

**Senate Bill No. 570**

(By Senators Edgell, Fitzsimmons, Cookman, Wells, Miller and  
Walters)

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[Introduced February 13, 2014; referred to the Committee on the  
Judiciary.]

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A Bill 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; to amend and reenact §31E-14-1401 of said code; to amend said code by adding thereto a new section, designated §47-9-64; and to amend said code by adding thereto a new section, designated §47B-10-6, all relating to consistency regarding exemptions for businesses; and standardization of limited liability companies, limited partnership and limited liability partnership in accordance to existing corporate exemptions.

*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; that §31E-14-1401 of said code be amended

1 and reenacted; that said code be amended by adding thereto a new  
2 section, designated §47-9-64; and that said code be amended by  
3 adding thereto a new section, designated §47B-10-6, all to read as  
4 follows:

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

6           **ARTICLE 10. FOREIGN LIMITED LIABILITY COMPANIES.**

7           **§31B-10-1003. Activities not constituting transacting business.**

8           (a) A foreign limited liability company may not conduct  
9 affairs in this state until it obtains a certificate of authority  
10 from the Secretary of State.

11           ~~(a)~~ (b) The following activities, among others, of a foreign  
12 limited liability company that do not constitute transacting  
13 business conducting affairs in this state within the meaning of  
14 subsection a of this article include section:

15           (1) Maintaining, defending or settling an action or  
16 proceeding;

17           (2) Holding meetings of ~~its members or managers~~ the board of  
18 directors or shareholders or carrying on any other activity  
19 concerning its internal corporate affairs;

20           (3) Maintaining bank accounts;

21           ~~(4) Maintaining offices or agencies for the transfer, exchange~~  
22 ~~and registration of the foreign company's own securities or~~  
23 ~~maintaining trustees or depositories with respect to those~~

1 ~~securities;~~

2       ~~(5)~~ (4) Selling through independent contractors;

3       ~~(6)~~ (5) Soliciting or obtaining orders, whether by mail or

4 through employees or agents or otherwise, if the orders require

5 acceptance outside this state before they become contracts;

6       ~~(7)~~ (6) Creating or acquiring indebtedness, mortgages or

7 security interests in real or personal property;

8       ~~(8)~~ (7) Securing or collecting debts or enforcing mortgages or

9 other security interests in property securing the debts: ~~and~~

10 ~~holding, protecting and maintaining property so acquired;~~ Provided,

11 That this exemption does not include debts collected by collection

12 agencies as defined in subdivision(b), section two, article

13 sixteen, chapter forty-seven of this code;

14       ~~(9)~~ (8) Conducting an isolated transaction that is completed

15 within thirty days and is not one in the course of similar

16 transactions of a like ~~manner~~ nature;

17       ~~(10)~~ (9) ~~Transacting business~~ Conducting affairs in interstate

18 commerce;

19       (10) Granting funds or other gifts;

20       (11) Distributing information to its shareholders or members;

21       (12) Effecting sales through independent contractors;

22       (13) The acquisition by purchase of lands secured by mortgage

23 or deeds;

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

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

9       ~~(11)~~ (16) Applying for withholding tax on an employee residing  
10 in the State of West Virginia who works for the foreign limited  
11 liability company in another state; and

12       ~~(12)~~ (17) Holding all, or a portion thereof, of the  
13 outstanding stock of another corporation authorized to transact  
14 business in the State of West Virginia: *Provided*, That the foreign  
15 limited liability company does not produce goods, services or  
16 otherwise conduct business in the State of West Virginia.

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

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

1 ~~this state~~ The list of activities in subsection (b) of this section  
2 is not exhaustive.

