

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1998



ENROLLED

House Bill No. 4453

(By Delegates Amores, Trumbo and Linch)



Passed March 14, 1998

In Effect Ninety Days from Passage

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SENATE OF WEST VIRGINIA

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H. B. 4453

(BY DELEGATES AMORES, TRUMP 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.

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

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

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

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

§31-1-11. Corporate name; requirements; certain names prohibited.

1 (a) Except for corporations in existence prior to the
2 effective date of this article, the corporate name:

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

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

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

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

39 (b) A corporation with which another corporation,
40 domestic or foreign, is merged, or which is formed by the
41 reorganization or consolidation of one or more domestic
42 or foreign corporations or upon a sale, lease or other
43 disposition to or exchange with, a domestic corporation of
44 all or substantially all the assets of another corporation,
45 domestic or foreign, including its name, may have the
46 same name as that used in this state by any of such
47 corporations if such other corporation was organized
48 under the laws of, or is authorized to conduct affairs or do
49 or transact business in this state.

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

§31-1-12. Reserved name.

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

3 (1) Any person intending to organize a corporation
4 under this article.

5 (2) Any domestic corporation intending to change its
6 name.

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

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

13 (5) Any person intending to organize a foreign
14 corporation and intending to have such corporation make
15 application for a certificate of authority to conduct affairs
16 or do or transact business.

17 (b) The reservation may be made by filing with the
18 secretary of state an application to reserve a specified
19 corporate name executed by the applicant and by
20 submitting the fee prescribed by section two, article one,
21 chapter fifty-nine of this code. If the secretary of state
22 finds that the name is available for corporate use, the name
23 shall be reserved for the exclusive use of the applicant for
24 a period of one hundred twenty days. A reservation may
25 be renewed for one additional period of one hundred
26 twenty days, but may not thereafter be reserved by the
27 same or associated persons within one calendar year of the
28 expiration of the last reservation period.

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

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

§31-1-13. Registered name.

1 Any corporation organized and existing under the
2 laws of any state or territory of the United States may
3 register its corporate name under this article, provided its
4 corporate name complies with the requirements of
5 subdivision (3), subsection (a), section eleven of this
6 article.

7 Such registration shall be made by:

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

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

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

§31-1-14. Renewal of registered name.

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

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

1 (a) No certificate of authority shall be issued to a
2 foreign corporation unless the corporate name of such
3 corporation:

4 (1) Shall contain the word "corporation," "company,"
5 "incorporated" or "limited," or shall contain an
6 abbreviation of one of such words, or such corporation
7 shall, for use in this state, add at the end of its name one of
8 such words or an abbreviation thereof.

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

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

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

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

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

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

35 (3) A certified copy of a final order of a court of
36 competent jurisdiction establishing the prior right of such
37 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.

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

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

10 (1) The name of any corporation, limited partnership,
11 limited liability partnership or limited liability company
12 incorporated, organized or authorized to transact business
13 in this state;

14 (2) A name reserved or registered under sections 1-
15 106 or 1-107 of this article or under sections twelve or
16 thirteen of article one, chapter thirty-one of this code.

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

20 (c) A limited liability company may apply to the
21 secretary of state for authorization to use a name that is
22 not distinguishable upon the records of the secretary of
23 state from one or more of the names described in
24 subsection (b) of this section. The secretary of state shall
25 authorize use of the name applied for if:

26 (1) The present user, registrant or owner of a reserved
27 name consents to the use in a record and submits an
28 undertaking in form satisfactory to the secretary of state to
29 change the name to a name that is distinguishable upon
30 the records of the secretary of state from the name applied
31 for; or

32 (2) The applicant delivers to the secretary of state a
33 certified copy of the final judgment of a court of
34 competent jurisdiction establishing the applicant's right to
35 use the name applied for in this state.

