WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 1998

ENROLLED

House Bill No. 4453
(By Delegates Amores, Trumã and Linch)

Passed March 14, 1998
In Effect Ninety Days from Passage
AN ACT to amend and reenact sections eleven, twelve, thirteen, fourteen and fifty-one, article one, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section six-a; to amend and reenact sections one hundred five and one hundred six, article one, chapter thirty-one-b of said code; to amend and reenact sections two hundred three and two hundred eleven, article two of said chapter; to amend and reenact section one thousand two, article ten of said chapter; to amend and reenact sections four and five, article eight, chapter forty-seven of said code; to amend and reenact sections two, three and fifty-one, article nine of said chapter; to amend and reenact sections one through six, inclusive, article nine-a of said chapter; and to further amend said article by adding thereto a new section, designated section seven, all relating to certification and registration requirements for business entities; requiring business entities to notify the secretary of state of changes in officers, trustees, and members authorized to execute certain documents to be filed with the secretary of state; setting forth name requirements and requiring that names of business entities be distinguishable from the names of other business entities and trade names; providing for the reservation of corporate names, including a temporary name reservation procedure; authorizing the registration of corporate names by foreign corporations and the renewal of
such registrations; updating various provisions to recognize
new authorized business entities; authorizing the use and
reservation of names for limited liability companies;
modifying requirements for articles of incorporation, the
filing of annual reports, and applications for certificates of
authority for limited liability companies; revising
requirements for the filing of applications for registration of
trade names; providing for names and the reservation of
names of limited partnerships and the registration of names
of foreign limited partnerships; setting forth detailed
procedures for the certification and registration of business
trusts and voluntary associations; requiring the secretary of
state to issue certificates which must be filed with the clerk of
certain county commissions; creating various requirements
for business trusts and voluntary associations, including
requirements relating to the names of such entities, the
adoption and use of trade names and seals, the amendment
of organizing documents, changes in the identities of
authorized persons and agents for receipt of service of
process, and the dissolution and withdrawal of such entities;
permitting business trusts and voluntary associations to use
trade names and providing for the acknowledgment of
certain deeds and other writings; validating previously
executed instruments; and providing for the repeal of
inconsistent acts and the severability of provisions.

Be it enacted by the Legislature of West Virginia:

That sections eleven, twelve, thirteen, fourteen and fifty-one,
article one, chapter thirty-one of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, be amended and
reenacted; that said article be further amended by adding thereto
a new section, designated section six-a; that sections one hundred
five and one hundred six, article one, chapter thirty-one-b of said
code be amended and reenacted; that sections two hundred three
and two hundred eleven, article two of said chapter be amended
and reenacted; that section one thousand two, article ten of said
chapter be amended and reenacted; that sections four and five,
article eight, chapter forty-seven of said code be amended and
reenacted; that sections two, three and fifty-one, article nine of
said chapter be amended and reenacted; that sections one
through six, inclusive, article nine-a be amended and reenacted;
and that said article be further amended by adding thereto a new section, designated section seven, all to read as follows:

CHAPTER 31. CORPORATIONS.

ARTICLE 1. BUSINESS AND NONPROFIT CORPORATIONS.

§31-1-6a. Signatures on documents filed with the secretary of state.

(a) No document which is required to be executed or verified by an officer or officers of a corporation shall be filed with the secretary of state unless:

(1) The officers who have executed or verified the document to be filed are the current officers of the corporation and the secretary of state has on file: (A) A current annual return of the corporation filed pursuant to section three, article twelve-c, chapter eleven of this code which identifies such officers; or (B) another corporate document which identifies such officers; or

(2) The document to be filed is accompanied by appropriate documentation showing that the persons executing or verifying the document are current officers of the corporation or are otherwise authorized to execute or verify the document on behalf of the current officers of the corporation.

