ENROLLED

SENATE BILL NO. 703

(By Senators Tramper, Weeks and Munro)

PASSED April 9, 2005

In Effect 90 days from Passage
ENROLLED

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-14-1421; 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
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.

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

(1) The name of the company;

(2) The address of the initial designated office in West Virginia, if any, and the mailing address of the principal office;

(3) The name and address of the initial agent for service of process, if any;
(4) The name and address of each organizer and of each member having authority to execute instruments on behalf of the limited liability company;

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

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

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

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

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

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

(2) Other matters not inconsistent with law.

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

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

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

ARTICLE 10. FOREIGN LIMITED LIABILITY.

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

(a) A foreign limited liability company may apply for a certificate of authority to transact business in this state by
delivering an application to the Secretary of State for filing, together with the fee prescribed by section two, article one, chapter fifty-nine of this code.

The application shall set forth:

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

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

(3) The mailing address of its principal office;

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

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

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

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

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

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

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

(b) A foreign limited liability company shall deliver with the completed application a certificate of existence or a record of similar import authenticated by the Secretary of State or other official having custody of company records in the state or country under whose law it is organized.
CHAPTER 31D. WEST VIRGINIA
BUSINESS CORPORATION ACT.

ARTICLE 1. GENERAL PROVISIONS.

§31D-1-120. Filing requirements.

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

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

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

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

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

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

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

(e) The person executing the document to be filed shall sign it and state beneath or opposite his or her signature, his or her name and the capacity in which he or she signs. The document may contain a corporate seal, attestation, acknowledgment or verification.
(f) The document to be filed must be delivered to the office of the Secretary of State for filing. Delivery may be made by electronic transmission as permitted by the Secretary of State. The Secretary of State may require one exact or conformed copy to be delivered with the document to be filed if the document is filed in typewritten or printed form and not transmitted electronically.

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

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

§31D-1-150. Definitions.

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

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

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

(3) "Conspicuous" means written so that a reasonable person against whom the writing is to operate should have noticed, including, but not limited to, printing in italics or boldface or contrasting color, or typing in capitals or underlined.
(4) “Corporation” or “domestic corporation” means a corporation for profit, which is not a foreign corporation, incorporated under or subject to the provisions of this chapter.

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

(6) “Distribution” means a direct or indirect transfer of money or other property or incurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect of any of its shares: Provided, That “distribution” does not include a direct or indirect transfer of a corporation’s own shares. A distribution may be in the form of a declaration or payment of a dividend; a purchase, redemption or other acquisition of shares; or a distribution of indebtedness.

(7) “Effective date of notice” means the date as determined pursuant to section one hundred fifty-one of this article.

(8) “Electronic transmission” or “electronically transmitted” means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval and reproduction of information by the recipient.

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

(10) “Entity” includes corporations and foreign corporations; nonprofit corporations; profit and nonprofit unincorporated associations; limited liability companies and foreign limited liability companies; business trusts, estates, partnerships, trusts and two or more persons having a joint or common economic interest; and state, United States and foreign government.
(11) "Foreign corporation" means a corporation for profit incorporated under a law other than the laws of this state.

(12) "Governmental subdivision" includes, but is not limited to, authorities, counties, districts and municipalities.

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

(14) "Person" includes, but is not limited to, an individual and an entity.

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

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

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

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

(19) "Registered office" means the address of the registered agent for the corporation, as provided in section five hundred one, article five of this chapter.

(20) "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under subsection (c), section eight hundred forty, article eight of...
this chapter for custody of the minutes of the meetings of
the board of directors and the meetings of the shareholders
and for authenticating records of the corporation.

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

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

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

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

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

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

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

(28) "Voting power" means the current power to vote in
the election of directors.
ARTICLE 2. INCORPORATIONS.


(a) The articles of incorporation must set forth:

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

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

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

(4) The name and address of each incorporator;

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

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

(b) The articles of incorporation may set forth:

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

(2) Provisions not inconsistent with law regarding:

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

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

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

(3) Any provision that, under this chapter, is required or permitted to be set forth in the bylaws;
(4) A provision eliminating or limiting the personal liability of a director to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director: Provided, That a provision may not eliminate or limit the liability of a director: (A) For any breach of the director's duty of loyalty to the corporation or its stockholders; (B) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; (C) under section eight hundred thirty-three, article eight of this chapter for unlawful distributions; or (D) for any transaction from which the director derived an improper personal benefit. No provision may eliminate or limit the liability of a director for any act or omission occurring prior to the date when that provision becomes effective; and

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

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

ARTICLE 5. OFFICE AND AGENT.

