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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2003

ENROLLED

House Bill No. 3108

(By Delegates Fleischauer, Vamer, Beane, Stemple, Palumbo, Foster and Manchin)

Passed March 7, 2003

In Effect Ninety Days from Passage

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SECRETARY OF STATE

E N R O L L E D

H. B. 3108

(BY DELEGATES FLEISCHAUER, VARNER, BEANE,
STEMPLE, PALUMBO, FOSTER AND MANCHIN)

[Passed March 7, 2003; in effect ninety days from passage.]

AN ACT to amend and reenact section three, article twelve-c, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one hundred one, one hundred eight and one hundred nine, article one, chapter thirty-one-b; to amend and reenact sections two hundred three, two hundred six, two hundred eleven, article two of said chapter thirty-one-b; to amend and reenact sections one thousand two and one thousand six, article ten of said chapter thirty-one-b; to amend and reenact section three hundred one, article three, chapter thirty-one-e of said code; to amend and reenact section four, article eight, chapter forty-seven of said code; to amend and reenact sections one, thirteen, sixteen and fifty, article nine of said chapter forty-seven; to amend and reenact sections two, three and four, article nine-a of said chapter forty-seven; to amend and reenact section one, article one, chapter forty-seven-b of said code; and to amend and reenact sections one and four, article ten of said chapter forty-seven, all relating to making all business entity filing requirements consistent with the corporation require-

*ok
Gregory M. Bond
2/18/03*

ments under the new corporation laws, including electronic filing, no requirement to have an agent and office in West Virginia, and no requirement to have a street address; requiring county and business class codes to be on the annual tax returns filed with the tax department; and clarifying the use of trade names by limited liability companies.

Be it enacted by the Legislature of West Virginia:

That section three, article twelve-c, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections one hundred one, one hundred eight and one hundred nine, article one, chapter thirty-one-b of said code be amended and reenacted; that sections two hundred three, two hundred six, two hundred eleven, article two of said chapter be amended and reenacted; that sections one thousand two and one thousand six, article ten of said chapter be amended and reenacted; that section three hundred one, article three, chapter thirty-one-e of said code be amended and reenacted; that section four, article eight, chapter forty-seven of said code be amended and reenacted; that sections one, thirteen, sixteen and fifty, article nine of said chapter be amended and reenacted; that sections two, three and four, article nine-a of said chapter be amended and reenacted; that section one, article one, chapter forty-seven-b of said code be amended and reenacted; and that sections one and four, article ten of said chapter be amended and reenacted, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 12C. CORPORATE LICENSE TAX.

§11-12C-3. Payment and collection of tax; deposit of money; return required.

- 1 (a) *Payment and collection of tax.* — When application is
- 2 made to the secretary of state for a certificate of incorporation
- 3 or authority to do business in this state, the applicant shall pay

4 all taxes and fees due under this article; and the secretary of
5 state shall collect the corporate license tax for the first year
6 before issuing the certificate. Thereafter, on or before the first
7 day of the license tax year next following the date of the
8 certificate, and on or before the first day of each succeeding
9 license tax year, the corporation shall pay and the tax commis-
10 sioner shall collect the tax for a full license tax year together
11 with the statutory attorney fee: *Provided*, That if the application
12 is made on or after the first day of the second month preceding
13 the beginning of the next license tax year, and before the first
14 day of the license tax year, the secretary of state shall collect
15 the tax for the full year beginning on the first day of the next
16 license tax year in addition to the initial tax, together with the
17 statutory attorney fee.

18 (b) *Deposit of money.* — The first year license tax received
19 by the secretary of state pursuant to the provisions of this article
20 shall be deposited by the secretary of state as follows: One-half
21 shall be deposited in the state general revenue fund and one-half
22 shall be deposited in the services fees and collections account
23 established by section two, article one, chapter fifty-nine of this
24 code. The license tax received by the tax commissioner every
25 year after the initial registration shall be deposited into the state
26 general revenue fund.