(b) For purposes of subsection (a) of this section, the term “appropriate documentation” means: (1) A copy of the minutes of the board of directors of the corporation reflecting the election or appointment of new officers, which copy includes or is accompanied by a notarized statement of authenticity signed by at least one director; (2) a court order reflecting the identity of the current officers or the authorization of any person to act for any officer; or (3) any other legally authorized document assigning to the person executing or verifying the document clear authority to execute or verify documents on behalf of the corporation.

§31-1-11. Corporate name; requirements; certain names prohibited.
(a) Except for corporations in existence prior to the effective date of this article, the corporate name:

(1) Shall contain the word "corporation," "company," "incorporated" or "limited," or shall contain an abbreviation of one of such words.

(2) Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation.

(3) Shall not be the same as, and shall be distinguishable from: (A) The name of any domestic corporation, domestic limited partnership, domestic limited liability partnership, or domestic limited liability company existing under the laws of this state; (B) the name of any foreign corporation, foreign limited partnership, foreign limited liability partnership, foreign limited liability company, or any other foreign business entity authorized to conduct affairs or transact business in this state; (C) a name the exclusive right to which is, at the time, reserved in the manner provided by law; or (D) the name of a corporation, limited partnership, limited liability partnership, or limited liability company which has in effect a registration of its business name as provided by law. The requirements of this subdivision shall not apply if the applicant files with the secretary of state either (X) a written consent to the use and a written undertaking by the present user, registrant or owner of a reserved name submitted in a form satisfactory to the secretary of state to change the name to a name that is distinguishable from the name applied for or (Y) a certified copy of a final order of a court of competent jurisdiction establishing the prior right of the applicant to the use of such name in this state. For purposes of this subdivision, any terms or abbreviations required to be included in the business name to identify the type of business entity shall not alone be sufficient to make one name distinguishable from another.

(4) Shall be transliterated into letters of the English alphabet, if it is not in English.
(b) A corporation with which another corporation, domestic or foreign, is merged, or which is formed by the reorganization or consolidation of one or more domestic or foreign corporations or upon a sale, lease or other disposition to or exchange with, a domestic corporation of all or substantially all the assets of another corporation, domestic or foreign, including its name, may have the same name as that used in this state by any of such corporations if such other corporation was organized under the laws of, or is authorized to conduct affairs or do or transact business in this state.

(c) After the effective date of this section, no corporation shall be chartered in this state under any name which includes the word "engineer," "engineers," "engineering" or any combination of same unless the purpose of the corporation is to practice professional engineering as defined in article thirteen, chapter thirty of this code, as amended, and one or more of the incorporators is a registered professional engineer as therein defined.

§31-1-12. Reserved name.

(a) The exclusive right to the use of a corporate name may be reserved by:

1. Any person intending to organize a corporation under this article.

2. Any domestic corporation intending to change its name.

3. Any foreign corporation intending to make application for a certificate of authority to conduct affairs or do or transact business in this state.

4. Any foreign corporation authorized to conduct affairs or do or transact business in this state and intending to change its name.

5. Any person intending to organize a foreign corporation and intending to have such corporation make application for a certificate of authority to conduct affairs or do or transact business.
(b) The reservation may be made by filing with the secretary of state an application to reserve a specified corporate name executed by the applicant and by submitting the fee prescribed by section two, article one, chapter fifty-nine of this code. If the secretary of state finds that the name is available for corporate use, the name shall be reserved for the exclusive use of the applicant for a period of one hundred twenty days. A reservation may be renewed for one additional period of one hundred twenty days, but may not thereafter be reserved by the same or associated persons within one calendar year of the expiration of the last reservation period.

(c) A temporary reservation may be made in person or by telephone without a fee through the office of business registration established under article twelve-d, chapter eleven of this code. If the secretary of state finds that the name is available for corporate use, the name shall be reserved for the exclusive use of the applicant for a period of seven days. A reservation made under this subsection shall expire on the seventh day after it is made unless the name is first reserved pursuant to subsection (b) of this section. A temporary reservation under this subsection may not be renewed by another temporary reservation. The secretary of state shall establish procedures for the making of temporary reservations under this subsection.

