A corporation administratively dissolved under section one thousand three hundred twenty-one of this article may apply to the Secretary of State for reinstatement within two years after the effective date of dissolution. The application must:

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

(2) State that the ground or grounds for dissolution either did not exist or have been eliminated;

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

(4) Contain 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 correct, he or she shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites his or her determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation pursuant to section five hundred four, article five of this chapter.

(c) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation resumes carrying on its activities as if the administrative dissolution had never occurred.

WV Legislature

§31E-13-1323. Appeal from denial of reinstatement.

(a) If the Secretary of State denies a corporation's application for reinstatement following administrative dissolution, he or she shall serve the corporation pursuant to section five hundred four, article five of this chapter with a written notice that explains the reason or reasons for denial.

(b) The corporation may appeal the denial of reinstatement to the circuit court within thirty days after service of the notice of denial is perfected. The corporation appeals by petitioning the circuit court to set aside the dissolution and attaching to the petition copies of the Secretary of State's certificate of dissolution, the corporation's application for reinstatement, and the Secretary of State's notice of denial.

(c) The circuit court may summarily order the Secretary of State to reinstate the dissolved corporation or may take other action the circuit court considers appropriate.

(d) The circuit court's final decision may be appealed as in other civil proceedings.

WV Legislature

PART 3. JUDICIAL DISSOLUTION.

§31E-13-1330. Grounds for judicial dissolution.

The circuit court may dissolve a corporation:

(1) In a proceeding by the Attorney General if it is established that:

(A) The corporation obtained its articles of incorporation through fraud; or

(B) The corporation has continued to exceed or abuse the authority conferred upon it by law;

(2) In a proceeding by a member or director if it is established that:

(A) The directors are deadlocked in the management of the corporate affairs, the members are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered, or the activities and affairs of the corporation can no longer be conducted in accordance with the corporation's purpose, because of the deadlock;

(B) The directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent; or

(C) The corporate assets are being misapplied or wasted;

(3) In a proceeding by a creditor if it is established that:

(A) The creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied, and the corporation is insolvent; or

(B) The corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent; or

(4) In a proceeding by the corporation to have its voluntary dissolution continued under circuit court supervision.

WV Legislature

§31E-13-1331. Procedure for judicial dissolution.

(a) It is not necessary to make members or directors parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

(b) A circuit court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the circuit court directs, take other action required to preserve the corporate assets wherever located, and carry on the activities of the corporation until a full hearing can be held.

WV Legislature

§31E-13-1332. Receivership or custodianship.

(a) A circuit court in a judicial proceeding brought to dissolve a corporation may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the activities and affairs of the corporation. The circuit court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the circuit court, before appointing a receiver or custodian. The circuit court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all of its property wherever located.

(b) The circuit court may appoint an individual or a domestic or foreign corporation authorized to transact business in this state as a receiver or custodian. The circuit court may require the receiver or custodian to post bond, with or without sureties, in an amount the circuit court directs.

(c) The circuit court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:

(1) The receiver: (A) May dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the circuit court; and (B) may sue and defend in his or her own name as receiver of the corporation in all circuit courts of this state; and

(2) The custodian may exercise all of the powers of the corporation, through or in place of its board of directors, to the extent necessary to manage the affairs of the corporation in the best interests of its members and creditors.

(d) The circuit court during a receivership may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing it is in the best interests of the corporation, its members, if any, and creditors.

(e) The circuit court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and his or her counsel from the assets of the corporation or proceeds from the sale of the assets.

WV Legislature

§31E-13-1333. Decree of dissolution.

(a) If after a hearing the circuit court determines that one or more grounds for judicial dissolution described in section one thousand three hundred thirty of this article exist, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution, and the clerk of the circuit court shall deliver a certified copy of the decree to the Secretary of State, who shall file it.

(b) After entering the decree of dissolution, the circuit court shall direct the winding up and liquidation of the corporation's activities and affairs in accordance with section one thousand three hundred five of this article and the notification of claimants in accordance with sections one thousand three hundred six and one thousand three hundred seven of this article.

WV Legislature

PART 4. MISCELLANEOUS.

§31E-13-1340. Deposit with State Treasurer.

Assets of a dissolved corporation that should be transferred to a creditor, claimant, or member of the corporation who cannot be found or who is not competent to receive them are to be reduced to cash and deposited with the State Treasurer or other appropriate state official for safekeeping. When the creditor, claimant, or member furnishes satisfactory proof of entitlement to the amount deposited, the State Treasurer or other appropriate state official shall pay him or her or his or her representative that amount.

WV Legislature

§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;

WV Legislature

(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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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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PART 1. RECORDS.

§31E-15-1501. Corporate records.

(a) A corporation shall keep as permanent records minutes of all meetings of its members and board of directors, a record of all actions taken by the members or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation.

(b) A corporation shall maintain appropriate accounting records.

(c) A corporation or its agent shall maintain a record of its members, if any, in a form that permits preparation of a list of the names and addresses of all members, in alphabetical order.

(d) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

(e) A corporation shall keep a copy of the following records at its principal office:

(1) Its articles or restated articles of incorporation and all amendments to them currently in effect;

(2) Its bylaws or restated bylaws and all amendments to them currently in effect;

(3) Resolutions adopted by its board of directors;

(4) The minutes of all members' meetings, and records of all action taken by members without a meeting, for the past three years;

(5) All written communications to members generally within the past three years, including the financial statements furnished for the past three years under section one thousand five hundred twenty of this article; and

(6) A list of the names and business addresses of its current directors and officers.

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§31E-15-1502. Inspection of records by members.