27 (c) *Returns.* — Payment of the tax and statutory attorney
28 fee required under the provisions of this section shall be
29 accompanied by a return on forms provided by the tax commis-
30 sioner for that purpose. The tax commissioner shall upon
31 completion of processing the return, forward it to the secretary
32 of state, together with a list of all corporations which have paid
33 the tax. The return shall contain: (1) The address of the corpora-
34 tion's principal office; (2) the names and mailing addresses of
35 its officers and directors; (3) the name and mailing address of
36 the person on whom notice of process may be served; (4) the
37 name and address of the corporation's parent corporation and

38 of each subsidiary of the corporation licensed to do business in
39 this state; (5) the county or county code in which the principal
40 office address or mailing address of the company is located in;
41 (6) business class code; and (7) any other information the tax
42 commissioner considers appropriate. Notwithstanding any other
43 provision of law to the contrary, the secretary of state shall,
44 upon request of any person, disclose: (A) The address of the
45 corporation's principal office; (B) the names and addresses of
46 its officers and directors; (C) the name and mailing address of
47 the person on whom notice of process may be served; (D) the
48 name and address of each subsidiary of the corporation and the
49 corporation's parent corporation; (E) the county or county code
50 in which the principal office address or mailing address of the
51 company is located; and (F) the business class code.

CHAPTER 31B. UNIFORM LIMITED LIABILITY COMPANY ACT.

ARTICLE 1. GENERAL PROVISIONS.

§31B-1-101. Definitions.

1 In this chapter:

2 (1) "Articles of organization" means initial, amended and
3 restated articles of organization and articles of merger. In the
4 case of a foreign limited liability company, the term includes all
5 records serving a similar function required to be filed in the
6 office of the secretary of state or other official having custody
7 of company records in the state or country under whose law it
8 is organized.

9 (2) "At-will company" means a limited liability company
10 other than a term company.

11 (3) "Business" includes every trade, occupation, profession
12 and other lawful purpose, whether or not carried on for profit.

13 (4) “Debtor in bankruptcy” means a person who is the
14 subject of an order for relief under Title 11 of the United States
15 Code or a comparable order under a successor statute of general
16 application or a comparable order under federal, state or foreign
17 law governing insolvency.

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

22 (6) “Distinguishable” means, in relation to the name of a
23 business a difference between names which would allow a
24 person to recognize or perceive the name of the business as
25 being noticeably different including at least a one-word
26 difference between names when the words are common terms
27 and the company is or might appear to be in a similar business
28 and at least a word order difference between names when the
29 different word is a proper name or an unusual term, or when the
30 company is clearly in a different type of business from the
31 existing name.

32 (7) “Distribution” means a transfer of money, property or
33 other benefit from a limited liability company to a member in
34 the member’s capacity as a member or to a transferee of the
35 member’s distributional interest.

36 (8) “Distributional interest” means all of a member’s
37 interest in distributions by the limited liability company.

38 (9) “Electronic transmission” or “electronically transmit-
39 ted” means any process of communication not directly involv-
40 ing the physical transfer of paper that is suitable for the
41 retention, retrieval and reproduction of information by the
42 recipient.

43 (10) “Entity” means a person other than an individual.

44 (11) "Foreign limited liability company" means an unincor-
45 porated entity organized under laws other than the laws of this
46 state which afford limited liability to its owners comparable to
47 the liability under section 3-303 and is not required to obtain a
48 certificate of authority to transact business under any law of this
49 state other than this chapter.

50 (12) "Limited liability company" means a limited liability
51 company organized under this chapter.

52 (13) "Manager" means a person, whether or not a member
53 of a manager-managed company, who is vested with authority
54 under section 3-301.

55 (14) "Manager-managed company" means a limited
56 liability company which is so designated in its articles of
57 organization.

58 (15) "Member-managed company" means a limited liability
59 company other than a manager-managed company.

60 (16) "Operating agreement" means the agreement under
61 section 1-103 concerning the relations among the members,
62 managers and limited liability company. The term includes
63 amendments to the agreement.

64 (17) "Person" means an individual, corporation, business
65 trust, estate, trust, partnership, limited liability company,
66 association, joint venture, government, governmental subdivi-
67 sion, agency, or instrumentality or any other legal or commer-
68 cial entity.