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

(a) A registered agent may resign his or her agency appointment by signing and delivering to the Secretary of State for filing a statement of resignation. The statement may include a statement that the registered office is also discontinued.
(b) After filing the statement, the Secretary of State shall mail a copy of the filed statement of resignation to the corporation at its principal office.

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

ARTICLE 15. FOREIGN CORPORATIONS.


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

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

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


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

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

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

(1) The name of the corporation;

(2) The effective date of the withdrawal that was revoked;

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

(4) If the corporation’s board of directors or incorporators revoked the withdrawal, a statement to that effect;

and

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

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

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

CHAPTER 31E. WEST VIRGINIA NONPROFIT CORPORATION ACT.

ARTICLE 1. GENERAL PROVISIONS.

§31E-1-120. Filing requirements.

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

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

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

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

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

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

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

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

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

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

(h) In the case of service of notice and process as permitted by subsection (c), section five hundred four, article five of this chapter and subsections (d) and (e), section one thousand four hundred ten, article fourteen of this chapter, the notice and process must be filed with the Secretary of State as one original, plus two copies for each person to be served or noticed.

§31E-1-150. Chapter definitions.

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

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

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

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

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

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

(6) "Corporation" or "domestic corporation" means a corporation without capital stock or shares, which is not a foreign corporation, incorporated under the laws of this state. Provided, That "corporation" or "domestic corporation" does not include towns, cities, boroughs or any
municipal corporation or any department or any town, city, borough or municipal corporation.

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

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

(9) "Effective date of notice" means the date as determined pursuant to section one hundred fifty-one of this article.

(10) "Electronic transmission" or "electronically transmitted" means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval and reproduction of information by the recipient.

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

(12) "Entity" includes corporation and foreign corporations; business corporations and foreign business corporations; profit and nonprofit unincorporated associations; limited liability companies and foreign limited liability companies; business trusts, estates, partnerships, trusts and two or more persons having a joint or common
economic interest; and state, United States and foreign government.

(13) "Foreign corporation" means any nonprofit corporation which is incorporated under a law other than the laws of this state.

(14) "Governmental subdivision" includes, but is not limited to, authorities, counties, districts and municipalities.

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

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

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

(18) "Person" includes, but is not limited to, an individual and an entity.

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

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

(21) "Record date" means the date established under article six or seven of this chapter on which a corporation determines the identity of its members and their interests. The determinations are to be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed.
(22) "Registered agent" means the agent identified by the corporation pursuant to section five hundred one, article five of this chapter.

(23) "Registered office" means the address of the registered agent for the corporation, as provided in section five hundred one, article five of this chapter.

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

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

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

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

ARTICLE 2. INCORPORATION.


(a) The articles of incorporation must set forth:

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

(2) A statement that the corporation is nonprofit and that the corporation may not have or issue shares of stock or make distributions;
(3) Whether the corporation is to have members and, if
it is to have members, the provisions required by section
six hundred one, article six of this chapter to be set forth
in the certificate of incorporation;

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

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

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

(b) The articles of incorporation may set forth:

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

(2) Provisions not inconsistent with law regarding:

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

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

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

(4) A provision eliminating or limiting the personal
liability of a director to the corporation or its members for
monetary damages for any action taken, or any failure to
take any action, as a director or member, except liability
for: (A) The amount of a financial benefit received by a
director or member to which he or she is not entitled; (B)
an intentional infliction of harm on the corporation or the
members; (C) a violation of section eight hundred thirty-
three, article eight of this chapter regarding unlawful
distributions; or (D) an intentional violation of criminal
law; and
(5) A provision permitting or making obligatory indemnification of a director for liability as that term is defined in section eight hundred fifty, article eight of this chapter to any person for any action taken, or any failure to take any action, as a director, except liability for: (A) Receipt of a financial benefit to which he or she is not entitled; (B) an intentional infliction of harm on the corporation or its members; (C) a violation of section eight hundred thirty-three, article eight of this chapter for unlawful distributions; or (D) an intentional violation of criminal law.

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

ARTICLE 5. OFFICE AND AGENT.

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

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

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

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

ARTICLE 14. FOREIGN CORPORATIONS.

