

5 SB 703

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
Regular Session, 2005



ENROLLED

SENATE BILL NO. 703

(By Senators Fanning, Weeks and Minard)



PASSED April 9, 2005

In Effect 90 days from Passage

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

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Senate Bill No. 703

(BY SENATORS FANNING, WEEKS AND MINARD)

[Passed April 9, 2005; in effect ninety days from passage.]

AN ACT to amend and reenact §31B-2-203 of the Code of West Virginia, 1931, as amended; to amend and reenact §31B-10-1002 of said code; to amend and reenact §31D-1-120 and §31D-1-150 of said code; to amend and reenact §31D-2-202 of said code; to amend and reenact §31D-5-503 of said code; to amend and reenact §31D-15-1509; to amend said code by adding thereto a new section, designated §31D-15-1521; to amend and reenact §31E-1-120 and §31E-1-150 of said code; to amend and reenact §31E-2-202 of said code; to amend and reenact §31E-5-503 of said code; to amend and reenact §31E-14-1409 of said code; to amend said code by adding thereto a new section, designated §31E-14-1421; to amend and reenact §47-9-1, §47-9-8, §47-9-49 and §47-9-53 of said code; to amend and reenact §47B-3-3 of said code; and to amend and reenact §47B-10-1 and §47B-10-4 of said code, all relating to updating language in the Uniform Liability Act; West Virginia Business Corporation Act; West Virginia Nonprofit Corporation Act; Uniform Limited Partnership Act; limited liability partnerships; and authority to revoke

withdrawal under the West Virginia Business Corporation Act and the West Virginia Nonprofit Corporation Act.

Be it enacted by the Legislature of West Virginia:

That §31B-2-203 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §31B-10-1002 of said code be amended and reenacted; that §31D-1-120 and §31D-1-150 of said code be amended and reenacted; that §31D-2-202 of said code be amended and reenacted; that §31D-5-503 of said code be amended and reenacted; that §31D-15-1509 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §31D-15-1521; that §31E-1-120 and §31E-1-150 of said code be amended and reenacted; that §31E-2-202 of said code be amended and reenacted; that §31E-5-503 of said code be amended and reenacted; that §31E-14-1409 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §31E-14-1421; that §47-9-1, §47-9-8, §47-9-49 and §47-9-53 of said code be amended and reenacted; that §47B-3-3 of said code be amended and reenacted; and that §47B-10-1 and §47B-10-4 of said code be amended and reenacted, all to read as follows:

**CHAPTER 31B. UNIFORM LIMITED
LIABILITY COMPANY ACT.**

ARTICLE 2. ORGANIZATION.

§31B-2-203. Articles of organization.

- 1 (a) Articles of organization of a limited liability company
- 2 must set forth:
 - 3 (1) The name of the company;
 - 4 (2) The address of the initial designated office in West
 - 5 Virginia, if any, and the mailing address of the principal
 - 6 office;
 - 7 (3) The name and address of the initial agent for service
 - 8 of process, if any;

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

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

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

16 (7) Whether one or more of the members of the company
17 are to be liable for its debts and obligations under section
18 3-303(c); and

19 (8) The purpose or purposes for which the limited
20 liability company is organized.

21 (b) Articles of organization of a limited liability com-
22 pany may set forth:

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

25 (2) Other matters not inconsistent with law.

26 (c) Articles of organization of a limited liability company
27 may not vary the nonwaivable provisions of section 1-
28 103(b). As to all other matters, if any provision of an
29 operating agreement is inconsistent with the articles of
30 organization:

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

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

ARTICLE 10. FOREIGN LIMITED LIABILITY.

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

1 (a) A foreign limited liability company may apply for a
2 certificate of authority to transact business in this state by

3 delivering an application to the Secretary of State for
4 filing, together with the fee prescribed by section two,
5 article one, chapter fifty-nine of this code.

6 The application shall set forth:

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

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

12 (3) The mailing address of its principal office;

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

16 (5) The address of its initial designated office in this
17 state, if any;

18 (6) The name and address of its initial agent for service
19 of process in this state, if any;

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

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

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

27 (10) The purpose or purposes for which the limited
28 liability company is organized.

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

**CHAPTER 31D. WEST VIRGINIA
BUSINESS CORPORATION ACT.**

ARTICLE 1. GENERAL PROVISIONS.

§31D-1-120. Filing requirements.

1 (a) A document must satisfy the requirements of this
2 section and any other provision of this code that adds to or
3 varies these requirements to be entitled to filing by the
4 Secretary of State.

5 (b) The document to be filed must be typewritten or
6 printed or, if electronically transmitted, it must be in a
7 format that can be retrieved or reproduced in typewritten
8 or printed form.

9 (c) The document to be filed must be in the English
10 language: *Provided*, That a corporate name is not required
11 to be in the English language if it is written in English
12 letters or Arabic or Roman numerals: *Provided, however*,
13 That the certificate of existence required of foreign
14 corporations is not required to be in the English language
15 if it is accompanied by a reasonably authenticated English
16 translation.

17 (d) The document to be filed must be executed:

18 (1) By the chairman of the board of directors of a
19 domestic or foreign corporation, by its president or by
20 another of its officers;

21 (2) If directors have not been selected or the corporation
22 has not been formed, by an incorporator; or

23 (3) If the corporation is in the hands of a receiver, trustee
24 or other court-appointed fiduciary, by that fiduciary.