69 (18) "Principal office" means the office, whether or not in
70 this state, where the principal executive office of a domestic or
71 foreign limited liability company is located.

72 (19) "Record" means information that is inscribed on a
73 tangible medium or that is stored in an electronic or other
74 medium and is retrievable in perceivable form.

75 (20) "Sign" or "signature" means to identify a record by
76 means of a signature, mark or other symbol, with intent to
77 authenticate it and includes, but is not limited to, any manual,
78 facsimile, conformed or electronic signature.

79 (21) "State" means a state of the United States, the District
80 of Columbia, the Commonwealth of Puerto Rico or any
81 territory or insular possession subject to the jurisdiction of the
82 United States.

83 (22) "Term company" means a limited liability company in
84 which its members have agreed to remain members until the
85 expiration of a term specified in the articles of organization.

86 (23) "Transfer" includes an assignment, conveyance, deed,
87 bill of sale, lease, mortgage, security interest, encumbrance and
88 gift.

§31B-1-108. Designated office and agent for service of process.

1 (a) A limited liability company and a foreign limited
2 liability company authorized to do business in this state may
3 continuously maintain in this state:

4 (1) An office, which need not be a place of its business in
5 this state; and

6 (2) An agent and address of the agent for service of process
7 on the company.

8 (b) An agent shall be an individual resident of this state, a
9 domestic corporation, another limited liability company or a

10 foreign corporation or foreign company authorized to do
11 business in this state.

12 (c) Every limited liability company shall pay an annual fee
13 of twenty-five dollars for the services of the secretary of state
14 as attorney-in-fact for the limited liability company, which fee
15 shall be due and payable at the initial registration of the limited
16 liability company and every year thereafter the same time that
17 the annual report required under section two hundred eleven,
18 article two of this chapter is due and one half of each fee shall
19 be deposited in the state fund, general revenue and one half of
20 the fees in the service fees and collections account established
21 by section two, article one, chapter fifty-nine of this code for
22 the operation of the office of the secretary of state. The secre-
23 tary of state shall dedicate sufficient resources from that fund
24 or other funds to provide the services required in this chapter.

25 (d) The secretary of state shall keep a record of all pro-
26 cesses, notices and demands served pursuant to this section and
27 record the time of and the action taken regarding the service.

28 (e) This section does not affect the right to serve process,
29 notice or demand in any manner otherwise provided by law.

**§31B-1-109. Change of designated office or agent for service of
process.**

1 A limited liability company may change its designated
2 office or agent for service of process by delivering to the
3 secretary of state for filing a statement of change which sets
4 forth:

5 (1) The name of the company;

6 (2) The address of its current designated office, if any;

7 (3) If the current designated office is to be changed, the
8 address of the new designated office;

9 (4) The name and address of its current agent for service of
10 process, if any;

11 (5) If the current agent for service of process or address of
12 that agent is to be changed, the new address or the name and
13 address of the new agent for service of process.

ARTICLE 2. ORGANIZATION.

§31B-2-203. Articles of organization.

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

3 (1) The name of the company;

4 (2) The address of the initial designated office;

5 (3) The name and address of the initial agent for service of
6 process;

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

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

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

14 (7) Whether one or more of the members of the company
15 are to be liable for its debts and obligations under section 3-
16 303(c).

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

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

21 (2) Other matters not inconsistent with law.

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

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

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

§31B-2-206. Filing in office of secretary of state.

1 (a) Articles of organization or any other record authorized
2 to be filed under this chapter must be in a medium permitted by
3 the secretary of state and must be delivered to the office of the
4 secretary of state. Delivery may be made by electronic trans-
5 mission if permitted by the secretary of state. Unless the
6 secretary of state determines that a record fails to comply as to
7 form with the filing requirements of this chapter, and if all
8 filing fees have been paid, the secretary of state shall file the
9 record and send a receipt for the record and the fees to the
10 limited liability company or its representative.

11 (b) Upon request and payment of a fee, the secretary of
12 state shall send to the requester a certified copy of the requested
13 record.