(a) A member of a corporation is entitled to inspect, during regular business hours at the corporation's principal office, any of the records of the corporation described in subsection (e), section one thousand five hundred one of this article if he or she gives the corporation written notice of his or her demand at least five business days before the date on which he or she wishes to inspect.

(b) A member of a corporation is entitled to inspect, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the member meets the requirements of subsection (c) of this section and gives the corporation written notice of his or her demand at least five business days before the date on which he or she wishes to inspect and copy:

(1) Excerpts from minutes of any meeting of the board of directors, records of any action of a committee of the board of directors while acting in place of the board of directors on behalf of the corporation, minutes of any meeting of the members, and records of action taken by the members or board of directors without a meeting, to the extent not subject to inspection under subsection (a) of this section;

(2) Accounting records of the corporation; and

(3) The record of members.

(c) A member may inspect and copy the records described in subdivisions (1) and (2), subsection (b) of this section and may inspect the records described in subdivision (3), subsection (b) of this section only if:

(1) His or her demand is made in good faith and for a proper purpose;

(2) He or she describes with reasonable particularity his or her purpose and the records he or she desires to inspect; and

(3) The records are directly connected with his or her purpose.

(d) A member may not copy the records described in subdivision (3), subsection (b) of this section unless provided for in the corporation's articles of incorporation or bylaws.

(e) The right of inspection granted by this section may not be abolished or limited by a corporation's articles of incorporation or bylaws.

(f) This section does not affect:

(1) The right of a member to inspect records under section seven hundred twenty, article seven of this chapter or, if the member is in litigation with the corporation, to the same extent as any other litigant; or

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(2) The power of a circuit court, independently of this chapter, to compel the production of corporate records for examination.

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§31E-15-1503. Scope of inspection right.

(a) A member's agent or attorney has the same inspection and copying rights as the member represented.

(b) The right to copy records under section one thousand five hundred two of this article includes, if reasonable, the right to receive copies by xerographic or other means, including copies through an electronic transmission if available and requested by the member.

The term "inspect" for purposes of section one thousand five hundred two of this article includes the making of extracts from the records reviewed.

(c) The corporation may comply at its expense with a member's demand to inspect the record of members under subdivision (3), subsection (b), section one thousand five hundred two of this article by providing the member with a list of members that was compiled no earlier than the date of the member's demand.

(d) The corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the member. The charge may not exceed the estimated cost of production, reproduction or transmission of the records.

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§31E-15-1504. Circuit court-ordered inspection.

(a) If a corporation does not allow a member who complies with subsection (a), section one thousand five hundred two of this article to inspect and copy any records required by that subsection to be available for inspection, the circuit court may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the member.

(b) If a corporation does not within a reasonable time allow a member to inspect and copy any other record, the member who complies with subsections (b) and (c), section one thousand five hundred two of this article may apply to the circuit court for an order to permit inspection and copying of the records demanded. The circuit court shall dispose of an application under this subsection on an expedited basis.

(c) If the circuit court orders inspection and copying of the records demanded, it shall also order the corporation to pay the member's costs, including reasonable counsel fees, incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the member to inspect the records demanded.

(d) If the circuit court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding member.

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§31E-15-1505. Inspection of records by directors.

(a) A director of a corporation is entitled to inspect and copy the books, records and documents of the corporation at any reasonable time to the extent reasonably related to the performance of the director's duties as a director, including duties as a member of a committee, but not for any other purpose or in any manner that would violate any duty to the corporation.

(b) The circuit court may order inspection and copying of the books, records and documents at the corporation's expense, upon application of a director who has been refused inspection rights, unless the corporation establishes that the director is not entitled to inspection rights. The circuit court shall dispose of an application under this subsection on an expedited basis.

(c) If an order is issued, the circuit court may include provisions protecting the corporation from undue burden or expense, and prohibiting the director from using information obtained upon exercise of the inspection rights in a manner that would violate a duty to the corporation, and may also order the corporation to reimburse the director for the director's costs, including reasonable counsel fees, incurred in connection with the application.

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§31E-15-1506. Exception to notice requirement.

(a) Whenever notice is required to be given under any provision of this chapter to any member, notice may not be required to be given if notice of two consecutive annual meetings, and all notices of meetings during the period between two consecutive annual meetings, have been sent to the member at the member's address as shown on the records of the corporation and have been returned undeliverable.

(b) If a member delivers to the corporation a written notice setting forth the member's then-current address, the requirement that notice be given to the member is to be reinstated.

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PART 2. CORPORATE RECORDS.

§31E-15-1520. Financial statements for members.

(a) A corporation shall furnish its members annual financial statements, which may be consolidated or combined statements of the corporation and one or more of its subsidiaries, as appropriate, that include a balance sheet as of the end of the fiscal year, and an income statement for that year. If financial statements are prepared for the corporation on the basis of generally accepted accounting principles, the annual financial statements must also be prepared on that basis.

(b) If the annual financial statements are reported upon by a public accountant, his or her report must accompany them. If not, the statements must be accompanied by a statement of the president or the person responsible for the corporation's accounting records:

(1) Stating his or her reasonable belief whether the statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation; and

(2) Describing any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year.

(c) A corporation shall mail the annual financial statements to each member within one hundred twenty days after the close of each fiscal year. On written request from a member who was not mailed the statements, the corporation shall mail him or her the latest financial statements.

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§31E-16-1601. Application to existing domestic corporations.

This chapter applies to all domestic corporations in existence on its effective date that were incorporated under any general statute of this state providing for incorporation of nonprofit corporations.

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§31E-16-1602. Application to qualified foreign corporations.

A foreign corporation authorized to transact business in this state on the effective date of this chapter is subject to this chapter but is not required to obtain a new certificate of authority to transact business under this chapter.

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§31E-16-1603. Effective date.

This chapter takes effect on October 1, 2002.

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