25 (e) The person executing the document to be filed shall
26 sign it and state beneath or opposite his or her signature,
27 his or her name and the capacity in which he or she signs.
28 The document may contain a corporate seal, attestation,
29 acknowledgment or verification.

30 (f) The document to be filed must be delivered to the
31 office of the Secretary of State for filing. Delivery may be
32 made by electronic transmission as permitted by the
33 Secretary of State. The Secretary of State may require one
34 exact or conformed copy to be delivered with the docu-
35 ment to be filed if the document is filed in typewritten or
36 printed form and not transmitted electronically.

37 (g) When a document is delivered to the office of the
38 Secretary of State for filing, the correct filing fee and any
39 franchise tax, license fee or penalty required by this
40 chapter or any other provision of this code must be paid or
41 provision for payment made in a manner permitted by the
42 Secretary of State.

43 (h) In the case of service of notice and process as permit-
44 ted by subsection (c), section five hundred four, article five
45 of this chapter and subsections (d) and (e), section one
46 thousand five hundred ten, article fifteen of this chapter,
47 the notice and process must be filed with the Secretary of
48 State as one original, plus two copies for each person to be
49 served or noticed.

§31D-1-150. Definitions.

1 As used in this chapter, unless the context otherwise
2 requires a different meaning, the term:

3 (1) "Articles of incorporation" includes, but is not
4 limited to, amended and restated articles of incorporation
5 and articles of merger.

6 (2) "Authorized shares" means the shares of all classes a
7 domestic or foreign corporation is authorized to issue.

8 (3) "Conspicuous" means written so that a reasonable
9 person against whom the writing is to operate should have
10 noticed, including, but not limited to, printing in italics or
11 boldface or contrasting color, or typing in capitals or
12 underlined.

13 (4) "Corporation" or "domestic corporation" means a
14 corporation for profit, which is not a foreign corporation,
15 incorporated under or subject to the provisions of this
16 chapter.

17 (5) "Deliver" or "delivery" means any method of delivery
18 used in conventional commercial practice, including, but
19 not limited to, delivery by hand, mail, commercial delivery
20 and electronic transmission.

21 (6) "Distribution" means a direct or indirect transfer of
22 money or other property or incurrence of indebtedness by
23 a corporation to or for the benefit of its shareholders in
24 respect of any of its shares: *Provided*, That "distribution"
25 does not include a direct or indirect transfer of a corpora-
26 tion's own shares. A distribution may be in the form of a
27 declaration or payment of a dividend; a purchase, redemp-
28 tion or other acquisition of shares; or a distribution of
29 indebtedness.

30 (7) "Effective date of notice" means the date as deter-
31 mined pursuant to section one hundred fifty-one of this
32 article.

33 (8) "Electronic transmission" or "electronically trans-
34 mitted" means any process of communication not directly
35 involving the physical transfer of paper that is suitable for
36 the retention, retrieval and reproduction of information by
37 the recipient.

38 (9) "Employee" includes an officer and may include a
39 director: *Provided*, That the director has accepted duties
40 that make him or her also an employee.

41 (10) "Entity" includes corporations and foreign corpora-
42 tions; nonprofit corporations; profit and nonprofit unin-
43 corporated associations; limited liability companies and
44 foreign limited liability companies; business trusts, estates,
45 partnerships, trusts and two or more persons having a
46 joint or common economic interest; and state, United
47 States and foreign government.

48 (11) "Foreign corporation" means a corporation for
49 profit incorporated under a law other than the laws of this
50 state.

51 (12) "Governmental subdivision" includes, but is not
52 limited to, authorities, counties, districts and municipali-
53 ties.

54 (13) "Individual" includes, but is not limited to, the
55 estate of an incompetent or deceased individual.

56 (14) "Person" includes, but is not limited to, an individ-
57 ual and an entity.

58 (15) "Principal office" means the office so designated in
59 the return required pursuant to section three, article
60 twelve-c, chapter eleven of this code where the principal
61 executive offices of a domestic or foreign corporation are
62 located.

63 (16) "Proceeding" includes, but is not limited to, civil
64 suits and criminal, administrative and investigatory
65 actions.

66 (17) "Record date" means the date established under
67 article six or seven of this chapter on which a corporation
68 determines the identity of its shareholders and their
69 shareholdings. The determinations are to be made as of
70 the close of business on the record date unless another
71 time for doing so is specified when the record date is fixed.

72 (18) "Registered agent" means the agent identified by
73 the corporation pursuant to section five hundred one,
74 article five of this chapter.

75 (19) "Registered office" means the address of the regis-
76 tered agent for the corporation, as provided in section five
77 hundred one, article five of this chapter.

78 (20) "Secretary" means the corporate officer to whom
79 the board of directors has delegated responsibility under
80 subsection (c), section eight hundred forty, article eight of

81 this chapter for custody of the minutes of the meetings of
82 the board of directors and the meetings of the shareholders
83 and for authenticating records of the corporation.

84 (21) "Shareholder" means the person in whose name
85 shares are registered in the records of a corporation or the
86 beneficial owner of shares to the extent of the rights
87 granted by a nominee certificate on file with a corpora-
88 tion.

89 (22) "Shares" means the units into which the proprietary
90 interests in a corporation are divided.

91 (23) "Sign" or "signature" includes, but is not limited to,
92 any manual, facsimile, conformed or electronic signature
93 with means to identify a record by signature, mark or
94 other symbol, with intent to authenticate it.

95 (24) "State", when referring to a part of the United
96 States, includes a state and commonwealth and a territory
97 and insular possession of the United States and their
98 agencies and governmental subdivisions.