14 (c) Except as otherwise provided in subsection (d) of this
15 section and section 2-207(c), a record accepted for filing by the
16 secretary of state is effective:

17 (1) At the time of filing on the date it is filed, as evidenced
18 by the secretary of state's date and time endorsement on the
19 original record; or

20 (2) At the time specified in the record as its effective time
21 on the date it is filed.

22 (d) A record may specify a delayed effective time and date,
23 and if it does so the record becomes effective at the time and
24 date specified. If a delayed effective date but no time is
25 specified, the record is effective at the close of business on that
26 date. If a delayed effective date is later than the ninetieth day
27 after the record is filed, the record is effective on the ninetieth
28 day.

§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 state,
3 shall deliver to the secretary of state for filing an annual report
4 that sets forth:

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

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

10 (3) The address of its principal office; and

11 (4) The names and business addresses of any managers and
12 the name and address of each member having authority to

13 execute instruments on behalf of the limited liability company.

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

17 (c) The first annual report must be delivered to the secretary
18 of state between the first day of January and the first day of
19 April of the year following the calendar year in which a limited
20 liability company was organized or a foreign company was
21 authorized to transact business. Subsequent annual reports must
22 be delivered to the secretary of state between the first day of
23 January and the first day of April of the ensuing calendar years.

24 (d) If an annual report does not contain the information
25 required in subsection (a) of this section, the secretary of state
26 shall promptly notify the reporting limited liability company or
27 foreign limited liability company and return the report to it for
28 correction. If the report is corrected to contain the information
29 required in subsection (a) of this section and delivered to the
30 secretary of state within thirty days after the effective date of
31 the notice, it is 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 filing,
4 together with the fee prescribed by section two, article one,
5 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 is
11 organized;

12 (3) The street address of its principal office;

13 (4) The name and address of each member having authority
14 to execute instruments on behalf of the limited liability com-
15 pany;

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

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

20 (7) Whether the duration of the company is for a specified
21 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; and

24 (9) Whether the members of the company are to be liable
25 for its debts and obligations under a provision similar to section
26 3-303(c).

27 (b) A foreign limited liability company shall deliver with
28 the completed application a certificate of existence or a record
29 of similar import authenticated by the secretary of state or other
30 official having custody of company records in the state or
31 country under whose law it is organized.

**§31B-10-1006. Revocation and reinstatement of certificate of
authority.**

1 (a) A certificate of authority of a foreign limited liability
2 company to transact business in this state may be revoked by
3 the secretary of state in the manner provided in subsection (b)
4 of this section if:

5 (1) The company fails to:

6 (i) Pay any fees, taxes and penalties owed to this state;

7 (ii) Deliver its annual report required under section 2-211
8 to the secretary of state within sixty days after it is due; or

9 (iii) File a statement of a change in the name or business
10 address of the agent as required by this article; or

11 (2) A misrepresentation has been made of any material
12 matter in any application, report, affidavit or other record
13 submitted by the company pursuant to this article.

14 (b) The secretary of state may not revoke a certificate of
15 authority of a foreign limited liability company unless the
16 secretary of state sends the company notice of the revocation,
17 at least sixty days before its effective date, by a record ad-
18 dressed to its principal office. The notice must specify the cause
19 for the revocation of the certificate of authority. The authority
20 of the company to transact business in this state ceases on the
21 effective date of the revocation unless the foreign limited
22 liability company cures the failure before that date.

23 (c) A foreign limited liability company administratively
24 revoked may apply to the secretary of state for reinstatement
25 within two years after the effective date of revocation. The
26 application must:

27 (1) Recite the name of the company and the effective date
28 of its administrative revocation; (2) state that the ground for
29 revocation either did not exist or has been eliminated; (3) state

30 that the company's name satisfies the requirements of section
31 10-1005; and (4) contain a certificate from the tax commis-
32 sioner reciting that all taxes owed by the company have been
33 paid.

