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WEST VIRGINIA LEGISLATURE
SEVENTY-NINTH LEGISLATURE
REGULAR SESSION, 2010

OFFICE WEST VIRGINIA
SECRETARY OF STATE

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ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 624

(SENATORS WHITE, WILLIAMS AND
JENKINS, *original sponsors*)

[Passed March 13, 2010; in effect ninety days from passage.]

SB 624

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AN ACT to amend and reenact §31B-2-203 and §31B-2-211 of the Code of West Virginia, 1931, as amended; to amend and reenact §31B-10-1002 of said code; to amend and reenact §31D-2-202 of said code; to amend and reenact §31D-15-1503 of said code; to amend and reenact §31E-2-202 of said code; to amend and reenact §31E-14-1403 of said code; and to amend and reenact §47-9A-2 and §47-9A-3 of said code, all relating to business organizations and associations generally; providing consistency of filing deadlines for all organizations filing annual reports with the Secretary of State; and requiring e-mail addresses for informational notices.

Be it enacted by the Legislature of West Virginia:

That §31B-2-203 and §31B-2-211 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-2-202 of said code be amended and reenacted; that §31D-

15-1503 of said code be amended and reenacted; that §31E-2-202 of said code be amended and reenacted; that §31E-14-1403 of said code be amended and reenacted; and that §47-9A-2 and §47-9A-3 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 com-
2 pany 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,
13 if 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);

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

21 (9) An e-mail address where informational notices and
22 reminders of annual filings may be sent, unless there is a
23 technical inability to comply.

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

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

28 (2) Other matters not inconsistent with law.

29 (c) Articles of organization of a limited liability company
30 may not vary the nonwaivable provisions of section 1-
31 103(b). As to all other matters, if any provision of an
32 operating agreement is inconsistent with the articles of
33 organization:

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

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

§31B-2-211. Annual report for Secretary of State.

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

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

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

10 (3) The address of its principal office;

11 (4) The names and business addresses of any managers
12 and the name and address of each member having author-
13 ity to execute instruments on behalf of the limited liability
14 company; and

15 (5) An e-mail address where informational notices and
16 reminders of annual filings may be sent, unless there is a
17 technical inability to comply.

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

21 (c) The first annual report must be delivered to the
22 Secretary of State between January 1 and July 1 of the
23 year following the calendar year in which a limited
24 liability company was organized or a foreign company was
25 authorized to transact business. Subsequent annual
26 reports must be delivered to the Secretary of State be-
27 tween January 1 and July 1 of the ensuing calendar years.

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

ARTICLE 10. FOREIGN LIMITED LIABILITY COMPANIES.

§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);

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

29 (11) An e-mail address where informational notices and
30 reminders of annual filings may be sent, unless there is a
31 technical inability to comply.

32 (b) A foreign limited liability company shall deliver with
33 the completed application a certificate of existence or a
34 record of similar import authenticated by the Secretary of

35 State or other official having custody of company records
36 in the state or country under whose law it is organized.

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

ARTICLE 2. INCORPORATION.

§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
6 to 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;

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

16 (7) An e-mail address where informational notices and
17 reminders of annual filings may be sent, unless there is a
18 technical inability to comply.

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

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

22 (2) Provisions not inconsistent with law regarding:

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

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

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

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

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

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

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

ARTICLE 15. FOREIGN CORPORATIONS.

§31D-15-1503. Application for certificate of authority.

1 (a) A foreign corporation may apply for a certificate of
2 authority to transact business in this state by delivering an
3 application to the Secretary of State for filing. The
4 application must set forth:

5 (1) The name of the foreign corporation or, if its name is
6 unavailable for use in this state, a corporate name that
7 satisfies the requirements of section one thousand five
8 hundred six of this article;

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

11 (3) Its date of incorporation and period of duration;

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

13 (5) The address of its registered office in this state, if
14 any, and the name of its registered agent at that office, if
15 any;

16 (6) The names and usual business addresses of its current
17 directors and officers;

18 (7) Purpose or purposes for transaction of business in
19 West Virginia; and

20 (8) An e-mail address where informational notices and
21 reminders of annual filings may be sent, unless there is a
22 technical inability to comply.

23 (b) The foreign corporation shall deliver with the
24 completed application a certificate of existence, or a
25 document of similar import, duly authenticated by the
26 Secretary of State or other official having custody of

27 corporate records in the state or country under whose law
28 it is incorporated.

**CHAPTER 31E. WEST VIRGINIA
NONPROFIT CORPORATION ACT.**

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;

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

18 (7) An e-mail address where informational notices and
19 reminders of annual filings may be sent, unless there is a
20 technical inability to comply.

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

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

24 (2) Provisions not inconsistent with law regarding:

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

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

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

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

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

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

ARTICLE 14. FOREIGN CORPORATIONS.

§31E-14-1403. Application for certificate of authority.