99 (25) "Subscriber" means a person who subscribes for
100 shares in a corporation, whether before or after incorpora-
101 tion.

102 (26) "United States" includes, but is not limited to,
103 districts, authorities, bureaus, commissions, departments
104 and any other agency of the United States.

105 (27) "Voting group" means all shares of one or more
106 classes or series that, pursuant to the articles of incorpora-
107 tion or this chapter, are entitled to vote and be counted
108 together collectively on a matter at a meeting of share-
109 holders. All shares entitled by the articles of incorporation
110 or this chapter to vote generally on the matter are for that
111 purpose a single voting group.

112 (28) "Voting power" means the current power to vote in
113 the election of directors.

ARTICLE 2. INCORPORATIONS.

§31D-2-202. Articles of incorporation.

1 (a) The articles of incorporation must set forth:

2 (1) A corporate name for the corporation that satisfies
3 the requirements of section four hundred one, article four
4 of this chapter;

5 (2) The number of shares the corporation is authorized to
6 issue, the par value of each of the shares or a statement
7 that all shares are without par value;

8 (3) The street address of the corporation's initial regis-
9 tered office, if any, and the name of its initial registered
10 agent at that office, if any;

11 (4) The name and address of each incorporator;

12 (5) The purpose or purposes for which the corporation is
13 organized; and

14 (6) The mailing address of the corporation's principal
15 office.

16 (b) The articles of incorporation may set forth:

17 (1) The names and addresses of the individuals who are
18 to serve as the initial directors;

19 (2) Provisions not inconsistent with law regarding:

20 (A) Managing the business and regulating the affairs of
21 the corporation;

22 (B) Defining, limiting and regulating the powers of the
23 corporation, its board of directors and shareholders; or

24 (C) The imposition of personal liability on shareholders
25 for the debts of the corporation to a specified extent and
26 upon specified conditions;

27 (3) Any provision that, under this chapter, is required or
28 permitted to be set forth in the bylaws;

29 (4) A provision eliminating or limiting the personal
30 liability of a director to the corporation or its stockholders
31 for monetary damages for breach of fiduciary duty as a
32 director: *Provided*, That a provision may not eliminate or
33 limit the liability of a director: (A) For any breach of the
34 director's duty of loyalty to the corporation or its stock-
35 holders; (B) for acts or omissions not in good faith or
36 which involve intentional misconduct or a knowing
37 violation of law; (C) under section eight hundred thirty-
38 three, article eight of this chapter for unlawful distribu-
39 tions; or (D) for any transaction from which the director
40 derived an improper personal benefit. No provision may
41 eliminate or limit the liability of a director for any act or
42 omission occurring prior to the date when that provision
43 becomes effective; and

44 (5) A provision permitting or making obligatory indem-
45 nification of a director for liability as that term is defined
46 in section eight hundred fifty, article eight of this chapter
47 to any person for any action taken, or any failure to take
48 any action, as a director except liability for: (A) Receipt of
49 a financial benefit to which he or she is not entitled; (B) an
50 intentional infliction of harm on the corporation or its
51 shareholders; (C) a violation of section eight hundred
52 thirty-three, article eight of this chapter for unlawful
53 distributions; or (D) an intentional violation of criminal
54 law.

55 (c) The articles of incorporation need not set forth any of
56 the corporate powers enumerated in this chapter.

ARTICLE 5. OFFICE AND AGENT.

§31D-5-503. Resignation of registered agent.

1 (a) A registered agent may resign his or her agency
2 appointment by signing and delivering to the Secretary of
3 State for filing a statement of resignation. The statement
4 may include a statement that the registered office is also
5 discontinued.

6 (b) After filing the statement, the Secretary of State shall
7 mail a copy of the filed statement of resignation to the
8 corporation at its principal office.

9 (c) The agency appointment is terminated, and the
10 registered office is discontinued if provision for its discon-
11 tinuation is made, on the thirty-first day after the date on
12 which the statement was filed.

ARTICLE 15. FOREIGN CORPORATIONS.

§31D-15-1509. Resignation of registered agent of foreign corpo- ration.

1 (a) The registered agent of a foreign corporation may
2 resign his or her agency appointment by signing and
3 delivering to the Secretary of State for filing a statement
4 of resignation. The statement of resignation may include
5 a statement that the registered office is also discontinued.

6 (b) After filing the statement, the Secretary of State shall
7 mail a copy of the filed statement of resignation and
8 receipt to the corporation at its principal office.

9 (c) The agency appointment is terminated, and the
10 registered office discontinued if provided in the statement
11 of registration, on the thirty-first day after the date on
12 which the statement was filed.

§31D-15-1521. Revocation of withdrawal.

1 (a) A corporation may revoke its withdrawal within one
2 hundred twenty days of its effective date.

3 (b) Revocation of withdrawal must be authorized in the
4 same manner as the withdrawal was authorized unless
5 that authorization permitted revocation by action of the
6 board of directors alone, in which event the board of
7 directors may revoke the withdrawal without shareholder
8 action.

9 (c) After the revocation of withdrawal is authorized, the
10 corporation may revoke the withdrawal by delivering to

11 the Secretary of State for filing articles of revocation of
12 withdrawal, together with a copy of its application of
13 withdrawal, that sets forth:

14 (1) The name of the corporation;

15 (2) The effective date of the withdrawal that was re-
16 voked;

17 (3) The date that the revocation of withdrawal was
18 authorized;

19 (4) If the corporation's board of directors or incorpora-
20 tors revoked the withdrawal, a statement to that effect;
21 and

22 (5) If the corporation's board of directors revoked the
23 withdrawal authorized by the shareholders, a statement
24 that revocation was permitted by action by the board of
25 directors alone pursuant to that authorization.