34 (d) If the secretary of state determines that the application
35 contains the information required by subsection (a) of this
36 section and that the information is correct, the secretary of state
37 shall cancel the certificate of revocation and prepare a certifi-
38 cate of reinstatement that recites this determination and the
39 effective date of reinstatement, file the original of the certifi-
40 cate, and serve the company with a copy of the certificate.

41 (e) When reinstatement is effective, it relates back to and
42 takes effect as of the effective date of the administrative
43 revocation and the company may resume its business as if the
44 administrative revocation had never occurred.

CHAPTER 31E. WEST VIRGINIA NONPROFIT CORPORATION ACT.

ARTICLE 3. PURPOSES AND POWERS.

§31E-3-301. Purposes.

1 Corporations may be organized under this chapter for any
2 lawful purpose, including any one or more of the following
3 purposes: Charitable, benevolent, eleemosynary, educational,
4 civic, patriotic, political, religious, social, fraternal, literary,
5 cultural, athletic, scientific, agricultural, horticultural, animal
6 husbandry, and professional commercial, industrial or trade
7 association.

CHAPTER 47. REGULATION OF TRADE.

ARTICLE 8. TRADE NAMES.

§47-8-4. Corporations, associations, limited partnerships, limited liability partnerships, and limited liability companies not to conduct business under assumed name without certificate of trade name; application; issuance of certificate of trade name.

1 (a) No business entity organized as a corporation, limited
2 partnership, limited liability partnership, limited liability
3 company, business trust or voluntary association required to
4 register with the secretary of state in order to conduct business
5 within the state may conduct or transact any business in this
6 state under any assumed name, or under any designation, name
7 or style, corporate or otherwise, other than the name established
8 by the original certificate establishing the business entity or by
9 an amendment thereto, unless the business entity files in the
10 office of the secretary of state an application for registration of
11 trade name. The application shall set forth:

12 (1) The name under which the business entity is organized
13 and registered;

14 (2) The name under which the business of such business
15 entity is, or is to be, conducted or transacted upon approval of
16 the application, which name must be distinguishable from the
17 name of any other corporation, limited partnership, limited
18 liability partnership, limited liability company, business trust or
19 voluntary association, and from any name reserved or registered
20 for any of those business entities;

21 (3) The address of the principal office within the state or, if
22 no office is maintained within the state, the address of the
23 principal office in the state in which the business entity is
24 established; and

25 (4) The name, title and signature of a person having
26 authority to make the application.

27 The secretary of state shall grant a certificate of registration
28 to any applicant who has met the requirements of this subsection.
29 A new certificate of registration is to be filed if the
30 business entity desires to conduct or transact any business in
31 this state under any other assumed name not on file in the office
32 of the secretary of state.

33 (b) One original executed of the application for trade name
34 registration shall be delivered to the secretary of state. Delivery
35 may be made by electronic transmission if permitted by the
36 secretary of state. If the filing officer finds that the application
37 for trade name registration conforms to law, he or she shall,
38 when all fees have been paid as prescribed by law, file it and
39 shall deliver to the entity or its representative a receipt for the
40 record and fee.

41 (c) Upon discontinuing the use of a registered trade name
42 the certificate of registration of trade name shall be withdrawn
43 by filing a certificate of withdrawal with the office of the
44 secretary of state setting forth the name to be discontinued, the
45 real name, the address of the party transacting business and the
46 date upon which the original certificate of registration of trade
47 name was filed.

48 (d) Any corporation authorized to transact business in this
49 state shall procure an amended certificate of incorporation in
50 the event it changes its corporate name by filing articles of
51 amendment with the office of the secretary of state as provided
52 in article ten, chapter thirty-one-d, or article ten, chapter thirty-
53 one-e of this code.

54 (e) Any limited liability company registering a trade name
55 pursuant to the provisions of this section is subject to the
56 limitations set forth in subsections (b), (c) and (d) section one
57 hundred five, article one, chapter thirty-one-b of this code.

ARTICLE 9. UNIFORM LIMITED PARTNERSHIP ACT.

§47-9-1. Definitions.