(d) The right to the exclusive use of a specified corporate name so reserved may be transferred to any other person or corporation by filing in the office of the secretary of state a notice of such transfer, executed by the applicant for whom the name was reserved, and specifying the name and address of the transferee.

§31-1-13. Registered name.

Any corporation organized and existing under the laws of any state or territory of the United States may register its corporate name under this article, provided its corporate name complies with the requirements of subdivision (3), subsection (a), section eleven of this article.
Such registration shall be made by:

(a) Filing with the secretary of state: (1) An application for registration executed by the corporation by an officer thereof, setting forth the name of the corporation, the state or territory under the laws of which it is incorporated, the date of its incorporation, a statement that it is carrying on or doing business, and a brief statement of the business in which it is engaged; and (2) a certificate setting forth that such corporation is in good standing under the laws of the state or territory wherein it is organized, executed by the secretary of state of such state or territory or by such other official as may have custody of the records pertaining to corporations, and

(b) Paying to the secretary of state the registration fee prescribed by section two, article one, chapter fifty-nine of this code.

Such registration shall be effective until the close of the fiscal year in which the application for registration is filed.

§31-1-14. Renewal of registered name.

A corporation which has in effect a registration of its corporate name may renew such registration from year to year by annually filing an application for renewal setting forth the facts required to be set forth in an original application for registration and a certificate of good standing as required for the original registration and by paying the fee prescribed by section two, article one, chapter fifty-nine of this code. A renewal application may be filed between the first day of April and the thirtieth day of June in each year, and shall extend the registration for the following fiscal year.

§31-1-51. Corporate name of foreign corporation; when certificate of authority shall not be issued.

(a) No certificate of authority shall be issued to a foreign corporation unless the corporate name of such corporation:
4 (1) Shall contain the word "corporation," "company," "incorporated" or "limited," or shall contain an abbreviation of one of such words, or such corporation shall, for use in this state, add at the end of its name one of such words or an abbreviation thereof.

9 (2) Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes in its articles of incorporation, or if the corporate name of such corporation indicates or implies that it is authorized or empowered to conduct the business of banking or insurance unless such corporation is so authorized or empowered under the laws of this state.

17 (3) Shall comply with subdivision (3), subsection (a), section eleven of this article.

(4) Shall be transliterated into letters of the English alphabet, if it is not in English.

(b) The provisions of subdivision (3), subsection (a) of this section shall not apply if the foreign corporation applying for a certificate of authority files with the secretary of state any one of the following:

(1) A resolution of its board of directors adopting a fictitious name for use in conducting affairs or doing or transacting business in this state, which fictitious name complies with the requirements of subdivision (3), subsection (a), section eleven of this article, or

(2) A written consent to the use and a written undertaking of the present user, registrant or owner of a reserved name submitted in a form satisfactory to the secretary of state to change the name to a name that is distinguishable from the name applied for; or

(3) A certified copy of a final order of a court of competent jurisdiction establishing the prior right of such foreign corporation to the use of such name in this state.

CHAPTER 31B. UNIFORM LIMITED LIABILITY COMPANY ACT.

ARTICLE 1. GENERAL PROVISIONS.
§31B-1-105. Name.

(a) The name of a limited liability company must contain "limited liability company" or "limited company" or the abbreviation "L.L.C.", "LLC", "L.C." or "LC". "Limited" may be abbreviated as "Ltd." and "company" may be abbreviated as "Co."

(b) Except as authorized by subsections (c) and (d) of this section, the name of a limited liability company must be distinguishable upon the records of the secretary of state from:

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

2. A name reserved or registered under sections 1-106 or 1-107 of this article or under sections twelve or thirteen of article one, chapter thirty-one of this code.

3. A fictitious name approved under section 10-1005 for a foreign company authorized to transact business in this state because its real name is unavailable.