26 (d) Revocation of withdrawal is effective upon the
27 effective date of the articles of revocation of withdrawal.

28 (e) When the revocation of withdrawal is effective, it
29 relates back to and takes effect as of the effective date of
30 the withdrawal and the corporation resumes carrying on
31 its business as if withdrawal had never occurred.

CHAPTER 31E. WEST VIRGINIA NONPROFIT CORPORATION ACT.

ARTICLE 1. GENERAL PROVISIONS.

§31E-1-120. Filing requirements.

1 (a) A document must satisfy the requirements of this
2 section and any other provision of this code that adds to or
3 varies these requirements to be entitled to filing by the
4 Secretary of State.

5 (b) The document to be filed must be typewritten or
6 printed or, if electronically transmitted, it must be in a

7 format that can be retrieved or reproduced in typewritten
8 or printed form.

9 (c) The document to be filed must be in the English
10 language: *Provided*, That a corporate name is not required
11 to be in the English language if it is written in English
12 letters or Arabic or Roman numerals: *Provided, however*,
13 That the certificate of existence required of foreign
14 corporations is not required to be in the English language
15 if it is accompanied by a reasonably authenticated English
16 translation.

17 (d) The document to be filed must be executed:

18 (1) By the chairman of the board of directors of a
19 domestic or foreign corporation, by its president or by
20 another of its officers;

21 (2) If directors have not been selected or the corporation
22 has not been formed, by an incorporator; or

23 (3) If the corporation is in the hands of a receiver, trustee
24 or other court-appointed fiduciary, by that fiduciary.

25 (e) The person executing the document to be filed shall
26 sign it and state beneath or opposite his or her signature,
27 his or her name and the capacity in which he or she signs.
28 The document may contain a corporate seal, attestation,
29 acknowledgment or verification.

30 (f) The document to be filed must be delivered to the
31 office of the Secretary of State for filing. Delivery may be
32 made by electronic transmission as permitted by the
33 Secretary of State. The Secretary of State may require one
34 exact or conformed copy to be delivered with the docu-
35 ment to be filed if the document is filed in typewritten or
36 printed form and not transmitted electronically.

37 (g) When a document is delivered to the office of the
38 Secretary of State for filing, the correct filing fee and any
39 franchise tax, license fee or penalty required by this
40 chapter or any other provision of this code must be paid or

41 provision for payment made in a manner permitted by the
42 Secretary of State.

43 (h) In the case of service of notice and process as permit-
44 ted by subsection (c), section five hundred four, article five
45 of this chapter and subsections (d) and (e), section one
46 thousand four hundred ten, article fourteen of this chap-
47 ter, the notice and process must be filed with the Secretary
48 of State as one original, plus two copies for each person to
49 be served or noticed.

§31E-1-150. Chapter definitions.

1 As used in this chapter, unless the context otherwise
2 requires a different meaning, the term:

3 (1) "Articles of incorporation" includes, but is not
4 limited to, amended and restated articles of incorporation
5 and articles of merger.

6 (2) "Authorized shares" means the shares of all classes a
7 domestic or foreign corporation is authorized to issue.

8 (3) "Board" or "board of directors" means the group of
9 persons vested with management of the affairs of the
10 corporation irrespective of the name by which the group is
11 designated.

12 (4) "Business corporation" means a corporation with
13 capital stock or shares incorporated for profit.

14 (5) "Conspicuous" means written so that a reasonable
15 person against whom the writing is to operate should have
16 noticed, including, but not limited to, printing in italics or
17 boldface or contrasting color, or typing in capitals or
18 underlined.

19 (6) "Corporation" or "domestic corporation" means a
20 corporation without capital stock or shares, which is not
21 a foreign corporation, incorporated under the laws of this
22 state: *Provided*, That "corporation" or "domestic corpora-
23 tion" does not include towns, cities, boroughs or any

24 municipal corporation or any department or any town,
25 city, borough or municipal corporation.

26 (7) "Deliver" or "delivery" means any method of delivery
27 used in conventional commercial practice, including, but
28 not limited to, delivery by hand, mail, commercial delivery
29 and electronic transmission.

30 (8) "Distribution" means a direct or indirect transfer of
31 money or other property or incurrence of indebtedness by
32 a corporation to or for the benefit of its members in
33 respect of any of its membership interests or to or for the
34 benefit of its officers or directors: *Provided*, That the
35 payment of reasonable compensation for services rendered,
36 the reimbursement of reasonable expenses, the granting of
37 benefits to members in conformity with the corporation's
38 nonprofit purposes and the making of distributions upon
39 dissolution or final liquidation as provided by article
40 thirteen of this chapter may not be deemed a distribution.

41 (9) "Effective date of notice" means the date as deter-
42 mined pursuant to section one hundred fifty-one of this
43 article.

44 (10) "Electronic transmission" or "electronically trans-
45 mitted" means any process of communication not directly
46 involving the physical transfer of paper that is suitable for
47 the retention, retrieval and reproduction of information by
48 the recipient.

49 (11) "Employee" includes an officer and may include a
50 director: *Provided*, That the director has accepted duties
51 that make him or her also an employee.

