WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2008

ENROLLED

House Bill No. 4464

(By Delegates Webster, Proudfoot, Stemple, Hrutkay, Guthrie, Sobonya, Longstreth, Vamer, Burdiss, Azinger and Schadler)

Passed March 6, 2008

In Effect Ninety Days from Passage
AN ACT to amend and reenact §31B-10-1003 of the Code of West Virginia, 1931, as amended; to amend and reenact §31D-15-1501 of said code; and to amend and reenact §31E-14-1401 of said code, all relating to conducting certain activities that do not constitute conducting affairs or transacting business within the state.

Be it enacted by the Legislature of West Virginia:

That §31B-10-1003 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §31D-15-1501 of said code be amended and reenacted; and that §31E-14-1401 of said code be amended and reenacted, all to read as follows:

CHAPTER 31B. UNIFORM LIMITED LIABILITY COMPANY ACT.

ARTICLE 10. FOREIGN LIMITED LIABILITY.

§31B-10-1003. Activities not constituting transacting business.
(a) Activities of a foreign limited liability company that do not constitute transacting business in this state within the meaning of this article include:

1. Maintaining, defending or settling an action or proceeding;

2. Holding meetings of its members or managers or carrying on any other activity concerning its internal affairs;

3. Maintaining bank accounts;

4. Maintaining offices or agencies for the transfer, exchange and registration of the foreign company's own securities or maintaining trustees or depositories with respect to those securities;

5. Selling through independent contractors;

6. Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;

7. Creating or acquiring indebtedness, mortgages or security interests in real or personal property;

8. Securing or collecting debts or enforcing mortgages or other security interests in property securing the debts, and holding, protecting and maintaining property so acquired;

9. Conducting an isolated transaction that is completed within thirty days and is not one in the course of similar transactions of a like manner;

10. Transacting business in interstate commerce;
(11) Applying for withholding tax on an employee residing in the State of West Virginia who works for the foreign limited liability company in another state; and

(12) Holding all, or a portion thereof, of the outstanding stock of another corporation authorized to transact business in the State of West Virginia: Provided, That the foreign limited liability company does not produce goods, services or otherwise conduct business in the State of West Virginia.

(b) For purposes of this article, the ownership in this state of income-producing real property or tangible personal property, other than property excluded under subsection (a) of this section, constitutes transacting business in this state.

(c) This section does not apply in determining the contacts or activities that may subject a foreign limited liability company to service of process, taxation or regulation under any other law of this state.

CHAPTER 31D. WEST VIRGINIA BUSINESS CORPORATION ACT.

ARTICLE 15. FOREIGN CORPORATIONS.

PART 1. CERTIFICATE OF AUTHORITY.


(a) A foreign corporation may not conduct affairs in this state until it obtains a certificate of authority from the Secretary of State.
(b) The following activities, among others, do not constitute conducting affairs within the meaning of subsection (a) of this section:

1. Maintaining, defending or settling any proceeding;
2. Holding meetings of the board of directors or shareholders or carrying on other activities concerning internal corporate affairs;
3. Maintaining bank accounts;
4. Selling through independent contractors;
5. Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;
6. Creating or acquiring indebtedness, mortgages and security interests in real or personal property;
7. Securing or collecting debts or enforcing mortgages and security interests in property securing the debts: Provided, That this exemption does not include debts collected by collection agencies as defined in subdivision (b), section two, article sixteen, chapter forty-seven of this code;
8. Owning, without more, real or personal property;
9. Conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like nature;
10. Conducting affairs in interstate commerce;
(11) Granting funds or other gifts;

(12) Distributing information to its shareholders or members;

(13) Effecting sales through independent contractors;

(14) The acquisition by purchase of lands secured by mortgage or deeds;

(15) Physical inspection and appraisal of property in West Virginia as security for deeds of trust, or mortgages and negotiations for the purchase of loans secured by property in West Virginia;

(16) The management, rental, maintenance and sale or the operating, maintaining, renting or otherwise dealing with selling or disposing of property acquired under foreclosure sale or by agreement in lieu of foreclosure sale;

(17) Applying for withholding tax on an employee residing in the State of West Virginia who works for the foreign corporation in another state; and

(18) Holding all, or a portion thereof, of the outstanding stock of another corporation authorized to transact business in the State of West Virginia. Provided, That the foreign corporation does not produce goods, services or otherwise conduct business in the State of West Virginia.