36 (d) A limited liability company may use the name,
37 including a fictitious name, of another domestic or foreign
38 company which is used in this state if the other company
39 is organized or authorized to transact business in this state
40 and the company proposing to use the name has:

41 (1) Merged with the other company;

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

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

§31B-1-106. Reserved name.

1 (a) A person may reserve the exclusive use of the
2 name of a limited liability company, including a fictitious
3 name for a foreign company whose name is not available,
4 by delivering an application to the secretary of state for
5 filing. The application must set forth the name and
6 address of the applicant and the name proposed to be
7 reserved. If the secretary of state finds that the name
8 applied for is available, it must be reserved for the
9 applicant's exclusive use for a one hundred twenty-day
10 period. The reservation may be renewed for one
11 additional period of one hundred twenty days, but may
12 not thereafter be reserved by the same or associated
13 persons within one calendar year of the expiration of the
14 last reservation period.

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

§31B-2-203. Articles of organization.

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

3 (1) The name of the company;

4 (2) The address of the initial designated office;

5 (3) The name and street address of the initial agent for
6 service of process;

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

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

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

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

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

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

22 (2) Other matters not inconsistent with law.

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

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

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

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

1 (a) A limited liability company, and a foreign limited
2 liability company authorized to transact business in this
3 state, shall deliver to the secretary of state for filing an
4 annual report that sets forth:

5 (1) The name of the company and the state or country
6 under whose law it is organized;

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

9 (3) The address of its principal office; and

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

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

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

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

§31B-10-1002. Application for certificate of authority.

1 (a) A foreign limited liability company may apply for
2 a certificate of authority to transact business in this state
3 by delivering an application to the secretary of state for
4 filing, together with a fee in the amount of one hundred
5 fifty dollars. The application must set forth:

6 (1) The name of the foreign company or, if its name is
7 unavailable for use in this state, a name that satisfies the
8 requirements of section 10-1005;

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

11 (3) The street address of its principal office;

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

15 (5) The address of its initial designated office in this
16 state;

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

19 (7) Whether the duration of the company is for a
20 specified term and, if so, the period specified;

21 (8) Whether the company is manager-managed, and,
22 if so, the name and address of each initial manager; and

23 (9) Whether the members of the company are to be
24 liable for its debts and obligations under a provision
25 similar to section 3-303(c).

26 (b) A foreign limited liability company shall deliver
27 with the completed application a certificate of existence or
28 a record of similar import authenticated by the secretary
29 of state or other official having custody of company
30 records in the state or country under whose law it is
31 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.**

1 (a) No business entity organized as a corporation,
2 limited partnership, limited liability partnership, limited
3 liability company, business trust or voluntary association
4 required to register with the secretary of state in order to
5 conduct business within the state may conduct or transact
6 any business in this state under any assumed name, or
7 under any designation, name or style, corporate or
8 otherwise, other than the name established by the original
9 certificate establishing the business entity or by an
10 amendment thereto, unless the business entity files in the
11 office of the secretary of state an application for
12 registration of trade name. The application shall set forth:

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

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

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

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

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

35 (b) Two executed originals of the application for trade
36 name registration shall be delivered to the secretary of
37 state. If the filing officer finds that the application for
38 trade name registration conforms to law, he or she shall,

39 when all fees have been paid as prescribed by law: (i)
40 Endorse on each of the originals the word "filed" and the
41 month, day and year of the filing; (ii) file one of the
42 originals; and (iii) issue to the applicant the certificate of
43 registration of trade name with the other original attached.

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

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

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

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

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

74 (h) Any limited liability company registering a trade
75 name pursuant to the provisions of this section is subject
.

76 to the limitations set forth in section one hundred five,
77 article one, chapter thirty-one-b of this code.

§47-8-5. Penalty for violations.

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

ARTICLE 9. UNIFORM LIMITED PARTNERSHIP ACT.

§47-9-2. Name of limited partnership.