52 (12) "Entity" includes corporation and foreign corpora-
53 tions; business corporations and foreign business corpora-
54 tions; profit and nonprofit unincorporated associations;
55 limited liability companies and foreign limited liability
56 companies; business trusts, estates, partnerships, trusts
57 and two or more persons having a joint or common

58 economic interest; and state, United States and foreign
59 government.

60 (13) "Foreign corporation" means any nonprofit corpo-
61 ration which is incorporated under a law other than the
62 laws of this state.

63 (14) "Governmental subdivision" includes, but is not
64 limited to, authorities, counties, districts and municipali-
65 ties.

66 (15) "Individual" includes, but is not limited to, the
67 estate of an incompetent or deceased individual.

68 (16) "Member" means a person having membership
69 rights in a corporation in accordance with the provisions
70 of its certificate of incorporation or bylaws.

71 (17) "Nonprofit corporation" means a corporation which
72 may not make distributions to its members, directors or
73 officers.

74 (18) "Person" includes, but is not limited to, an individ-
75 ual and an entity.

76 (19) "Principal office" means the office so designated in
77 the return required pursuant to section three, article
78 twelve-c, chapter eleven of this code, where the principal
79 executive offices of a domestic or foreign corporation are
80 located.

81 (20) "Proceeding" includes, but is not limited to, civil
82 suits and criminal, administrative and investigatory
83 actions.

84 (21) "Record date" means the date established under
85 article six or seven of this chapter on which a corporation
86 determines the identity of its members and their interests.
87 The determinations are to be made as of the close of
88 business on the record date unless another time for doing
89 so is specified when the record date is fixed.

90 (22) "Registered agent" means the agent identified by
91 the corporation pursuant to section five hundred one,
92 article five of this chapter.

93 (23) "Registered office" means the address of the regis-
94 tered agent for the corporation, as provided in section five
95 hundred one, article five of this chapter.

96 (24) "Secretary" means the corporate officer to whom
97 the board of directors has delegated responsibility under
98 subsection (c), section eight hundred forty, article eight of
99 this chapter for custody of the minutes of the meetings of
100 the board of directors and the meetings of the members
101 and for authenticating records of the corporation.

102 (25) "Sign" or "signature" includes, but is not limited to,
103 any manual, facsimile, conformed or electronic signature
104 with means to identify a record by a signature, mark or
105 other symbol, with intent to authenticate it.

106 (26) "State", when referring to a part of the United
107 States, includes a state, commonwealth and a territory and
108 insular possession of the United States and their agencies
109 and governmental subdivisions.

110 (27) "United States" includes, but is not limited to,
111 districts, authorities, bureaus, commissions, departments
112 and any other agency of the United States.

ARTICLE 2. INCORPORATION.

§31E-2-202. Articles of incorporation.

1 (a) The articles of incorporation must set forth:

2 (1) A corporate name for the corporation that satisfies
3 the requirements of section four hundred one, article four
4 of this chapter;

5 (2) A statement that the corporation is nonprofit and
6 that the corporation may not have or issue shares of stock
7 or make distributions;

8 (3) Whether the corporation is to have members and, if
9 it is to have members, the provisions required by section
10 six hundred one, article six of this chapter to be set forth
11 in the certificate of incorporation;

12 (4) The mailing address of the corporation's initial
13 registered office, if any, and the name of its initial regis-
14 tered agent at that office, if any;

15 (5) The name and address of each incorporator; and

16 (6) The mailing address of the corporation's principal
17 office.

18 (b) The articles of incorporation may set forth:

19 (1) The names and addresses of the individuals who are
20 to serve as the initial directors;

21 (2) Provisions not inconsistent with law regarding:

22 (A) Managing and regulating the affairs of the corpora-
23 tion; or

24 (B) Defining, limiting and regulating the powers of the
25 corporation, its board of directors and members or any
26 class of members;

27 (3) Any provision that under this chapter is required or
28 permitted to be set forth in the bylaws;

29 (4) A provision eliminating or limiting the personal
30 liability of a director to the corporation or its members for
31 monetary damages for any action taken, or any failure to
32 take any action, as a director or member, except liability
33 for: (A) The amount of a financial benefit received by a
34 director or member to which he or she is not entitled; (B)
35 an intentional infliction of harm on the corporation or the
36 members; (C) a violation of section eight hundred thirty-
37 three, article eight of this chapter regarding unlawful
38 distributions; or (D) an intentional violation of criminal
39 law; and

40 (5) A provision permitting or making obligatory indem-
41 nification of a director for liability as that term is defined
42 in section eight hundred fifty, article eight of this chapter
43 to any person for any action taken, or any failure to take
44 any action, as a director, except liability for: (A) Receipt of
45 a financial benefit to which he or she is not entitled; (B) an
46 intentional infliction of harm on the corporation or its
47 members; (C) a violation of section eight hundred thirty-
48 three, article eight of this chapter for unlawful distribu-
49 tions; or (D) an intentional violation of criminal law.

50 (C) The articles of incorporation need not set forth any
51 of the corporate powers enumerated in this chapter.

ARTICLE 5. OFFICE AND AGENT.

§31E-5-503. Resignation of registered agent.

1 (a) A registered agent may resign his or her agency
2 appointment by signing and delivering to the Secretary of
3 State for filing the statement of resignation. The state-
4 ment may include a statement that the registered office is
5 also discontinued.

6 (b) After filing the statement the Secretary of State shall
7 mail a copy of the filed statement of resignation to the
8 registered office if the registered office is not discontinued
9 and the other copy to the corporation at its principal
10 office.

