WEST VIRGINIA CODE CHAPTER 31b ARTICLE 10

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§31B-10-1001. Law governing foreign limited liability companies.

(a) The laws of the state or other jurisdiction under which a foreign limited liability company is organized govern its organization and internal affairs and the liability of its managers, members and their transferees.

(b) A foreign limited liability company may not be denied a certificate of authority by reason of any difference between the laws of another jurisdiction under which the foreign company is organized and the laws of this state.

(c) A certificate of authority does not authorize a foreign limited liability company to engage in any business or exercise any power that a limited liability company may not engage in or exercise in this state.

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§31B-10-1002. Application for certificate of authority.

(a) A foreign limited liability company may apply for a certificate of authority to transact business in this state by delivering an application to the Secretary of State for filing, together with the fee prescribed by section two, article one, chapter fifty-nine of this code.

The application shall set forth:

(1) The name of the foreign company or, if its name is unavailable for use in this state, a name that satisfies the requirements of section 10-1005 of this article;

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

(3) The mailing address of its principal office;

(4) The name and address of each member having authority to execute instruments on behalf of the limited liability company;

(5) The address of its initial designated office in this state, if any;

(6) The name and address of its initial agent for service of process in this state, if any;

(7) Whether the duration of the company is for a specified term and, if so, the period specified;

(8) Whether the company is manager-managed and, if so, the name and address of each initial manager;

(9) Whether the members of the company are to be liable for its debts and obligations under a provision similar to section 3-303(c);

(10) The purpose or purposes for which the limited liability company is organized; and

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

(b) A foreign limited liability company shall deliver with the completed application a certificate of existence or a record of similar import authenticated by the Secretary of State or other official having custody of company records in the state or country under whose law it is organized.

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§31B-10-1003. Activities not constituting transacting business.

(a) Activities of a foreign limited liability company that do not constitute transacting business in this state within the meaning of this article include:

(1) Maintaining, defending or settling an action or proceeding;

(2) Holding meetings of its members or managers or carrying on any other activity concerning its internal affairs;

(3) Maintaining bank accounts;

(4) Maintaining offices or agencies for the transfer, exchange and registration of the foreign company's own securities or maintaining trustees or depositories with respect to those securities;

(5) Selling through independent contractors;

(6) 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;

(7) Creating or acquiring indebtedness, mortgages or security interests in real or personal property;

(8) Securing or collecting debts or enforcing mortgages or other security interests in property securing the debts, and holding, protecting and maintaining property so acquired;

(9) Conducting an isolated transaction that is completed within thirty days and is not one in the course of similar transactions of a like manner;

(10) Transacting business in interstate commerce;

(11) Applying for withholding tax on an employee residing in the State of West Virginia who works for the foreign limited liability company in another state; and

(12) Holding all, or a portion thereof, of the outstanding stock of another corporation authorized to transact business in the State of West Virginia: Provided, That the foreign limited liability company does not produce goods, services or otherwise conduct business in the State of West Virginia.

(b) For purposes of this article, the ownership in this state of income-producing real property or tangible personal property, other than property excluded under subsection (a) of this section, constitutes transacting business in this state.

(c) This section does not apply in determining the contacts or activities that may subject a foreign limited liability company to service of process, taxation or regulation under any other

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law of this state.

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§31B-10-1004. Issuance of certificate of authority.

Unless the Secretary of State determines that an application for a certificate of authority fails to comply as to form with the filing requirements of this chapter, the Secretary of State, upon payment of all filing fees, shall file the application and send a receipt for it and the fees to the limited liability company or its representative.

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§31B-10-1005. Name of foreign limited liability company.

(a) If the name of a foreign limited liability company does not satisfy the requirements of section 1-105, the company, to obtain or maintain a certificate of authority to transact business in this state, must 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 managers, in the case of a manager-managed company, or of its members, in the case of a member-managed company, adopting the fictitious name.