(c) The list of activities in subsection (b) of this section is not exhaustive.

(d) A foreign corporation is deemed to be transacting business in this state if:
(1) The corporation makes a contract to be performed, in whole or in part, by any party thereto in this state;

(2) The corporation commits a tort, in whole or in part, in this state; or

(3) The corporation manufactures, sells, offers for sale or supplies any product in a defective condition and that product causes injury to any person or property within this state notwithstanding the fact that the corporation had no agents, servants or employees or contacts within this state at the time of the injury.

(e) A foreign corporation's making of a contract, the committing of a manufacture or sale, offer of sale or supply of defective product as described in subsection (d) of this section is deemed to be the agreement of that foreign corporation that any notice or process served upon, or accepted by, the Secretary of State in a proceeding against that foreign corporation arising from, or growing out of, contract, tort or manufacture or sale, offer of sale or supply of the defective product has the same legal force and validity as process duly served on that corporation in this state.

CHAPTER 31E. WEST VIRGINIA NONPROFIT CORPORATION ACT.

ARTICLE 14. FOREIGN CORPORATIONS.

PART 1. CERTIFICATE OF AUTHORITY.

§31E-14-1401. Authority to conduct affairs required.

(a) A foreign corporation may not conduct affairs in this state until it obtains a certificate of authority from the Secretary of State.
(b) The following activities, among others, do not constitute conducting affairs within the meaning of subsection (a) of this section:

1. Maintaining, defending, or settling any proceeding;
2. Holding meetings of the board of directors or members or carrying on other activities concerning internal corporate affairs;
3. Maintaining bank accounts;
4. Selling through independent contractors;
5. Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;
6. Creating or acquiring indebtedness, mortgages, and security interests in real or personal property: Provided, That this exemption does not include debts collected by collection agencies as defined in subdivision (b), section two, article sixteen, chapter forty-seven of this code;
7. Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;
8. Owning, without more, real or personal property;
9. Conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like nature;
10. Conducting affairs in interstate commerce;
(11) Granting funds or other gifts;

(12) Distributing information to its shareholders or members;

(13) Effecting sales through independent contractors;

(14) The acquisition by purchase of lands secured by mortgage or deeds;

(15) Physical inspection and appraisal of property in West Virginia as security for deeds of trust, or mortgages and negotiations for the purchase of loans secured by property in West Virginia;

(16) The management, rental, maintenance and sale; or the operating, maintaining, renting or otherwise, dealing with selling or disposing of property acquired under foreclosure sale or by agreement in lieu of foreclosure sale; and

(17) Applying for withholding tax on an employee residing in the State of West Virginia who works for the foreign corporation in another state.

(c) The list of activities in subsection (b) of this section is not exhaustive.

(d) A foreign corporation is to be deemed to be conducting affairs in this state if:

(1) The corporation makes a contract to be performed, in whole or in part, by any party thereto, in this state;

(2) The corporation commits a tort, in whole or in part, in this state; or
(3) The corporation manufactures, sells, offers for sale or supplies any product in a defective condition and that product causes injury to any person or property within this state notwithstanding the fact that the corporation had no agents, servants or employees or contacts within this state at the time of the injury.

(e) A foreign corporation's making of a contract, the committing of a manufacture or sale, offer of sale or supply of defective product as described in subsection (d) of this section is deemed to be the agreement of that foreign corporation that any notice or process served upon, or accepted by, the Secretary of State in a proceeding against that foreign corporation arising from, or growing out of, contract, tort, or manufacture or sale, offer of sale or supply of the defective product has the same legal force and validity as process duly served on that corporation in this state.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 13th day of March, 2008.

Governor