11 (c) The agency appointment is terminated, and the
12 registered office is discontinued if provision for its discon-
13 tinuation is made, on the thirty-first day after the date on
14 which the statement was filed.

ARTICLE 14. FOREIGN CORPORATIONS.

§31E-14-1409. Resignation of registered agent of foreign corpo- ration.

1 (a) The registered agent of a foreign corporation may
2 resign his or her agency appointment by signing and

3 delivering to the Secretary of State for filing a statement
4 of resignation. The statement of resignation may include
5 a statement that the registered office is also discontinued.

6 (b) After filing the statement, the Secretary of State shall
7 mail a copy of the filed statement of resignation and
8 receipt to the corporation at its principal office.

9 (c) The agency appointment is terminated, and the
10 registered office discontinued if provided in the statement
11 of registration, on the thirty-first day after the date on
12 which the statement was filed.

§31E-14-1421. Revocation of withdrawal.

1 (a) A corporation may revoke its withdrawal within one
2 hundred twenty days of its effective date.

3 (b) Revocation of withdrawal must be authorized in the
4 same manner as the withdrawal was authorized unless
5 that authorization permitted revocation by action of the
6 board of directors alone, in which event the board of
7 directors may revoke the withdrawal without shareholder
8 action.

9 (c) After the revocation of withdrawal is authorized, the
10 corporation may revoke the withdrawal by delivering to
11 the Secretary of State for filing articles of revocation of
12 withdrawal, together with a copy of its application of
13 withdrawal, that sets forth:

14 (1) The name of the corporation;

15 (2) The effective date of the withdrawal that was re-
16 voked;

17 (3) The date that the revocation of withdrawal was
18 authorized;

19 (4) If the corporation's board of directors or incorpora-
20 tors revoked the withdrawal, a statement to that effect;
21 and

22 (5) If the corporation's board of directors revoked the
23 withdrawal authorized by the shareholders, a statement
24 that revocation was permitted by action by the board of
25 directors alone pursuant to that authorization.

26 (d) Revocation of withdrawal is effective upon the
27 effective date of the articles of revocation of withdrawal.

28 (e) When the revocation of withdrawal is effective, it
29 relates back to and takes effect as of the effective date of
30 the withdrawal and the corporation resumes carrying on
31 its business as if withdrawal had never occurred.

CHAPTER 47. REGULATION OF TRADE.

ARTICLE 9. UNIFORM LIMITED PARTNERSHIP ACT.

§47-9-1. Definitions.

1 As used in this article, unless the context otherwise
2 requires:

3 (1) "Certificate of limited partnership" means the
4 certificate referred to in section eight of this article and
5 the certificate as amended;

6 (2) "Contribution" means any cash, property, services
7 rendered or a promissory note or other binding obligation
8 to contribute cash or property or to perform services,
9 which a partner contributes to a limited partnership in his
10 or her capacity as a partner;

11 (3) "Deliver" or "delivery" means any method of delivery
12 used in conventional commercial practice, including, but
13 not limited to, delivery by hand, mail, commercial delivery
14 and electronic transmission;

15 (4) "Electronic transmission" or "electronically trans-
16 mitted" means any process of communication not directly
17 involving the physical transfer of paper that is suitable for
18 the retention, retrieval and reproduction of information by
19 the recipient;

20 (5) "Event of withdrawal of a general partner" means an
21 event that causes a person to cease to be a general partner
22 as provided in section twenty-three of this article;

23 (6) "Foreign limited partnership" means a partnership
24 formed under the laws of any state other than this state
25 and having as partners one or more general partners and
26 one or more limited partners;

27 (7) "General partner" means a person who has been
28 admitted to a limited partnership as a general partner in
29 accordance with the partnership agreement and named in
30 the certificate of limited partnership as a general partner;

31 (8) "Limited partner" means a person who has been
32 admitted to a limited partnership as a limited partner in
33 accordance with the partnership agreement;

34 (9) "Limited partnership" and "domestic limited part-
35 nership" means a partnership formed by two or more
36 persons under the laws of this state and having one or
37 more general partners and one or more limited partners;

38 (10) "Partner" means a limited or general partner;

39 (11) "Partnership agreement" means any valid agree-
40 ment, written or oral, of the partners as to the affairs of a
41 limited partnership and the conduct of its business;

42 (12) "Partnership interest" means a partner's share of
43 the profits and losses of a limited partnership and the right
44 to receive distributions of partnership assets;

45 (13) "Person" means a natural person, partnership,
46 limited partnership (domestic or foreign), limited liability
47 company, professional limited liability company, trust,
48 estate, association, corporation, or any other legal or
49 commercial entity;

50 (14) "Sign" or "signature" includes, but is not limited to,
51 any manual, facsimile, conformed or electronic signature

52 with means to identify a record by a signature, mark or
53 other symbol, with intent to authenticate it; and

54 (15) "State" means a state, territory or possession of the
55 United States, the District of Columbia or the Common-
56 wealth of Puerto Rico.

§47-9-8. Certificate and formation of limited partnership.

1 (a) In order to form a limited partnership, two or more
2 persons must execute a certificate of limited partnership.
3 The certificate shall be filed in the office of the Secretary
4 of State and set forth:

5 (1) The name of the limited partnership;

6 (2) The general character of its business;

7 (3) The mailing address of the principal office and the
8 name and address of the agent for service of process, if
9 any;

10 (4) The name and the business address of each general
11 partner; and

12 (5) Any other matters the general partners determine to
13 include therein.

