

HB 2515

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# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1995

— ● —

# ENROLLED

HOUSE BILL No. 2515

(By Delegates BEACH AND FARRIS )

— ● —

Passed MARCH 11, 1995

In Effect 90 DAYS FROM Passage



ENROLLED

# H. B. 2515

(BY DELEGATES BEACH AND FARRIS)

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[Passed March 11, 1995; in effect ninety days from passage.]

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AN ACT to amend chapter thirty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article eleven, relating generally to adopting the Uniform Unincorporated Nonprofit Association Act; definitions; supplementary principles of law and equity; territorial application; real and personal property; nonprofit association as legatee, devisee or beneficiary; statement of authority as to real property; liability in tort and contract; capacity to assert and defend; standing; effect of judgment or order; disposition of personal property of inactive nonprofit association; appointment of agent to receive service of process; claim not abated by change of members or officers; venue; summons and complaint; service of process; uniformity of application and construction; short title; transition concerning real and personal property; and savings clause.

*Be it enacted by the Legislature of West Virginia:*

That chapter thirty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article eleven, to read as follows:

**ARTICLE 11. UNIFORM UNINCORPORATED NONPROFIT ASSOCIATION ACT.**

**§36-11-1. Definitions.**

1 In this article:

2 (1) "Member" means a person who, under the rules or  
3 practices of a nonprofit association, may participate in the  
4 selection of persons authorized to manage the affairs of  
5 the nonprofit association or in the development of policy  
6 of the nonprofit association.

7 (2) "Nonprofit association" means an unincorporated  
8 organization consisting of two or more members joined  
9 by mutual consent for a common, nonprofit purpose.  
10 However, joint tenancy, tenancy in common, or tenancy  
11 by the entireties does not by itself establish a nonprofit  
12 association, even if the coowners share use of the property  
13 for a nonprofit purpose.

14 (3) "Person" means an individual, corporation, busi-  
15 ness trust, estate, trust, partnership, association, joint ven-  
16 ture, government, governmental subdivision, agency or  
17 instrumentality or any other legal or commercial entity.

18 (4) "State" means a state of the United States, the Dis-  
19 trict of Columbia, the Commonwealth of Puerto Rico or  
20 any territory or insular possession subject to the jurisdic-  
21 tion of the United States.

**§36-11-2. Supplementary general principles of law and equity.**

1 Principles of law and equity supplement this article  
2 unless displaced by a particular provision of it.

**§36-11-3. Territorial application.**

1 Real and personal property in this state may be ac-  
2 quired, held, encumbered and transferred by a nonprofit  
3 association, whether or not the nonprofit association or a  
4 member has any other relationship to this state.

**§36-11-4. Real and personal property; nonprofit association as legatee, devisee, or beneficiary.**

1 (a) A nonprofit association in its name may acquire,  
2 hold, encumber or transfer an estate or interest in real or  
3 personal property.

4 (b) A nonprofit association may be a legatee, devisee

5 or beneficiary of a trust or contract.

**§36-11-5. Statement of authority as to real property.**

1 (a) A nonprofit association may execute and record a  
2 statement of authority to transfer an estate or interest in  
3 real property in the name of the nonprofit association.

4 (b) An estate or interest in real property in the name  
5 of a nonprofit association may be transferred by a person  
6 so authorized in a statement of authority recorded in the  
7 office in the county in which a transfer of the property  
8 would be recorded.

9 (c) A statement of authority must set forth:

10 (1) The name of the nonprofit association;

11 (2) The address in this state, including the street ad-  
12 dress, if any, of the nonprofit association, or, if the non-  
13 profit association does not have an address in this state, its  
14 address out of state;

15 (3) The name or title of a person authorized to trans-  
16 fer an estate or interest in real property held in the name  
17 of the nonprofit association; and

18 (4) The action, procedure or vote of the nonprofit  
19 association which authorizes the person to transfer the real  
20 property of the nonprofit association and which authorizes  
21 the person to execute the statement of authority.

22 (d) A statement of authority must be executed in the  
23 same manner as a deed by a person who is not the person  
24 authorized to transfer the estate or interest.

