WEST VIRGINIA LEGISLATURE
SEVENTY-NINTH LEGISLATURE
REGULAR SESSION, 2010

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.]
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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.

(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);

(8) The purpose or purposes for which the limited liability company is organized; and
(9) An e-mail address where informational notices and
reminders of annual filings may be sent, unless there is a
technical inability to comply.

(b) Articles of organization of a limited liability com-
pany 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.

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

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

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

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

(3) The address of its principal office;
(4) The names and business addresses of any managers and the name and address of each member having authority to execute instruments on behalf of the limited liability company; and

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

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

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

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

ARTICLE 10. FOREIGN LIMITED LIABILITY COMPANIES.

§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);

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

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

(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
35 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 2. INCORPORATION.


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

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

5 (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;

8 (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;

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

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

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

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

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

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

22 (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.
ARTICLE 15. FOREIGN CORPORATIONS.


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

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

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

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

(4) The mailing address of its principal office;

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

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

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

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

(b) The foreign corporation 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
CHAPTER 31E. WEST VIRGINIA NONPROFIT CORPORATION ACT.

ARTICLE 2. 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;
(2) Provisions not inconsistent with law regarding:

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

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

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

1. The name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of section one thousand four hundred six of this article;
2. The name of the state or country under whose law it is incorporated;
3. Its date of incorporation and period of duration;
4. The mailing address of its principal office;
5. The address of its registered office in this state, if any, and the name of its registered agent at that office, if any;
6. The names and usual addresses of its current directors and officers;
7. The purpose or purposes of the corporation which it proposes to pursue in conducting its affairs or doing or transacting its business in this state; and
8. An e-mail address where informational notices and reminders of annual filings may be sent, unless there is a technical inability to comply.

(b) The foreign corporation 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 corporate records in the state or country under whose law it is incorporated.
CHAPTER 47. REGULATION OF TRADE.

ARTICLE 9A. VOLUNTARY ASSOCIATIONS AND BUSINESS TRUSTS.


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

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

9. (c) Any business trust organized outside this state and operating within this state shall file with the Secretary of State: (1) One executed original copy of an application for registration; (2) one executed original copy of the declaration, articles or agreement of trust creating the business trust as recorded in the state or country of origin of the business trust; and (3) a statement or certificate from the proper officer of the state or country of origin that the 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 West Virginia business trust, or if organized outside the state, the state in which it was organized and the formation date of the business trust;

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

26. (4) The address of its principal office;
(5) The name and address of the person to whom notice of process may be sent, if any;

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

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

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

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

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

§47-9A-3. Filing of voluntary association; issuance of certificate of voluntary association.

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

(b) Any voluntary association organized in this state shall file with the Secretary of State: (1) One executed original copy of an application for registration; and (2) one executed original copy of the agreement of association creating the voluntary association (if such an agreement exists apart from the application for registration itself).
(c) Any voluntary association organized outside this state and operating within this state shall file with the Secretary of State: (1) One executed original copy of an application for registration; (2) one executed original copy of the agreement of association creating the voluntary association; and (3) a statement or certificate from the proper officer of the state or country of origin that the voluntary association is in good standing.

(d) An application for registration shall set forth:

(1) The name of the voluntary association;

(2) The principal office address of the voluntary association;

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

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

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

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

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

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

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

(10) A statement reflecting the voluntary association's consent to and recognition of the application of the law of
(11) An e-mail address where informational notices and reminders of annual filings may be sent, unless there is a technical inability to comply.

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

(f) If the Secretary of State determines that an application for registration has been properly filed in complete form and that the fee prescribed in section two, article one, chapter fifty-nine of this code has been paid, he or she shall file it and deliver to the voluntary association or its representative a receipt for the record and the fees.
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 is approved this the 31st Day of 2010.

Governor