WEST VIRGINIA CODE CHAPTER 31b ARTICLE 1

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§31B-1-101. Definitions.

In this chapter:

(1) "Articles of organization" means initial, amended and restated articles of organization and articles of merger. In the case of a foreign limited liability company, the term includes all records serving a similar function required to be filed in the office of the Secretary of State or other official having custody of company records in the state or country under whose law it is organized.

(2) "At-will company" means a limited liability company other than a term company.

(3) "Business" includes every trade, occupation, profession and other lawful purpose, whether or not carried on for profit.

(4) "Debtor in bankruptcy" means a person who is the subject of an order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application or a comparable order under federal, state or foreign law governing insolvency.

(5) "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.

(6) "Distinguishable" means, in relation to the name of a business a difference between names which would allow a person to recognize or perceive the name of the business as being noticeably different including at least a one-word difference between names when the words are common terms and the company is or might appear to be in a similar business and at least a word order difference between names when the different word is a proper name or an unusual term, or when the company is clearly in a different type of business from the existing name.

(7) "Distribution" means a transfer of money, property or other benefit from a limited liability company to a member in the member's capacity as a member or to a transferee of the member's distributional interest.

(8) "Distributional interest" means all of a member's interest in distributions by the limited liability company.

(9) "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.

(10) "Entity" means a person other than an individual.

(11) "Foreign limited liability company" means an unincorporated entity organized under

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laws other than the laws of this state which afford limited liability to its owners comparable to the liability under section 3-303 and is not required to obtain a certificate of authority to transact business under any law of this state other than this chapter.

(12) "Limited liability company" means a limited liability company organized under this chapter.

(13) "Manager" means a person, whether or not a member of a manager-managed company, who is vested with authority under section 3-301.

(14) "Manager-managed company" means a limited liability company which is so designated in its articles of organization.

(15) "Member-managed company" means a limited liability company other than a manager-managed company.

(16) "Operating agreement" means the agreement under section 1-103 concerning the relations among the members, managers and limited liability company. The term includes amendments to the agreement.

(17) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality or any other legal or commercial entity.

(18) "Principal office" means the office, whether or not in this state, where the principal executive office of a domestic or foreign limited liability company is located.

(19) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

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

(21) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico or any territory or insular possession subject to the jurisdiction of the United States.

(22) "Term company" means a limited liability company in which its members have agreed to remain members until the expiration of a term specified in the articles of organization.

(23) "Transfer" includes an assignment, conveyance, deed, bill of sale, lease, mortgage, security interest, encumbrance and gift.

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§31B-1-102. Knowledge and notice.

(a) A person knows a fact if the person has actual knowledge of it.

(b) A person has notice of a fact if the person:

(1) Knows the fact;

(2) Has received a notification of the fact; or

(3) Has reason to know the fact exists from all of the facts known to the person at the time in question.

(c) A person notifies or gives a notification of a fact to another by taking steps reasonably required to inform the other person in ordinary course, whether or not the other person knows the fact.

(d) A person receives a notification when the notification:

(1) Comes to the person's attention; or

(2) Is duly delivered at the person's place of business or at any other place held out by the person as a place for receiving communications.

(e) An entity knows, has notice or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction for the entity knows, has notice, or receives a notification of the fact, or in any event when the fact would have been brought to the individual's attention had the entity exercised reasonable diligence. An entity exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction for the entity and there is reasonable compliance with the routines. Reasonable diligence does not require an individual acting for the entity to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

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§31B-1-103. Effect of operating agreement; nonwaivable provisions.

(a) Except as otherwise provided in subsection (b) of this section, all members of a limited liability company may enter into an operating agreement, which need not be in writing, to regulate the affairs of the company and the conduct of its business, and to govern relations among the members, managers and company. To the extent the operating agreement does not otherwise provide, this chapter governs relations among the members, managers and company.

(b) The operating agreement may not:

(1) Unreasonably restrict a right to information or access to records under section 4-408;

(2) Eliminate the duty of loyalty under section 4-409(b) or 6-603(b)(3), but the agreement may:

(i) Identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable; and

(ii) Specify the number or percentage of members or disinterested managers that may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty;

(3) Unreasonably reduce the duty of care under section 4-409(c) or 6-603(b)(3);

(4) Eliminate the obligation of good faith and fair dealing under section 4-409(d), but the operating agreement may determine the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;

(5) Vary the right to expel a member in an event specified in section 6-601(6);

(6) Vary the requirement to wind up the limited liability company's business in a case specified in section 8-801(b)(4) or (b)(5); or

(7) Restrict rights of a person, other than a manager, member and transferee of a member's distributional interest, under this chapter.

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§31B-1-104. Supplemental principles of law.

(a) Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.