25 (e) A filing officer may collect a fee for recording a  
26 statement of authority in the amount authorized for re-  
27 cording a transfer of real property.

28 (f) An amendment, including a cancellation, of a  
29 statement of authority must meet the requirements for  
30 execution and recording of an original statement. Unless  
31 canceled earlier, a recorded statement of authority or its  
32 most recent amendment is canceled by operation of law  
33 five years after the date of the most recent recording.

34 (g) If the record title to real property is in the name  
35 of a nonprofit association and the statement of authority is  
36 recorded in the office of the county in which a transfer of  
37 real property would be recorded, the authority of the per-  
38 son named in a statement of authority is conclusive in  
39 favor of a person who gives value without notice that the  
40 person lacks authority.

**§36-11-6. Liability in tort and contract.**

1 (a) A nonprofit association is a legal entity separate  
2 from its members for the purposes of determining and  
3 enforcing rights, duties and liabilities in contract and tort.

4 (b) A person may not be liable for a breach of a  
5 nonprofit association's contract merely because the person  
6 is a member, is authorized to participate in the manage-  
7 ment of the affairs of the nonprofit association or is a  
8 person considered to be a member by the nonprofit asso-  
9 ciation.

10 (c) A person may not be liable for a tortious act or  
11 omission for which a nonprofit association is liable merely  
12 because the person is a member, is authorized to partici-  
13 pate in the management of the affairs of the nonprofit  
14 association or is a person considered as a member by the  
15 nonprofit association.

16 (d) A tortious act or omission of a member or other  
17 person for which a nonprofit association is liable may not  
18 be imputed to a person merely because the person is a  
19 member of the nonprofit association, is authorized to  
20 participate in the management of the affairs of the non-  
21 profit association or is a person considered as a member  
22 by the nonprofit association.

23 (e) A member of, or a person considered to be a  
24 member by, a nonprofit association may assert a claim  
25 against the nonprofit association. A nonprofit association  
26 may assert a claim against a member or a person consid-  
27 ered to be a member by the nonprofit association.

**§36-11-7. Capacity to assert and defend; standing.**

1 (a) A nonprofit association, in its name, may institute,

2 defend, intervene, or participate in a judicial, administra-  
3 tive or other governmental proceeding or in an arbitration,  
4 mediation or any other form of alternative dispute resolu-  
5 tion.

6 (b) A nonprofit association may assert a claim in its  
7 name on behalf of its members if one or more members  
8 of the nonprofit association have standing to assert a claim  
9 in their own right, the interests the nonprofit association  
10 seeks to protect are germane to its purposes, and neither  
11 the claim asserted nor the relief requested requires the  
12 participation of a member.

**§36-11-8. Effect of judgment or order.**

1 A judgment or order against a nonprofit association is  
2 not by itself a judgment or order against a member.

**§36-11-9. Disposition of personal property of inactive non-  
profit association.**

1 If a nonprofit association has been inactive for three  
2 years or longer, a person in possession or control of per-  
3 sonal property of the nonprofit association may transfer  
4 the property:

5 (1) If a document of a nonprofit association specifies  
6 a person to whom transfer is to be made under these cir-  
7 cumstances, to that person; or

8 (2) If no person is so specified, to a nonprofit associa-  
9 tion or nonprofit corporation pursuing broadly similar  
10 purposes, or to a government or governmental subdivision,  
11 agency or instrumentality.

**§36-11-10. Appointment of agent to receive service of process.**

1 (a) A nonprofit association shall file in the office of  
2 the secretary of state a statement appointing an agent au-  
3 thorized to receive service of process.

4 (b) A statement appointing an agent must set forth:

5 (1) The name of the nonprofit association;

6 (2) The address in this state, including the street ad-  
7 dress, if any, of the nonprofit association, or, if the non-

8 profit association does not have an address in this state, its  
9 address out of state; and

10 (3) The name of the person in this state authorized to  
11 receive service of process and the person's address, includ-  
12 ing the street address, in this state.

13 (c) A statement appointing an agent must be signed  
14 and acknowledged by a person authorized to manage the  
15 affairs of a nonprofit association. The statement must also  
16 be signed and acknowledged by the person appointed  
17 agent, who thereby accepts the appointment. The appoint-  
18 ed agent may resign by filing a resignation in the office of  
19 the secretary of state and giving notice to the nonprofit  
20 association.

