WEST VIRGINIA CODE CHAPTER 31e ARTICLE 1

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.

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§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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