(c) A limited liability company may apply to the secretary of state for authorization to use a name that is not distinguishable upon the records of the secretary of state 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 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 the name to a name that 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 limited liability company may use the name, including a fictitious name, of another domestic or foreign company which is used in this state if the other company is organized or authorized to transact business in this state and the company proposing to use the name has:

(1) Merged with the other company;

(2) Been formed by reorganization with the other company; or

(3) Acquired substantially all of the assets, including the name, of the other company.

§31B-1-106. Reserved name.

(a) A person may reserve the exclusive use of the name of a limited liability company, including a fictitious name for a foreign company whose 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 name applied for is available, it must be reserved for the applicant's exclusive use for a one hundred twenty-day period. The reservation may be renewed for one additional period of one hundred twenty days, but may not thereafter be reserved by the same or associated persons within one calendar year of the expiration of the last reservation period.

(b) The owner of a name reserved for a limited liability company may transfer the reservation to another person by delivering to the secretary of state a signed notice of the transfer which states the name and address of the transferee.

§31B-2-203. Articles of organization.

(a) Articles of organization of a limited liability company must set forth:

(1) The name of the company;

(2) The address of the initial designated office;
(3) The name and street address of the initial agent for service of process;

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

(5) Whether the company is to be a term company and, if so, the term specified;

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

(7) Whether one or more of the members of the company are to be liable for its debts and obligations under section 3-303(c).

(b) Articles of organization of a limited liability company may set forth:

(1) Provisions permitted to be set forth in an operating agreement; or

(2) Other matters not inconsistent with law.

(c) Articles of organization of a limited liability company may not vary the nonwaivable provisions of section 1-103(b). As to all other matters, if any provision of an operating agreement is inconsistent with the articles of organization:

(1) The operating agreement controls as to managers, members and members' transferees; and

(2) The articles of organization control as to persons other than managers, members and their transferees who reasonably rely on the articles to their detriment.

§31B-2-211. Annual report for secretary of state.

(a) A limited liability company, and a foreign limited liability company authorized to transact business in this state, shall deliver to the secretary of state for filing an annual report that sets forth:
(1) The name of the company and the state or country under whose law it is organized;

(2) The address of its designated office and the name and address of its agent for service of process in this state;

(3) The address of its principal office; and

(4) The names and business addresses of any managers and the name and address of each member having authority to execute instruments on behalf of the limited liability company.

(b) Information in an annual report must be current as of the date the annual report is signed on behalf of the limited liability company.

(c) The first annual report must be delivered to the secretary of state between the first day of January and the first day of April of the year following the calendar year in which a limited liability company was organized or a foreign company was authorized to transact business. Subsequent annual reports must be delivered to the secretary of state between the first day of January and the first day of April of the ensuing calendar years.

(d) If an annual report does not contain the information required in subsection (a) of this section, the secretary of state shall promptly notify the reporting limited liability company or foreign limited liability company and return the report to it for correction. If the report is corrected to contain the information required in subsection (a) of this section and delivered to the secretary of state within thirty days after the effective date of the notice, it is timely filed.

§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 a fee in the amount of one hundred fifty dollars. The application must 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;

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

(3) The street 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;

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

(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; and

(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).

(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.

CHAPTER 47. REGULATION OF TRADE.

ARTICLE 8. TRADE NAMES.

§47-8-4. Corporations, associations, limited partnerships, limited liability partnerships, and limited liability companies not to conduct business under assumed name without certificate of trade name; application; issuance of certificate of trade name.
(a) No business entity organized as a corporation, limited partnership, limited liability partnership, limited liability company, business trust or voluntary association required to register with the secretary of state in order to conduct business within the state may conduct or transact any business in this state under any assumed name, or under any designation, name or style, corporate or otherwise, other than the name established by the original certificate establishing the business entity or by an amendment thereto, unless the business entity files in the office of the secretary of state an application for registration of trade name. The application shall set forth:

(1) The name under which the business entity is organized and registered;

(2) The name under which the business of such business entity is, or is to be, conducted or transacted upon approval of the application, which name must be distinguishable from the name of any other corporation, limited partnership, limited liability partnership, limited liability company, business trust or voluntary association, and from any name reserved or registered for any of those business entities;

(3) The address of the principal office within the state or, if no office is maintained within the state, the address of the principal office in the state in which the business entity is established; and

(4) The name, title and signature of a person having authority to make the application.