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

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

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

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

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

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

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

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

(1) The name of the corporation;

(2) The effective date of the withdrawal that was revoked;

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

(4) If the corporation's board of directors or incorporators revoked the withdrawal, a statement to that effect; and
(5) If the corporation’s board of directors revoked the withdrawal authorized by the shareholders, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization.

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

(e) When the revocation of withdrawal is effective, it relates back to and takes effect as of the effective date of the withdrawal and the corporation resumes carrying on 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 requires:

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

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

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

15 (4) “Electronic transmission” or “electronically transmitted” means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval and reproduction of information by the recipient;
(5) "Event of withdrawal of a general partner" means an event that causes a person to cease to be a general partner as provided in section twenty-three of this article;

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

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

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

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

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

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

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

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

(14) "Sign" or "signature" includes, but is not limited to, any manual, facsimile, conformed or electronic signature
with means to identify a record by a signature, mark or other symbol, with intent to authenticate it; and

(15) "State" means a state, territory or possession of the United States, the District of Columbia or the Commonwealth of Puerto Rico.


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

(1) The name of the limited partnership;

(2) The general character of its business;

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

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

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

(b) A limited partnership is formed at the time of the filing of the certificate of limited partnership in the office of the Secretary of State or at any later time specified in the certificate of limited partnership if, in either case, there has been substantial compliance with the requirements of this section.

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

(a) Before transacting business in this state, a foreign limited partnership shall register with the Secretary of State. In order to register, a foreign limited partnership shall submit to the Secretary of State, an application for
registration as a foreign limited partnership, signed and
sworn to by a general partner and setting forth:

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

(2) The state and date of its formation;

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

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

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

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

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

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

A foreign limited partnership may cancel its registration
by filing with the Secretary of State a certificate of
cancellation signed by a general partner. A cancellation
does not terminate the authority of the Secretary of State
to accept service of process on the foreign limited partner-
ship with respect to claims for relief or causes of action
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.

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

(1) Must include:

(A) The name of the partnership;

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

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

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

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

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

(c) If a filed statement of partnership authority is
executed pursuant to subsection (c), section five, article
one of this chapter and states the name of the partnership
but does not contain all of the other information required
by subsection (a) of this section, the statement nevertheless
operates with respect to a person not a partner as provided
in subsections (d) and (e) of this section.

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

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

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

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

(f) Except as otherwise provided in subsections (d) and
(e) of this section and section four, article seven of this
chapter and section five, article eight of this chapter, a person not a partner is not deemed to know of a limitation on the authority of a partner merely because the limitation is contained in a filed statement.

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

ARTICLE 10. LIMITED LIABILITY PARTNERSHIP.

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

(a) To become a registered limited liability partnership, a partnership shall deliver and file with the Secretary of State a statement of registration stating the name of the partnership; the address of its principal office; the address of a registered office and the name and address of a registered agent for service of process, if any; a brief statement of the business in which the partnership engages; the name and address of each partner authorized to execute instruments on behalf of the partnership; any other matters that the partnership determines to include; and that the partnership thereby registers as a registered limited liability partnership.

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

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

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

(e) A partnership registered under this section shall pay, in each year following the year in which its registration is filed, on a date specified by the Secretary of State, an
annual fee of five hundred dollars. The fee shall be
accompanied by a notice, on a form provided by the
Secretary of State, of any material changes in the informa-
tion contained in the partnership's registration.

(f) Registration is effective:

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

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

(g) Registration remains effective until:

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

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

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

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

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

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

(j) All fees and moneys collected by the Secretary of
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
(ii) File a notice with the Secretary of State, stating the name of the partnership or if its name is unavailable for use in this state, a limited partnership name that satisfies the requirements of section four-e of this article, including a copy of the resolution of its partners adopting the fictitious name; the address of its principal office; the address of a registered office and the name and address of a registered agent for service of process, if any; a brief statement of the business in which the partnership engages; the name and address of each partner authorized to execute instruments on behalf of the partnership and any other matters that the partnership determines to include; and a brief statement of the business in which the partnership engages. Such notice shall be effective for two years from the date of filing, after which time the partnership shall file a new notice.

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

(f) Notwithstanding section six, article one of this chapter, the internal affairs of foreign registered limited liability partnerships, including the liability of partners for debts, obligations and liabilities of or chargeable to the partnership, shall be subject to and governed by the laws of the jurisdiction in which the foreign registered limited liability partnership is registered.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within bill approved this the _th_ Day of _May_, 2005.

Governor
PRESENTED TO THE GOVERNOR

APR 20 2005

Time 3:00 pm