WEST VIRGINIA CODE CHAPTER 31d ARTICLE 3

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§31D-3-301. Purposes.

(a) Every corporation incorporated under this chapter has the purpose of engaging in any lawful business unless a more limited purpose is set forth in the articles of incorporation.

(b) A corporation engaging in a business that is subject to regulation under another statute of this state may incorporate under this chapter only if permitted by, and subject to all limitations of, the other statute.

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§31D-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 the business 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 business, 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; fix their compensation; and lend them money and credit;

(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 business that will aid governmental policy; and

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

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§31D-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 business 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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§31D-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 shareholder 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 under section one thousand four hundred thirty, article fourteen of this chapter.

(c) In a shareholder'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.

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