14 (b) A limited partnership is formed at the time of the
15 filing of the certificate of limited partnership in the office
16 of the Secretary of State or at any later time specified in
17 the certificate of limited partnership if, in either case,
18 there has been substantial compliance with the require-
19 ments of this section.

§47-9-49. Registration of foreign limited partnership.

1 (a) Before transacting business in this state, a foreign
2 limited partnership shall register with the Secretary of
3 State. In order to register, a foreign limited partnership
4 shall submit to the Secretary of State, an application for

5 registration as a foreign limited partnership, signed and
6 sworn to by a general partner and setting forth:

7 (1) The name of the foreign limited partnership or if its
8 name is unavailable for use in this state, a limited partner-
9 ship name that satisfies the requirements of section two of
10 this article, including a copy of the resolution of its
11 partners adopting the fictitious name;

12 (2) The state and date of its formation;

13 (3) The name and address of an agent for service of
14 process, if any;

15 (4) The address of the office required to be maintained in
16 the state of its organization by the laws of that state or, if
17 not so required, of the principal office of the foreign
18 limited partnership;

19 (5) The name and business address of each general
20 partner; and

21 (6) The address of the office at which is kept a list of the
22 names and addresses of the limited partners and their
23 capital contributions, together with an undertaking by the
24 foreign limited partnership to keep those records until the
25 foreign limited partnership's registration in this state is
26 canceled or withdrawn.

27 (b) The foreign limited partnership shall deliver with the
28 completed application a certificate of existence, or a
29 document of similar import, duly authenticated by the
30 Secretary of State or other official having custody of the
31 partnership records in the state or country under whose
32 law it is organized.

§47-9-53. Foreign limited partnership – Cancellation of registration.

1 A foreign limited partnership may cancel its registration
2 by filing with the Secretary of State a certificate of
3 cancellation signed by a general partner. A cancellation

4 does not terminate the authority of the Secretary of State
5 to accept service of process on the foreign limited partner-
6 ship with respect to claims for relief or causes of action
7 arising out of the transaction of business in this state.

CHAPTER 47B. UNIFORM PARTNERSHIP ACT.

ARTICLE 3. RELATIONS OF PARTNERS TO PERSONS DEALING WITH PARTNERSHIP.

§47B-3-3. Statement of partnership authority.

1 (a) A partnership may file a statement of partnership
2 authority, which:

3 (1) Must include:

4 (A) The name of the partnership;

5 (B) The mailing address of its principal office and of its
6 office in this state, if there is one;

7 (C) The names and mailing addresses of all of the
8 partners appointed and maintained by the partnership, if
9 any, for the purpose of subsection (b) of this section; and

10 (D) The names of the partners authorized to execute an
11 instrument transferring real property held in the name of
12 the partnership; and

13 (2) May state the authority, or limitations on the author-
14 ity, of some or all of the partners to enter into other
15 transactions on behalf of the partnership and any other
16 matter.

17 (b) If a statement of partnership authority names an
18 agent, the agent shall maintain a list of the names and
19 mailing addresses of all of the partners and make it
20 available to any person on request for good cause shown.

21 (c) If a filed statement of partnership authority is
22 executed pursuant to subsection (c), section five, article
23 one of this chapter and states the name of the partnership
24 but does not contain all of the other information required

25 by subsection (a) of this section, the statement nevertheless
26 operates with respect to a person not a partner as provided
27 in subsections (d) and (e) of this section.

28 (d) Except as otherwise provided in subsection (g) of this
29 section, a filed statement of partnership authority supple-
30 ments the authority of a partner to enter into transactions
31 on behalf of the partnership as follows:

32 (1) Except for transfers of real property, a grant of
33 authority contained in a filed statement of partnership
34 authority is conclusive in favor of a person who gives value
35 without knowledge to the contrary, so long as and to the
36 extent that a limitation on that authority is not then
37 contained in another filed statement. A filed cancellation
38 of a limitation on authority revives the previous grant of
39 authority.

40 (2) A grant of authority to transfer real property held in
41 the name of the partnership contained in a certified copy
42 of a filed statement of partnership authority recorded in
43 the office for recording transfers of that real property is
44 conclusive in favor of a person who gives value without
45 knowledge to the contrary, so long as and to the extent
46 that a certified copy of a filed statement containing a
47 limitation on that authority is not then of record in the
48 office for recording transfers of that real property. The
49 recording in the office for recording transfers of that real
50 property of a certified copy of a filed cancellation of a
51 limitation on authority revives the previous grant of
52 authority.

53 (e) A person not a partner is deemed to know of a
54 limitation on the authority of a partner to transfer real
55 property held in the name of the partnership if a certified
56 copy of the filed statement containing the limitation on
57 authority is of record in the office for recording transfers
58 of that real property.

59 (f) Except as otherwise provided in subsections (d) and
60 (e) of this section and section four, article seven of this

61 chapter and section five, article eight of this chapter, a
62 person not a partner is not deemed to know of a limitation
63 on the authority of a partner merely because the limitation
64 is contained in a filed statement.

65 (g) Unless earlier canceled, a filed statement of partner-
66 ship authority is canceled by operation of law five years
67 after the date on which the statement, or the most recent
68 amendment, was filed with the Secretary of State.

ARTICLE 10. LIMITED LIABILITY PARTNERSHIP.

§47B-10-1. Registered limited liability partnerships.