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

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

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

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

18 (4) May not include the words "engineer", "engineers,"
19 "engineering" or any combination of those words unless
20 the purpose of the corporation is to practice professional
21 engineering as defined in article thirteen, chapter thirty of

22 this code, as amended, and one or more of the
23 incorporators is a registered professional engineer as
24 defined therein.

§47-9-3. Reservation of name.

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

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

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

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

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

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

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

1 A foreign limited partnership may register with the
2 secretary of state under any name, whether or not it is the

3 name under which it is registered in its state of
4 organization, that could be registered by a domestic
5 limited partnership under the provisions of section two of
6 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.

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

§47-9A-2. Application for registration of business trust; issuance of certificate of business trust; recording of certificate in county.

1 (a) For the purposes of this article, a “business trust”
2 is any trust organized for the purpose of conducting
3 business and commonly designated as a Massachusetts
4 trust.

5 (b) Any business trust organized in this state shall file
6 with secretary of state: (1) Two executed original copies of
7 an application for registration; and (2) two executed
8 original copies of the declaration, articles or agreement of
9 trust creating the business trust.

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

19 (d) An application for registration shall set forth:

20 (1) The name of the business trust;

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

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

27 (4) The address of its principal office;

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

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

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

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

37 (f) If the secretary of state determines that an
38 application for registration has been properly filed in

39 complete form and that the fee prescribed in section two,
40 article one, chapter fifty-nine of this code has been paid,
41 he or she shall stamp on each of the two executed original
42 copies of the application the word "Filed" and the month,
43 day and year of the filing. The secretary of state shall
44 then issue a certificate of business trust to the applicant
45 showing the applicant to be duly authorized and qualified
46 to do business in this state as a business trust, to which he
47 or she shall affix one of the stamped original copies of the
48 application. The secretary of state shall file the other
49 stamped original copy of the application for its records.

50 (g) A business trust shall file its certificate of business
51 trust, together with a copy of its declaration, articles or
52 agreement creating the business trust, in the office of the
53 clerk of the county commission of each county in this
54 state in which its business is or will be conducted or in
55 which it will purchase, acquire, hold, sell, lease, convey,
56 exchange, pledge, mortgage, encumber or otherwise
57 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.**

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

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

13 (c) Any voluntary association organized outside this
14 state and operating within this state shall file with the
15 secretary of state: (1) Two executed original copies of an
16 application for registration; (2) two executed original
17 copies of the agreement of association creating the

18 voluntary association; and (3) a statement or certificate
19 from the proper officer of the state or country of origin
20 that the voluntary association is in good standing.

21 (d) An application for registration shall set forth:

22 (1) The name of the voluntary association;

23 (2) The physical address of the voluntary association;

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

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

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

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

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

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

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

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

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

46 (f) If the secretary of state determines that an
47 application for registration has been properly filed in
48 complete form and that the fee prescribed in section two,
49 article one, chapter fifty-nine of this code has been paid,
50 he or she shall stamp on each of the two original copies of
51 the application for registration the word "Filed" and the

52 month, day and year of the filing. The secretary of state
53 shall then issue a certificate of voluntary association to the
54 applicant showing the applicant to be duly authorized and
55 qualified to do business in this state as a voluntary
56 association, to which he or she shall affix one of the
57 stamped original copies of the application. The secretary
58 of state shall file the other stamped original copy of the
59 application for its records.

60 (g) A voluntary association shall file its certificate of
61 voluntary association, together with a copy of the
62 agreement of association creating the voluntary
63 association (if any), in the office of the clerk of the county
64 commission of the county or counties of this state in
65 which its business is or will be conducted or in which it
66 will purchase, acquire, hold, sell, lease, convey, exchange,
67 pledge, mortgage, encumber or otherwise dispose of real
68 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.**

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

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

14 (c) Any business trust or voluntary association may
15 use a trade name upon complying with the provisions of

16 section four, article eight, chapter forty-seven of this code.
17 Any business trust or voluntary association may adopt and
18 use a common seal.