The secretary of state shall grant a certificate of registration to any applicant who has met the requirements of this subsection. A new certificate of registration is to be filed if the business entity desires to conduct or transact any business in this state under any other assumed name not on file in the office of the secretary of state.

(b) Two executed originals of the application for trade name registration shall be delivered to the secretary of state. If the filing officer finds that the application for trade name registration conforms to law, he or she shall,
when all fees have been paid as prescribed by law: (i) 
Endorse on each of the originals the word "filed" and the 
month, day and year of the filing; (ii) file one of the 
originals; and (iii) issue to the applicant the certificate of 
registration of trade name with the other original attached.

(c) Upon discontinuing the use of a registered trade 
name the certificate of registration of trade name shall be 
withdrawn by filing a certificate of withdrawal with the 
office of the secretary of state setting forth the name to be 
discontinued, the real name, the address of the party 
transacting business and the date upon which the original 
certificate of registration of trade name was filed.

(d) Any corporation authorized to transact business in 
this state shall procure an amended certificate of 
incorporation in the event it changes its corporate name 
by filing articles of amendment with the office of the 
secretary of state as provided in article one, chapter 
three-one of this code.

(e) A domestic business entity having its principal 
office within the state shall file a certified copy of any 
certificate of trade name with the clerk of the county 
commission of the county in which the principal office is 
located. A foreign business entity having its principal 
office outside the state shall file a certified copy of any 
such certificate with the clerk of the county commission of 
a county in which its principal business is transacted.

(f) The secretary of state shall keep an alphabetical 
index by trade name of all certificates issued under this 
section.

(g) Any corporation registering a trade name pursuant 
to the provisions of this section is subject to the limitations 
set forth in subsection (c), section eleven, article one, 
chapter thirty-one of this code regarding use of the words 
"engineer", "engineers", "engineering", or any combination 
thereof.

(h) Any limited liability company registering a trade 
name pursuant to the provisions of this section is subject
to the limitations set forth in section one hundred five, article one, chapter thirty-one-b of this code.

§47-8-5. Penalty for violations.

Any individual, sole proprietorship, general partnership, corporation, limited partnership, limited liability partnership, limited liability company, business trust or voluntary association or other person owning, carrying on, conducting or transacting business as aforesaid who willfully fails to comply with the provisions of section two or four of this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than twenty-five nor more than one hundred dollars, or imprisoned in the county jail for a term not exceeding thirty days, or both fined and imprisoned.

ARTICLE 9. UNIFORM LIMITED PARTNERSHIP ACT.

§47-9-2. Name of limited partnership.

The name of each limited partnership as set forth in its certificate of limited partnership:

(1) Shall contain the words "limited partnership," or the abbreviation “Ltd. Partnership,” “LP” or “L.P.”;

(2) May not contain the name of a limited partner unless: (i) It is also the name of a general partner or the corporate name of a corporate general partner; or (ii) the business of the limited partnership had been carried on under the name before the admission of that limited partner;

(3) May not be the same as, and must be distinguishable from, the name of any corporation, limited partnership, limited liability partnership, or limited liability company organized under the laws of this state or licensed or registered as a foreign corporation, limited partnership, limited liability partnership, or limited liability company in this state; and

(4) May not include the words "engineer", "engineers," "engineering" or any combination of those words unless the purpose of the corporation is to practice professional engineering as defined in article thirteen, chapter thirty of
this code, as amended, and one or more of the
incorporators is a registered professional engineer as
defined therein.

§47-9-3. Reservation of name.