1 (a) To become a registered limited liability partnership,
2 a partnership shall deliver and file with the Secretary of
3 State a statement of registration stating the name of the
4 partnership; the address of its principal office; the address
5 of a registered office and the name and address of a
6 registered agent for service of process, if any; a brief
7 statement of the business in which the partnership en-
8 gages; the name and address of each partner authorized to
9 execute instruments on behalf of the partnership; any
10 other matters that the partnership determines to include;
11 and that the partnership thereby registers as a registered
12 limited liability partnership.

13 (b) The registration shall be executed by one or more
14 partners authorized to execute a registration.

15 (c) The registration shall be accompanied by a fee of two
16 hundred fifty dollars.

17 (d) The Secretary of State shall register as a registered
18 limited liability partnership any partnership that submits
19 a completed registration with the required fee and deliver
20 to the partnership or its representative a receipt for the
21 record and the fees.

22 (e) A partnership registered under this section shall pay,
23 in each year following the year in which its registration is
24 filed, on a date specified by the Secretary of State, an

25 annual fee of five hundred dollars. The fee shall be
26 accompanied by a notice, on a form provided by the
27 Secretary of State, of any material changes in the informa-
28 tion contained in the partnership's registration.

29 (f) Registration is effective:

30 (1) Immediately after the date a registration is filed; or

31 (2) On a date specified in the statement of registration,
32 which date shall not be more than sixty days after the date
33 of filing.

34 (g) Registration remains effective until:

35 (1) It is voluntarily withdrawn by filing with the Secre-
36 tary of State a statement of withdrawal; or

37 (2) Thirty days after receipt by the partnership of a
38 notice from the Secretary of State, which shall be sent by
39 certified mail, return receipt requested, that the partner-
40 ship has failed to make timely payment of the annual fee
41 specified in subsection (e) of this section, unless the fee is
42 paid within a thirty-day period.

43 (h) The status of a partnership as a registered limited
44 liability partnership and the liability of the partners
45 thereof shall not be affected by:

46 (1) Errors in the information contained in a statement of
47 registration under subsection (a) of this section or notice
48 under subsection (e) of this section; or

49 (2) Changes after the filing of the statement of registra-
50 tion or notice in the information stated in the registration
51 or notice.

52 (i) The Secretary of State may provide forms for the
53 statement of registration under subsection (a) of this
54 section or a notice under subsection (e) of this section.

55 (j) All fees and moneys collected by the Secretary of
56 State pursuant to the provisions of this article shall be

57 deposited by the Secretary of State as follows: One-half
58 shall be deposited in the state general revenue fund and
59 one-half shall be deposited in the service fees and collec-
60 tions account established by section two, article one,
61 chapter fifty-nine of this code for the operation of the
62 office of the Secretary of State. The Secretary of State
63 shall dedicate sufficient resources from that fund or other
64 funds to provide the services required in this article.

**§47B-10-4. Applicability of article to foreign and interstate
commerce.**

1 (a) A registered limited liability partnership formed
2 under this article may conduct its business, carry on its
3 operations and have and exercise the powers granted by
4 this chapter in any state, territory, district or possession of
5 the United States or in any foreign country.

6 (b) It is the intent of the Legislature that the legal
7 existence of registered limited liability partnerships
8 formed under this article be recognized outside the
9 boundaries of this state and that the laws of this state
10 governing such registered limited liability partnerships
11 doing business outside this state be granted the protection
12 of full faith and credit under the Constitution of the
13 United States.

14 (c) Notwithstanding section six, article one of this
15 chapter, the internal affairs of registered limited liability
16 partnerships formed under this article, including the
17 liability of partners for debts, obligations and liabilities of
18 or chargeable to the partnership, shall be subject to and
19 governed by the laws of this state.

20 (d) Before transacting business in this state, a foreign
21 registered limited liability partnership shall:

22 (i) Comply with any statutory or administrative registra-
23 tion or filing requirements governing the specific type of
24 business in which the partnership is engaged; and

25 (ii) File a notice with the Secretary of State, stating the
26 name of the partnership or if its name is unavailable for
27 use in this state, a limited partnership name that satisfies
28 the requirements of section four-e of this article, including
29 a copy of the resolution of its partners adopting the
30 fictitious name; the address of its principal office; the
31 address of a registered office and the name and address of
32 a registered agent for service of process, if any; a brief
33 statement of the business in which the partnership en-
34 gages; the name and address of each partner authorized to
35 execute instruments on behalf of the partnership and any
36 other matters that the partnership determines to include;
37 and a brief statement of the business in which the partner-
38 ship engages. Such notice shall be effective for two years
39 from the date of filing, after which time the partnership
40 shall file a new notice.

41 (e) The name of a foreign registered limited liability
42 partnership doing business in this state shall contain the
43 words "Registered Limited Liability Partnership" or the
44 abbreviation "L.L.P." or "LLP" as the last words or letters
45 of its name.

46 (f) Notwithstanding section six, article one of this
47 chapter, the internal affairs of foreign registered limited
48 liability partnerships, including the liability of partners
49 for debts, obligations and liabilities of or chargeable to the
50 partnership, shall be subject to and governed by the laws
51 of the jurisdiction in which the foreign registered limited
52 liability partnership is registered.

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

Cheryl White
.....
Chairman Senate Committee

R. Richard Bury
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Russell E. Holmes
.....
Clerk of the Senate

Gregg M. Boy
.....
Clerk of the House of Delegates

Carl Ray Tomblin
.....
President of the Senate

Robert D. ...
.....
Speaker House of Delegates

The within *is approved* this the *4th*
Day of *May*, 2005.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

APR 20 2005

Time 3:00 pm