3 (d) A foreign limited liability company is deemed to be  
4 transacting business in this state if:

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

7 (2) The limited liability company commits a tort, in whole or  
8 in part, in this state; or

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

15 (e) A foreign limited liability company's making of a  
16 contract, the committing of a manufacture or sale, offer of sale or  
17 supply of defective product as described in subsection (d) of this  
18 section is deemed to be the agreement of that foreign limited  
19 liability company that any notice or process served upon, or  
20 accepted by, the Secretary of State in a proceeding against that  
21 foreign limited liability company arising from, or growing out of,  
22 contract, tort or manufacture or sale, offer of sale or supply of  
23 the defective product has the same legal force and validity as

1 process duly served on that corporation in this state.

2 (f) A person may apply for an exemption by delivering an  
3 application to the Secretary of State for filing along with a  
4 filing fee of \$25. The application must set forth:

5 (1) Name of the organization applying for exemption;

6 (2) The state the organization was organized in and date of  
7 its formation in that state;

8 (3) The address of the principal office of the organization;

9 (4) The type of business to be conducted in West Virginia; and

10 (5) Any other information the Secretary of State deems  
11 appropriate to determine if an exemption is to be granted.

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

13 **ARTICLE 15. FOREIGN CORPORATIONS.**

14 **§31D-15-1501. Authority to transact business and jurisdiction**  
15 **over foreign corporations.**

16 (a) A foreign corporation may not conduct affairs in this  
17 state until it obtains a certificate of authority from the  
18 Secretary of State.

19 (b) The following activities, among others, do not constitute  
20 conducting affairs within the meaning of subsection (a) of this  
21 section:

22 (1) Maintaining, defending or settling any proceeding;

23 (2) Holding meetings of the board of directors or shareholders

1 or carrying on other activities concerning internal corporate  
2 affairs;

3 (3) Maintaining bank accounts;

4 (4) Selling through independent contractors;

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

8 (6) Creating or acquiring indebtedness, mortgages and security  
9 interests in real or personal property;

10 (7) Securing or collecting debts or enforcing mortgages and  
11 security interests in property securing the debts: *Provided*, That  
12 this exemption does not include debts collected by collection  
13 agencies as defined in subdivision (b), section two, article  
14 sixteen, chapter forty-seven of this code;

15 (8) Owning, without more, real or personal property;

16 (9) Conducting an isolated transaction that is completed  
17 within thirty days and that is not one in the course of repeated  
18 transactions of a like nature;

19 (10) Conducting affairs in interstate commerce;

20 (11) Granting funds or other gifts;

21 (12) Distributing information to its shareholders or members;

22 (13) Effecting sales through independent contractors;

23 (14) The acquisition by purchase of lands secured by mortgage

1 or deeds;

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

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

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

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

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

20       (d) A foreign corporation is deemed to be transacting business  
21 in this state if:

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



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

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

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

19       (f) A person may apply for an exemption by delivering an  
20 application to the Secretary of State for filing along with a  
21 filing fee of \$25. The application must set forth:

22       (1) Name of the organization applying for exemption;

23       (2) The state the organization was organized in and date of

1 its formation in that state;

2 (3) The address of the principal office of the organization;

3 (4) The type of business to be conducted in West Virginia; and

4 (5) Any other information the Secretary of State deems

5 appropriate to determine if an exemption is to be granted.

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

7 **ARTICLE 14. FOREIGN CORPORATIONS.**

8 **§31E-14-1401. Authority to conduct affairs required.**

9 (a) A foreign corporation may not conduct affairs in this  
10 state until it obtains a certificate of authority from the  
11 Secretary of State.

12 (b) The following activities, among others, do not constitute  
13 conducting affairs within the meaning of subsection (a) of this  
14 section:

15 (1) Maintaining, defending, or settling any proceeding;

16 (2) Holding meetings of the board of directors or members or  
17 carrying on other activities concerning internal corporate affairs;

18 (3) Maintaining bank accounts;

19 (4) Selling through independent contractors;

20 (5) Soliciting or obtaining orders, whether by mail or through  
21 employees or agents or otherwise, if the orders require acceptance  
22 outside this state before they become contracts;