(b) If an obligation to pay interest arises under this chapter and the rate is not specified, the rate is that specified in section thirty-one, article six, chapter fifty-six of this code.

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§31B-1-105. Name.

(a) The name of a limited liability company must contain "limited liability company" or "limited company" or the abbreviation "L.L.C.", "LLC", "L.C." or "LC". "Limited" may be abbreviated as "Ltd." and "company" may be abbreviated as "Co.".

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

(1) The name of any corporation, limited partnership, limited liability partnership or limited liability company incorporated, organized or authorized to transact business in this state;

(2) A name reserved or registered under sections 1-106 or 1-107 of this article or under sections twelve or thirteen of article one, chapter thirty-one of this code.

(3) A fictitious name approved under section 10-1005 for a foreign company authorized to transact business in this state because its real name is unavailable.

(c) A limited liability company may apply to the Secretary of State for authorization to use a name that is not distinguishable upon the records of the Secretary of State 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 present user, registrant or owner of a reserved name consents to the use in a record and submits an undertaking in form satisfactory to the Secretary of State to change the name to a name that 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 limited liability company may use the name, including a fictitious name, of another domestic or foreign company which is used in this state if the other company is organized or authorized to transact business in this state and the company proposing to use the name has:

(1) Merged with the other company;

(2) Been formed by reorganization with the other company; or

(3) Acquired substantially all of the assets, including the name, of the other company.

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§31B-1-106. Reserved name.

(a) A person may reserve the exclusive use of the name of a limited liability company, including a fictitious name for a foreign company whose 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 name applied for is available, it must be reserved for the applicant's exclusive use for a one hundred twenty-day period. The reservation may be renewed for one additional period of one hundred twenty days, but may not thereafter be reserved by the same or associated persons within one calendar year of the expiration of the last reservation period.

(b) The owner of a name reserved for a limited liability company may transfer the reservation to another person by delivering to the Secretary of State a signed notice of the transfer which states the name and address of the transferee.

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§31B-1-107. Registered name.

(a) A foreign limited liability company may register its name subject to the requirements of section 10-1005, if the name is distinguishable upon the records of the Secretary of State from names that are not available under section 1-105(b).

(b) A foreign limited liability company registers its name, or its name with any addition required by section 10-1005, by delivering to the Secretary of State for filing an application:

(1) Setting forth its name, or its name with any addition required by section 10-1005, the state or country and date of its organization 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 record of similar import, from the state or country of organization.

(c) A foreign limited liability company whose registration is effective may renew it for successive years by delivering for filing in the office of the Secretary of State a renewal application complying with subsection (b) of this section between October 1, and December 31, of the preceding year. The renewal application renews the registration for the following calendar year.

(d) A foreign limited liability company whose registration is effective may qualify as a foreign company under its name or consent in writing to the use of its name by a limited liability company later organized under this chapter or by another foreign company later authorized to transact business in this state. The registered name terminates when the limited liability company is organized or the foreign company qualifies or consents to the qualification of another foreign company under the registered name.

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§31B-1-108. Designated office and agent for service of process.

(a) A limited liability company and a foreign limited liability company authorized to do business in this state may continuously maintain in this state:

(1) An office, which need not be a place of its business in this state; and

(2) An agent and address of the agent for service of process on the company.

(b) An agent shall be an individual resident of this state, a domestic corporation, another limited liability company, or a foreign corporation or foreign company authorized to do business in this state.

(c) Every limited liability company shall pay the annual report fee of $25 for the filing of the annual report for the limited liability company or the biennial report fee of $50 for the filing of the biennial report as described in §59-1-2a of this code, which fee shall be due and payable with the filing of the annual or biennial report, as applicable, after the initial registration of the limited liability company on or before the dates specified in §59-1-2a of this code and other applicable provisions thereof, and shall be collected by the Secretary of State and deposited in the general administrative fees account established by §59-1-2 of this code. The Secretary of State shall dedicate sufficient resources from that fund or other funds to provide the services required in this chapter.

(d) The Secretary of State shall keep a record of all processes, notices, and demands served pursuant to this section and record the time of and the action taken regarding the service.

(e) This section does not affect the right to serve process, notice, or demand in any manner otherwise provided by law.

(f) The amendments to this section enacted in 2008 are effective beginning on and after July 1, 2008.

(g) Amendments to this section concerning the election of biennial reporting enacted into law during the Regular Legislative Session of the year 2026, shall take effect on July 1, 2026, and shall not forgive prior failures to file annual reports or pay annual fees previously due.

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§31B-1-109. Change of designated office or agent for service of process.

A limited liability company may change its designated office or agent for service of process by delivering to the secretary of state for filing a statement of change which sets forth:

(1) The name of the company;

(2) The address of its current designated office, if any;

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

(4) The name and address of its current agent for service of process, if any;

(5) If the current agent for service of process or address of that agent is to be changed, the new address or the name and address of the new agent for service of process.