(a) The exclusive right to the use of a name may be
reserved by:

(1) Any person intending to organize a limited
partnership under this article and to adopt that name;

(2) Any domestic limited partnership or any foreign
limited partnership registered in this state which, in either
case, intends to adopt that name;

(3) Any foreign limited partnership intending to
register in this state and adopt that name; and

(4) Any person intending to organize a foreign
limited partnership and intending to have it registered in
this state and adopt that name.

(b) The reservation shall be made by filing with the
secretary of state an application, executed by the applicant,
to reserve a specified name along with the fee prescribed
by section two, article one, chapter fifty-nine of this code.
If the secretary of state finds that the name is available for
use by a domestic or foreign limited partnership, he shall
reserve that name for the exclusive use of the applicant for
a period of one hundred twenty days. The reservation
may be renewed for one additional period of one hundred
twenty days, but may not thereafter be reserved by the
same or associated persons within one calendar year of the
expiration of the last reservation period. The right to the
exclusive use of a reserved name may be transferred to
any other person by filing in the office of the secretary of
state a notice of the transfer, executed by the applicant for
whom the name was reserved and specifying the name and
address of the transferee.

§47-9-51. Registration of name of foreign limited partnership.

A foreign limited partnership may register with the
secretary of state under any name, whether or not it is the
name under which it is registered in its state of organization, that could be registered by a domestic limited partnership under the provisions of section two of this article.

ARTICLE 9A. VOLUNTARY ASSOCIATIONS AND BUSINESS TRUSTS.

§47-9A-1. Right to acquire and dispose of property; execution of deeds and other writings.

Any persons who are now or who have heretofore been voluntarily associated together for the transaction or doing of business under and pursuant to the terms and provisions of a declaration of trust or articles or agreement of association, commonly designated as a Massachusetts trust or business trust, or any other lawful voluntary association by whatever name known, may purchase, acquire, hold, deal in, sell, lease, convey, exchange, pledge, mortgage and encumber any real estate or personal property or interest therein within this state, and may execute all deeds, leases, contracts, or other instruments in writing with respect to real estate or personal property or interest therein as may be necessary or required, either in the name or names of the trustees for the time being designated in such declaration, articles or agreement, or their successors, or in the name or names of another person or persons designated in such declaration, articles or agreement, or by a descriptive, assumed or trade name, when signed by a duly authorized officer or officers thereof, all as may be provided for and stated in such declaration, articles or agreement: Provided, That such association or trust shall have qualified to do business in West Virginia, as hereinafter provided for in sections two and three of this article.


(a) For the purposes of this article, a “business trust” is any trust organized for the purpose of conducting business and commonly designated as a Massachusetts trust.
(b) Any business trust organized in this state shall file with the secretary of state: (1) Two executed original copies of an application for registration; and (2) two executed original copies of the declaration, articles or agreement of trust creating the business trust.

(c) Any business trust organized outside this state and operating within this state shall file with the secretary of state: (1) Two executed original copies of an application for registration; (2) two executed original copies of the declaration, articles or agreement of trust creating the business trust as recorded in the state or country of origin of the business trust; and (3) a statement or certificate from the proper officer of the state or country of origin that the business trust is in good standing.

(d) An application for registration shall set forth:

(1) The name of the business trust;

(2) If organized within the state, a statement that it is a West Virginia business trust, or if organized outside the state, the state in which it was organized and the formation date of the business trust;

(3) The purpose or purposes for which the business trust is organized;

(4) The address of its principal office;

(5) The name and address of the person to whom notice of process may be sent;

(6) The names and addresses of all trustees having authority to act on behalf of the business trust; and

(7) A statement reflecting the business trust's consent to and recognition of the application to the business trust of the law of this state with respect to corporations.

(e) An application for registration shall contain the notarized signature of a trustee of the business trust.