(b) Except as authorized by subsections (c) and (d) of this section, the name, including a fictitious name to be used to transact business in this state, of a foreign limited liability company must be distinguishable upon the records of the Secretary of State from:

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

(2) A name reserved or registered under section 1-106 or 1-107; and

(3) The fictitious name of another foreign limited liability company authorized to transact business in this state.

(c) A foreign limited liability company may apply to the Secretary of State for authority to use in this state a name that is not distinguishable upon the records of the Secretary of State from a name 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 its name to a name that is distinguishable upon the records of the Secretary of State from the name of the foreign applying limited liability company; or

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

(d) A foreign limited liability company may use in this state the name, including the fictitious name, of another domestic or foreign entity that is used in this state if the other entity is incorporated, organized or authorized to transact business in this state and the foreign limited liability company:

(1) Has merged with the other entity;

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

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

(e) If a foreign limited liability company authorized to transact business in this state changes

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its name to one that does not satisfy the requirements of section 1-105, it may not transact business in this state under the name as changed until it adopts a name satisfying the requirements of section 1-105 and obtains an amended certificate of authority.

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§31B-10-1006. Revocation and reinstatement of certificate of authority.

(a) A certificate of authority of a foreign limited liability company to transact business in this state may be revoked by the Secretary of State in the manner provided in subsection (b) of this section if:

(1) The company fails to:

(A) Pay any fees, taxes, and penalties owed to this state;

(B) Deliver its annual or biennial report required under §31-2-211 of this code to the Secretary of State within 60 days after it is due; or

(C) File a statement of a change in the name or business address of the agent as required by this article;

(2) A misrepresentation has been made of any material matter in any application, report, affidavit, or other record submitted by the company pursuant to this article;

(3) 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 company; or

(4) The company is in default with the Bureau of Employment Programs as provided in §21a-2-6 of this code.

(b) The Secretary of State may not revoke a certificate of authority of a foreign limited liability company unless the Secretary of State sends the company notice of the revocation, at least 60 days before its effective date, by a record addressed to its principal office. The notice must specify the cause for the revocation of the certificate of authority. The authority of the company to transact business in this state ceases on the effective date of the revocation unless the foreign limited liability company cures the failure before that date.

(c) A foreign limited liability company administratively revoked 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 company and the effective date of its administrative revocation;

(2) State that the ground for revocation either did not exist or has been eliminated;

(3) State that the company's name satisfies the requirements of §31B-10-1005 of this code; and

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

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(d) 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, the Secretary of State shall cancel the certificate of revocation and prepare a certificate of reinstatement that recites this determination and the effective date of reinstatement, file the original of the certificate, and serve the company with a copy of the certificate.

(e) When reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative revocation and the company may resume its business as if the administrative revocation had never occurred.

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§31B-10-1007. Cancellation of authority.

A foreign limited liability company may cancel its authority to transact business in this state by filing in the office of the Secretary of State a certificate of cancellation. Cancellation does not terminate the authority of the Secretary of State to accept service of process on the company for claims for relief arising out of the transactions of business in this state.

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§31B-10-1008. Effect of failure to obtain certificate of authority.

(a) A foreign limited liability company transacting business in this state may not maintain an action or proceeding in this state unless it has a certificate of authority to transact business in this state.

(b) The failure of a foreign limited liability company to have a certificate of authority to transact business in this state does not impair the validity of a contract or act of the company or prevent the foreign limited liability company from defending an action or proceeding in this state.

(c) Limitations on personal liability of managers, members and their transferees are not waived solely by transacting business in this state without a certificate of authority.

(d) If a foreign limited liability company transacts business in this state without a certificate of authority, it appoints the Secretary of State as its agent for service of process for claims for relief arising out of the transaction of business in this state.

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§31B-10-1009. Action by Attorney General.

The Attorney General may maintain an action to restrain a foreign limited liability company from transacting business in this state in violation of this article.

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