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

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

38 (f) Upon the determination of the majority of trustees
39 of a business trust or a majority of members of a
40 voluntary association that the business trust or voluntary
41 association shall be dissolved, the business trust or
42 voluntary association shall file with the secretary of state a
43 statement of intent to dissolve containing the notarized
44 signature of at least one trustee of the business trust or at
45 least one organizer or member of the voluntary
46 association. After all debts, liabilities and obligations of
47 the business trust or voluntary association have been paid
48 and discharged, the business trust or voluntary association
49 shall distribute all of the remaining assets of the business
50 trust or voluntary association and file articles of
51 dissolution with the secretary of state in the manner
52 provided for corporations in section thirty-nine, article
53 one, chapter thirty-one of this code. Upon verification by
54 the appropriate state agencies that the business trust or
55 voluntary association has paid all taxes, assessments and

56 fees due to the state, the secretary of state shall issue a
57 certificate of dissolution to the business trust or voluntary
58 association.

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

64 (h) No document required to be filed by this section
65 shall be filed with the secretary of state unless the trustee
66 of the business trust or the organizer or member of the
67 voluntary association is currently authorized as such and
68 the secretary of state has on file a document which
69 identifies such trustee, organizer or member, or unless the
70 business trust or voluntary association attaches to the
71 document to be filed appropriate documentation showing
72 that the person signing the document is a current trustee,
73 organizer or member or is otherwise authorized to sign the
74 document on behalf of a current trustee, organizer or
75 member of the business trust or voluntary association. For
76 purposes of this subsection, the term "appropriate
77 documentation" means: (1) A notice of change filed
78 pursuant to subsection (e) of this section; (2) a court order
79 reflecting the identity of the current trustees, organizers or
80 members or the authorization of any person to act for any
81 trustee, organizer or member; or (3) any other legally
82 authorized document assigning to the person signing the
83 document clear authority to execute or verify documents
84 on behalf of the business trust or voluntary association.

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

1 Any declaration, articles or agreement of trust of a
2 business trust and any agreement of association of a
3 voluntary association which provides for the use of a trade
4 name shall authorize and designate or shall contain
5 provisions for the authorization or designation of persons
6 by whom deeds, leases, contracts and other written
7 instruments shall be executed. All such deeds, leases,
8 contracts and other instruments in writing shall be deemed
9 to be properly acknowledged for the purposes of

10 recordation if acknowledged in the form provided by
11 statute for acknowledgments by corporations, or, if
12 executed by trustees or other persons, then in the form
13 provided by statute therefor.

**§47-9A-6. Validation of deeds and other writings heretofore
executed.**

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

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

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

3 The provisions of this article shall be construed to be
4 severable and if any are held unconstitutional or otherwise
5 invalid, such invalidity or unconstitutionality shall not
6 affect the operation of the remaining provisions.

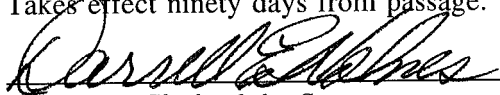
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

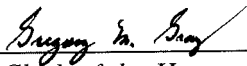

Chairman Senate Committee

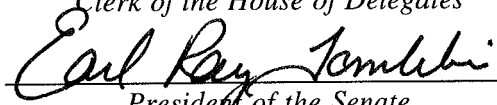

Chairman House Committee


Originating in the House.

Takes effect ninety days from passage.

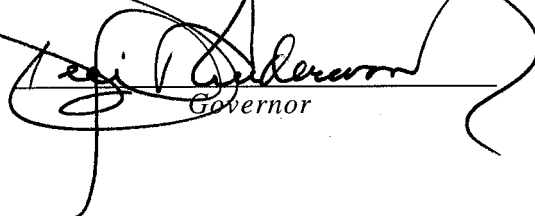

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within approved this the 7th
day of April, 1998.


Governor

PRESENTED TO THE

GOVERNOR

Date 3/31/98

Time 2:42 pm