(f) If the secretary of state determines that an application for registration has been properly filed in
complete form and that the fee prescribed in section two, article one, chapter fifty-nine of this code has been paid, he or she shall stamp on each of the two executed original copies of the application the word “Filed” and the month, day and year of the filing. The secretary of state shall then issue a certificate of business trust to the applicant showing the applicant to be duly authorized and qualified to do business in this state as a business trust, to which he or she shall affix one of the stamped original copies of the application. The secretary of state shall file the other stamped original copy of the application for its records.

(g) A business trust shall file its certificate of business trust, together with a copy of its declaration, articles or agreement creating the business trust, in the office of the clerk of the county commission of each county in this state in which its business is or will be conducted or in which it will purchase, acquire, hold, sell, lease, convey, exchange, pledge, mortgage, encumber or otherwise dispose of real or personal property or interests therein.

§47-9A-3. Filing of voluntary association; issuance of certificate of voluntary association; recordation in county.

(a) For purposes of this article, a “voluntary association” is any association organized for the purpose of conducting business in this state, but does not include an organization formed as an unincorporated nonprofit association under the provisions of article eleven, chapter thirty-six of this code.

(b) Any voluntary association organized in this state shall file with secretary of state: (1) Two executed original copies of an application for registration; and (2) two executed original copies of the agreement of association creating the voluntary association (if such an agreement exists apart from the application for registration itself).

(c) Any voluntary association organized outside this state and operating within this state shall file with the secretary of state: (1) Two executed original copies of an application for registration; (2) two executed original copies of the agreement of association creating the
voluntary association; and (3) a statement or certificate
from the proper officer of the state or country of origin
that the voluntary association is in good standing.

(d) An application for registration shall set forth:

(1) The name of the voluntary association;

(2) The physical address of the voluntary association;

(3) The mailing address of the voluntary association, if
different from the physical address;

(4) The name and address of the person to whom
notice of process may be sent;

(5) Whether the voluntary association is organized for
profit or as a nonprofit voluntary association;

(6) The purpose or purposes for which the voluntary
association is formed;

(7) The full names and addresses of one or more of
the organizers of the voluntary association;

(8) The full names and addresses of no fewer than two
officers, owners or members of the voluntary association
who have signatory authority for the association;

(9) Any additional statements as may be required for
the type of business to be conducted; and

(10) A statement reflecting the voluntary association's
consent to and recognition of the application of the law of
this state with respect to corporations to the voluntary
association.

(e) An application for registration shall contain the
notarized signature of at least one organizer or member of
the voluntary association.

(f) If the secretary of state determines that an
application for registration has been properly filed in
complete form and that the fee prescribed in section two,
article one, chapter fifty-nine of this code has been paid,
he or she shall stamp on each of the two original copies of
the application for registration the word “Filed” and the
month, day and year of the filing. The secretary of state shall then issue a certificate of voluntary association to the applicant showing the applicant to be duly authorized and qualified to do business in this state as a voluntary association, to which he or she shall affix one of the stamped original copies of the application. The secretary of state shall file the other stamped original copy of the application for its records.

(g) A voluntary association shall file its certificate of voluntary association, together with a copy of the agreement of association creating the voluntary association (if any), in the office of the clerk of the county commission of the county or counties of this state in which its business is or will be conducted or in which it will purchase, acquire, hold, sell, lease, convey, exchange, pledge, mortgage, encumber or otherwise dispose of real or personal property or interests therein.

§47-9A-4. Application of laws relating to corporations; name of business trust or voluntary association; adoption and use of trade name and seal; amendment of declaration, articles or agreement; change of agent for service of process, trustees, and members; dissolution; filing.

(a) Unless otherwise specifically provided in this article, any business trust or voluntary association conducting business in this state is subject to the laws of this state with respect to corporations, including laws relating to license fees and all other taxes, to the extent such laws are applicable.

(b) The name of any business trust or voluntary association applying for registration shall meet the requirements for corporate names set forth in section eleven, article one, chapter thirty-one of this code, except that the name shall not contain the words “incorporated,” “corporation,” “limited,” or any abbreviation of these terms.

(c) Any business trust or voluntary association may use a trade name upon complying with the provisions of
Any business trust or voluntary association may adopt and use a common seal.

