WEST VIRGINIA CODE CHAPTER 31e ARTICLE 4

WV Legislature

§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.

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§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.

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§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.

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