1 (a) A foreign corporation may apply for a certificate of
2 authority to conduct affairs in this state by delivering an
3 application to the Secretary of State for filing. The
4 application must set forth:

5 (1) The name of the foreign corporation or, if its name is
6 unavailable for use in this state, a corporate name that
7 satisfies the requirements of section one thousand four
8 hundred six of this article;

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

11 (3) Its date of incorporation and period of duration;

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

13 (5) The address of its registered office in this state, if
14 any, and the name of its registered agent at that office, if
15 any;

16 (6) The names and usual addresses of its current direc-
17 tors and officers;

18 (7) The purpose or purposes of the corporation which it
19 proposes to pursue in conducting its affairs or doing or
20 transacting its business in this state; and

21 (8) An e-mail address where informational notices and
22 reminders of annual filings may be sent, unless there is a
23 technical inability to comply.

24 (b) The foreign corporation shall deliver with the
25 completed application a certificate of existence, or a
26 document of similar import, duly authenticated by the
27 Secretary of State or other official having custody of
28 corporate records in the state or country under whose law
29 it is incorporated.

CHAPTER 47. REGULATION OF TRADE.

ARTICLE 9A. VOLUNTARY ASSOCIATIONS AND BUSINESS TRUSTS.

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

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

4 (b) Any business trust organized in this state shall file
5 with the Secretary of State: (1) One executed original copy
6 of an application for registration; and (2) one executed
7 original copy of the declaration, articles or agreement of
8 trust creating the business trust.

9 (c) Any business trust organized outside this state and
10 operating within this state shall file with the Secretary of
11 State: (1) One executed original copy of an application for
12 registration; (2) one executed original copy of the declara-
13 tion, articles or agreement of trust creating the business
14 trust as recorded in the state or country of origin of the
15 business trust; and (3) a statement or certificate from the
16 proper officer of the state or country of origin that the
17 business trust is in good standing.

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

19 (1) The name of the business trust;

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

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

26 (4) The address of its principal office;

27 (5) The name and address of the person to whom notice
28 of process may be sent, if any;

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

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

34 (8) An e-mail address where informational notices and
35 reminders of annual filings may be sent, unless there is a
36 technical inability to comply.

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

39 (f) If the Secretary of State determines that an applica-
40 tion for registration has been properly filed in complete
41 form and that the fee prescribed in section two, article
42 one, chapter fifty-nine of this code has been paid, he or she
43 shall file it and deliver to the business trust or its repre-
44 sentative a receipt for the record and the fees.

**§47-9A-3. Filing of voluntary association; issuance of certifi-
cate of voluntary association.**

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

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

13 (c) Any voluntary association organized outside this
14 state and operating within this state shall file with the
15 Secretary of State: (1) One executed original copy of an
16 application for registration; (2) one executed original copy
17 of the agreement of association creating the voluntary
18 association; and (3) a statement or certificate from the
19 proper officer of the state or country of origin that the
20 voluntary association is in good standing.

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

22 (1) The name of the voluntary association;

23 (2) The principal office address of the voluntary associa-
24 tion;

25 (3) The mailing address of the voluntary association, if
26 different from the principal office address;

27 (4) The name and address of the person to whom notice
28 of process may be sent, if any;

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

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

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

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

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

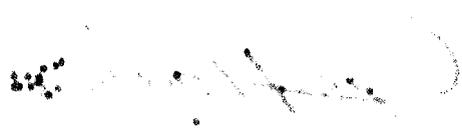
40 (10) A statement reflecting the voluntary association's
41 consent to and recognition of the application of the law of

42 this state with respect to corporations to the voluntary
43 association; and

44 (11) An e-mail address where informational notices and
45 reminders of annual filings may be sent, unless there is a
46 technical inability to comply.

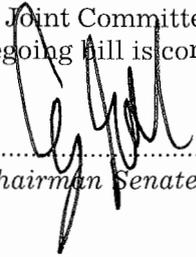
47 (e) An application for registration may contain the
48 notarized signature of at least one organizer or member of
49 the voluntary association.

50 (f) If the Secretary of State determines that an applica-
51 tion for registration has been properly filed in complete
52 form and that the fee prescribed in section two, article
53 one, chapter fifty-nine of this code has been paid, he or she
54 shall file it and deliver to the voluntary association or its
55 representative a receipt for the record and the fees.



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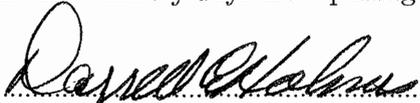
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

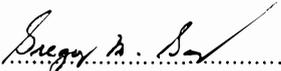

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Chairman Senate Committee

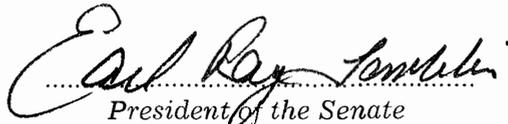

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Chairman House Committee

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 is approved this the 31st
Day of 2010.


.....
Governor

PRESENTED TO THE
GOVERNOR

MAR 29 2010

Time 3:40 pm