(d) Upon the adoption of an amendment to the declaration, articles or agreement of trust of a business trust or the agreement of association of a voluntary association, the business trust or voluntary association shall file two executed original copies of the amendment, containing the notarized signature of at least one trustee of the business trust or at least one organizer or member of the voluntary association, with the office of the secretary of state and with the office of the clerk of the county commission of each county in which the declaration, articles or agreement of trust or the agreement of association has been filed.

(e) Upon any change of trustees, organizers, members or other persons previously recorded as having authority to act on behalf of the business trust or voluntary association, or upon any change of the agent of the business trust or voluntary association for service of process, a business trust or voluntary association shall file notice of the change with the secretary of state.

(f) Upon the determination of the majority of trustees of a business trust or a majority of members of a voluntary association that the business trust or voluntary association shall be dissolved, the business trust or voluntary association shall file with the secretary of state a statement of intent to dissolve containing the notarized signature of at least one trustee of the business trust or at least one organizer or member of the voluntary association. After all debts, liabilities and obligations of the business trust or voluntary association have been paid and discharged, the business trust or voluntary association shall distribute all of the remaining assets of the business trust or voluntary association and file articles of dissolution with the secretary of state in the manner provided for corporations in section thirty-nine, article one, chapter thirty-one of this code. Upon verification by the appropriate state agencies that the business trust or voluntary association has paid all taxes, assessments and
fees due to the state, the secretary of state shall issue a
certificate of dissolution to the business trust or voluntary
association.

(g) A business trust or voluntary association organized
outside the state and registered to do business within this
state may withdraw from the state in the manner provided
for corporations in section sixty, article one, chapter
thirty-one of this code.

(h) No document required to be filed by this section
shall be filed with the secretary of state unless the trustee
of the business trust or the organizer or member of the
voluntary association is currently authorized as such and
the secretary of state has on file a document which
identifies such trustee, organizer or member, or unless the
business trust or voluntary association attaches to the
document to be filed appropriate documentation showing
that the person signing the document is a current trustee,
organizer or member or is otherwise authorized to sign the
document on behalf of a current trustee, organizer or
member of the business trust or voluntary association. For
purposes of this subsection, the term “appropriate
documentation” means: (1) A notice of change filed
pursuant to subsection (e) of this section; (2) a court order
reflecting the identity of the current trustees, organizers or
members or the authorization of any person to act for any
trustee, organizer or member; or (3) any other legally
authorized document assigning to the person signing the
document clear authority to execute or verify documents
on behalf of the business trust or voluntary association.

§47-9A-5. Providing for use of trade names; acknowledgment
of deeds and other writings.

Any declaration, articles or agreement of trust of a
business trust and any agreement of association of a
voluntary association which provides for the use of a trade
name shall authorize and designate or shall contain
provisions for the authorization or designation of persons
by whom deeds, leases, contracts and other written
instruments shall be executed. All such deeds, leases,
contracts and other instruments in writing shall be deemed
to be properly acknowledged for the purposes of
§47-9A-6. Validation of deeds and other writings heretofore executed.

All such deeds, leases, contracts and other written instruments with respect to real or personal property or any interest therein within this state heretofore made and delivered by any business trust or voluntary association which comply with the requirements of this article are hereby expressly validated.

§47-9A-7. Repeal of conflicting acts; severability.

All acts or parts of acts in conflict with this article are hereby repealed.

The provisions of this article shall be construed to be severable and if any are held unconstitutional or otherwise invalid, such invalidity or unconstitutionality shall not affect the operation of the remaining provisions.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Randy Schimpf
Chairman Senate Committee

Nick Fantansy
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Carroll Shewmaker
Clerk of the Senate

Earl Ray Tomblin
President of the Senate

Speaker of the House of Delegates

The within approved this the day of , 1998.

Governor
PRESENTED TO THE
GOVERNOR
Date 3/31/98
Time 2:15 PM