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§31B-1-110. Resignation of agent for service of process.

(a) An agent for service of process of a limited liability company may resign by delivering to the Secretary of State for filing a record of the statement of resignation.

(b) After filing a statement of resignation, the Secretary of State shall mail a copy to the designated office and another copy to the limited liability company at its principal office.

(c) An agency is terminated on the thirty-first day after the statement is filed in the office of the Secretary of State.

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§31B-1-111. Service of process.

(a) An agent for service of process appointed by a limited liability company or a foreign limited liability company is an agent of the company for service of any process, notice or demand required or permitted by law to be served upon the company.

(b) If a limited liability company or foreign limited liability company fails to appoint or maintain an agent for service of process in this state or the agent for service of process cannot with reasonable diligence be found at the agent's address, the Secretary of State is an agent of the company upon whom process, notice or demand may be served.

(c) 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 assistant Secretary of State or clerk having charge of the limited liability company department of the Secretary of State, the original process, notice or demand and two copies thereof for each defendant, along with the fee required by section two, article one, chapter fifty-nine of this code. No process, notice or demand may be served on or accepted by the Secretary of State less than ten days before the return day thereof. The Secretary of State, upon being served with or accepting any process, notice or demand, shall: (1) File in his or her office a copy of the process, notice or demand, endorsed as of the time of service or acceptance; and (2) transmit one copy of the process, notice or demand by registered or certified mail, return receipt requested, by a means which may include electronic issuance and acceptance of electronic return receipts, to the limited liability company's registered agent: Provided, That if there is no registered agent, then to the individual whose name and address was last given to the Secretary of State's office as the person designated to receive process, notice or demand. If no person has been named, then to the principal office of the limited liability company at the address 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. Such service or acceptance of process, notice or demand is sufficient if the return receipt is signed by an agent or employee of such company, or the registered or certified mail so sent by the Secretary of State is refused by the addressee and the registered or certified mail is returned to the Secretary of State, showing the stamp of the United States Postal Service that delivery thereof has been refused, and such 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 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

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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, notice or demand 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) The Secretary of State shall keep a record of all processes, notices and demands served pursuant to this section and record the time of and the action taken regarding the service.

(e) This section does not affect the right to serve process, notice or demand in any manner otherwise provided by law.

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§31B-1-112. Nature of business and powers.

(a) A limited liability company may be organized under this chapter for any lawful purpose, subject to any law of this state governing or regulating business.

(b) Unless its articles of organization provide otherwise, a limited liability company has the same powers as an individual to do all things necessary or convenient to carry on its business or affairs, including power to:

(1) Sue and be sued, and defend in its name;

(2) 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;

(3) Sell, convey, mortgage, grant a security interest in, lease, exchange and otherwise encumber or dispose of all or any part of its property;

(4) Purchase, receive, subscribe for or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, grant a security interest in or otherwise dispose of and deal in and with, shares or other interests in or obligations of any other entity;

(5) 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 limited liability company, and secure any of its obligations by a mortgage on or a security interest in any of its property, franchises or income;

(6) Lend money, invest and reinvest its funds and receive and hold real and personal property as security for repayment;

(7) Be a promoter, partner, member, associate or manager of any partnership, joint venture, trust or other entity;

(8) Conduct its business, locate offices and exercise the powers granted by this chapter within or without this state;

(9) Elect managers and appoint officers, employees and agents of the limited liability company, define their duties, fix their compensation and lend them money and credit;

(10) Pay pensions and establish pension plans, pension trusts, profit sharing plans, bonus plans, option plans and benefit or incentive plans for any or all of its current or former members, managers, officers, employees and agents;

(11) Make donations for the public welfare or for charitable, scientific or educational purposes; and

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(12) Make payments or donations, or do any other act, not inconsistent with law, that furthers the business of the limited liability company.

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§31B-1-113. Disclosures required by limited liability companies holding certain licenses.

Notwithstanding any provisions of this code to the contrary, any limited liability company seeking or holding a Class A liquor license issued pursuant to the provisions of article seven, chapter sixty of this code, or which seeks or holds a license under the provisions of article twenty-two-b, chapter twenty-nine of this code shall disclose in any required application the identities of all members or persons entitled to a distribution under section one hundred one, article one, chapter thirty-one-b, or if the license is already held, shall reveal the identities of all members or persons entitled to a distribution under section one hundred one, article one, chapter thirty-one-b, to the regulatory agency overseeing the licensee.

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§31B-1-114. Penalty for signing false document.

Any person who signs a document required to be filed with the Secretary of State by this chapter which he or she knows is false in any material respect is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000 or confined in jail not more than one year, or both fined and confined.

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