23 (6) Creating or acquiring indebtedness, mortgages, and

1 security interests in real or personal property: *Provided, That*  
2 this exemption does not include debts collected by collection  
3 agencies as defined in subdivision (b), section two, article  
4 sixteen, chapter forty-seven of this code;

5 (7) Securing or collecting debts or enforcing mortgages and  
6 security interests in property securing the debts;

7 (8) Owning, without more, real or personal property;

8 (9) Conducting an isolated transaction that is completed  
9 within thirty days and that is not one in the course of repeated  
10 transactions of a like nature;

11 (10) Conducting affairs in interstate commerce;

12 (11) Granting funds or other gifts;

13 (12) Distributing information to its shareholders or members;

14 (13) Effecting sales through independent contractors;

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

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

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

1 agreement in lieu of foreclosure sale; and

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

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

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

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

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

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

19       (e) A foreign corporation's making of a contract, the  
20 committing of a manufacture or sale, offer of sale or supply of  
21 defective product as described in subsection (d) of this section is  
22 deemed to be the agreement of that foreign corporation that any  
23 notice or process served upon, or accepted by, the Secretary of

1 State in a proceeding against that foreign corporation arising  
2 from, or growing out of, contract, tort, or manufacture or sale,  
3 offer of sale or supply of the defective product has the same legal  
4 force and validity as process duly served on that corporation in  
5 this state.

6 (f) A person may apply for an exemption by delivering an  
7 application to the Secretary of State for filing along with a  
8 filing fee of \$25. The application must set forth:

9 (1) Name of the organization applying for exemption;

10 (2) The state the organization was organized in and date of  
11 its formation in that state;

12 (3) The address of the principal office of the organization;

13 (4) The type of business to be conducted in West Virginia; and

14 (5) Any other information the Secretary of State deems  
15 appropriate to determine if an exemption is to be granted.

16 **CHAPTER 47. REGULATION OF TRADE.**

17 **ARTICLE 9. UNIFORM LIMITED PARTNERSHIP ACT.**

18 **§47-9-64. Activities not constituting transacting business.**

19 (a) A foreign limited partnership may not conduct affairs in  
20 this state until it obtains a certificate of authority from the  
21 Secretary of State.

22 (b) The following activities, among others, do not constitute  
23 conducting affairs within the meaning of subsection (a) of this

1 section:

2 (1) Maintaining, defending or settling any proceeding;

3 (2) Holding meetings of the board of directors or shareholders  
4 or carrying on other activities concerning internal corporate  
5 affairs;

6 (3) Maintaining bank accounts;

7 (4) Selling through independent contractors;

8 (5) Soliciting or obtaining orders, whether by mail or through  
9 employees or agents or otherwise, if the orders require acceptance  
10 outside this state before they become contracts;

11 (6) Creating or acquiring indebtedness, mortgages and security  
12 interests in real or personal property;

13 (7) Securing or collecting debts or enforcing mortgages and  
14 security interests in property securing the debts: *Provided*, That  
15 this exemption does not include debts collected by collection  
16 agencies as defined in subdivision (b), section two, article  
17 sixteen, chapter forty-seven of this code;

18 (8) Owning, without more, real or personal property;

19 (9) Conducting an isolated transaction that is completed  
20 within thirty days and that is not one in the course of repeated  
21 transactions of a like nature;

22 (10) Conducting affairs in interstate commerce;

23 (11) Granting funds or other gifts;

1 (12) Distributing information to its shareholders or members;

2 (13) Effecting sales through independent contractors;

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

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

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

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

16 (18) Holding all, or a portion thereof, of the outstanding  
17 stock of another limited partnership authorized to transact  
18 business in the State of West Virginia: *Provided*, That the foreign  
19 limited partnership does not produce goods, services or otherwise  
20 conduct business in the State of West Virginia.