21 (d) A filing officer may collect a fee for filing a state-  
22 ment appointing an agent to receive service of process, an  
23 amendment, or a resignation in the amount charged for  
24 filing similar documents.

25 (e) An amendment to a statement appointing an agent  
26 to receive service of process must meet the requirements  
27 for execution of an original statement.

**§36-11-11. Claim not abated by change of members or offi-  
cers.**

1 A claim for relief against a nonprofit association does  
2 not abate merely because of a change in its members or  
3 persons authorized to manage the affairs of the nonprofit  
4 association.

**§36-11-12. Venue.**

1 For purposes of venue, a nonprofit association is a  
2 resident of a county in which it has an office or where it  
3 conducts its business or activities, or where any of its offi-  
4 cers or managers reside.

**§36-11-13. Summons and complaint; service on whom.**

1 In an action or proceeding against a nonprofit associa-  
2 tion a summons and complaint must be served on an agent  
3 authorized by appointment to receive service of process,  
4 an officer, managing or general agent or a person autho-

5 rized to participate in the management of its affairs. If  
6 none of them can be served, service may be made on a  
7 member.

**§36-11-14. Uniformity of application and construction.**

1 This article shall be applied and construed to effectu-  
2 ate its general purpose to make uniform the law with re-  
3 spect to the subject of this article among states enacting it.

**§36-11-15. Short title.**

1 This article may be cited as the Uniform Unincorpo-  
2 rated Nonprofit Association Act.

**§36-11-16. Transition concerning real and personal property.**

1 (a) If, before the effective date of this article, an es-  
2 tate or interest in real or personal property was purported-  
3 ly transferred to a nonprofit association, on the effective  
4 date of this article the estate or interest vests in the non-  
5 profit association unless the parties have treated the trans-  
6 fer as ineffective.

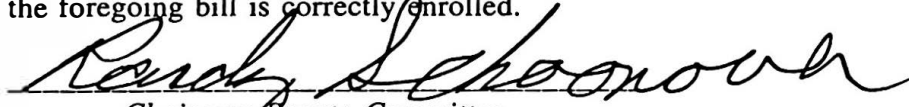
7 (b) If, before the effective date of this article, the  
8 transfer vested the estate or interest in another person to  
9 hold the estate or interest as a fiduciary for the benefit of  
10 the nonprofit association, its members, or both, on or after  
11 the effective date of this article the fiduciary may transfer  
12 the estate or interest to the nonprofit association in its  
13 name, or the nonprofit association, by appropriate pro-  
14 ceedings, may require that the estate or interest be trans-  
15 ferred to it in its name.

**§36-11-17. Savings clause.**

1 This article does not affect an action or proceeding  
2 commenced or right accrued before this article takes ef-  
3 fect.



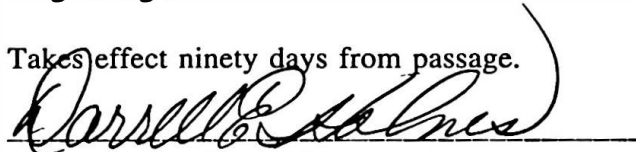
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

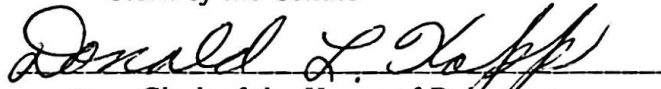
  
Chairman Senate Committee


  
Chairman House Committee

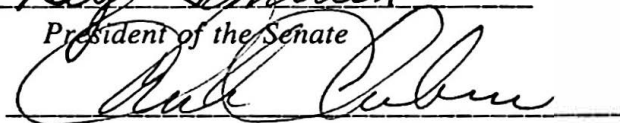
Originating in the House.

Takes effect ninety days from passage.

  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker of the House of Delegates

The within \_\_\_\_\_ this the \_\_\_\_\_  
day of \_\_\_\_\_, 1995.

\_\_\_\_\_  
Governor



PRESENTED TO THE  
GOVERNOR

Date 3/31/95

Time 2:37