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

23 (d) A foreign limited partnership is deemed to be transacting

1 business in this state if:

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

4       (2) The limited partnership commits a tort, in whole or in  
5 part, in this state; or

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

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

22       (f) A person may apply for an exemption by delivering an  
23 application to the Secretary of State for filing along with a



1 filing fee of \$25. The application must set forth:

2 (1) Name of the organization applying for exemption;

3 (2) The state the organization was organized in and date of  
4 its formation in that state;

5 (3) The address of the principal office of the organization;

6 (4) The type of business to be conducted in West Virginia; and

7 (5) Any other information the Secretary of State deems  
8 appropriate to determine if an exemption is to be granted.

9 **CHAPTER 47B. UNIFORM PARTNERSHIP ACT.**

10 **ARTICLE 10. LIMITED LIABILITY PARTNERSHIPS.**

11 **§47B-10-6. Activities not constituting transacting business.**

12 (a) A foreign limited liability partnership may not conduct  
13 affairs in this state until it obtains a certificate of authority  
14 from the Secretary of State.

15 (b) The following activities, among others, do not constitute  
16 conducting affairs within the meaning of subsection (a) of this  
17 section:

18 (1) Maintaining, defending or settling any proceeding;

19 (2) Holding meetings of the board of directors or shareholders  
20 or carrying on other activities concerning internal corporate  
21 affairs;

22 (3) Maintaining bank accounts;

23 (4) Selling through independent contractors;

1           (5) Soliciting or obtaining orders, whether by mail or through  
2 employees or agents or otherwise, if the orders require acceptance  
3 outside this state before they become contracts;

4           (6) Creating or acquiring indebtedness, mortgages and security  
5 interests in real or personal property;

6           (7) Securing or collecting debts or enforcing mortgages and  
7 security interests in property securing the debts: *Provided*, That  
8 this exemption does not include debts collected by collection  
9 agencies as defined in subdivision (b), section two, article  
10 sixteen, chapter forty-seven of this code;

11          (8) Owning, without more, real or personal property;

12          (9) Conducting an isolated transaction that is completed  
13 within thirty days and that is not one in the course of repeated  
14 transactions of a like nature;

15          (10) Conducting affairs in interstate commerce;

16          (11) Granting funds or other gifts;

17          (12) Distributing information to its shareholders or members;

18          (13) Effecting sales through independent contractors;

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

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

1 Virginia;

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

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

9       (18) Holding all, or a portion thereof, of the outstanding  
10 stock of another limited liability partnership authorized to  
11 transact business in the State of West Virginia: *Provided*, That  
12 the foreign limited liability partnership does not produce goods,  
13 services or otherwise conduct business in the State of West  
14 Virginia.

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

17       (d) A foreign limited liability partnership is deemed to be  
18 transacting business in this state if:

19       (1) The limited liability partnership makes a contract to be  
20 performed, in whole or in part, by any party thereto in this state;

21       (2) The limited liability partnership commits a tort, in whole  
22 or in part, in this state; or

23       (3) The corporation manufactures, sells, offers for sale or

1 supplies any product in a defective condition and that product  
2 causes injury to any person or property within this state  
3 notwithstanding the fact that the corporation had no agents,  
4 servants or employees or contacts within this state at the time of  
5 the injury.

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

16 (f) A person may apply for an exemption by delivering an  
17 application to the Secretary of State for filing along with a  
18 filing fee of \$25. The application must set forth:

19 (1) Name of the organization applying for exemption;

20 (2) The state the organization was organized in and date of  
21 its formation in that state;

22 (3) The address of the principal office of the organization;

23 (4) The type of business to be conducted in West Virginia; and

1           (5) Any other information the Secretary of State deems  
2 appropriate to determine if an exemption is to be granted.

NOTE: The purpose of this bill is to specify and centralize exemptions for corporations, limited liability companies, limited partnerships and limited liability partnerships. The bill amends decentralized exemptions of limited liability companies to make them equivalent to corporations. The bill sets this as the standard for limited partnerships and limited liability partnerships as well.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

§47-9-64 and §47B-10-6 are new; therefore strike-throughs and underscoring have been omitted.