1 As used in this article, unless the context otherwise
2 requires:

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

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

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

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

19 (5) “Event of withdrawal of a general partner” means an
20 event that causes a person to cease to be a general partner as
21 provided in section twenty-three of this article;

22 (6) “Foreign limited partnership” means a partnership
23 formed under the laws of any state other than this state and
24 having as partners one or more general partners and one or
25 more limited partners;

26 (7) “General partner” means a person who has been
27 admitted to a limited partnership as a general partner in

28 accordance with the partnership agreement and named in the
29 certificate of limited partnership as a general partner;

30 (8) “Limited partner” means a person who has been
31 admitted to a limited partnership as a limited partner in accor-
32 dance with the partnership agreement;

33 (9) “Limited partnership” and “domestic limited partner-
34 ship” means a partnership formed by two or more persons under
35 the laws of this state and having one or more general partners
36 and one or more limited partners;

37 (10) “Partner” means a limited or general partner;

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

41 (12) “Partnership interest” means a partner’s share of the
42 profits and losses of a limited partnership and the right to
43 receive distributions of partnership assets;

44 (13) “Person” means a natural person, partnership, limited
45 partnership (domestic or foreign), limited liability company,
46 professional limited liability company, trust, estate, association,
47 corporation, or any other legal or commercial entity;

48 (14) “Sign” or “signature” includes, but is not limited to,
49 any manual, facsimile, conformed or electronic signature; and

50 (15) “State” means a state, territory or possession of the
51 United States, the District of Columbia or the Commonwealth
52 of Puerto Rico.

§47-9-13. Filing of certificate,

1 (a) One signed copy of the certificate of limited partnership
2 and of any certificates of amendment or cancellation, or of any
3 judicial decree of amendment or cancellation, shall be delivered
4 to the secretary of state. Delivery may be made by electronic
5 transmission if permitted by the secretary of state. A person
6 who executes a certificate as an agent or fiduciary need not
7 exhibit evidence of his authority as a prerequisite to filing.
8 Unless the secretary of state finds that any certificate does not
9 conform to law, upon receipt of all filing fees required by law,
10 he or she shall file it and deliver to the limited partnership or its
11 representative a receipt for the record and the fees.

12 (b) Upon the filing of a certificate of amendment, or
13 judicial decree of amendment, in the office of the secretary of
14 state the certificate of limited partnership shall be amended as
15 set forth therein, and upon the effective date of a certificate of
16 cancellation, or a judicial decree thereof, the certificate of
17 limited partnership is canceled.

18 This filing, or failure to file, shall in no way affect the
19 formation of the limited partnership. Only the filing in the
20 office of the secretary of state, required by section eight of this
21 article, shall determine the validity of the limited partnership.

§47-9-16. Delivery of certificates to limited partners.

1 Upon the return by the secretary of state pursuant to section
2 thirteen of this article of a receipt for the record and the fees the
3 general partners shall promptly deliver or mail a copy of the
4 receipt for the record and the fees to each limited partner unless
5 the partnership agreement provides otherwise.

§47-9-50. Issuance of registration.

1 (a) If the secretary of state finds that an application for
2 registration conforms to law and all requisite fees have been

3 paid, he shall file it and deliver to the limited partnership or its
4 representative a receipt for the record and the fees.

5 This filing, or failure to file, shall in no way affect the
6 formation of the limited partnership. Only the filing in the
7 office of the secretary of state, required by section nine of this
8 article, shall determine the validity of the limited partnership.

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 any
2 trust organized for the purpose of conducting business and
3 commonly designated as a Massachusetts trust.

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

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

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

18 (1) The name of the business trust;

19 (2) If organized within the state, a statement that it is a
20 West Virginia business trust, or if organized outside the state,

21 the state in which it was organized and the formation date of the
22 business trust;

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

25 (4) The address of its principal office;

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

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

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

33 (e) An application for registration may contain the nota-
34 rized signature of a trustee of the business trust.

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

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

1 (a) For purposes of this article, a “voluntary association” is
2 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 the
5 provisions of article eleven, chapter thirty-six of this code.

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

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

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

21 (1) The name of the voluntary association;

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

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

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

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

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

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

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

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

39 (10) A statement reflecting the voluntary association's
40 consent to and recognition of the application of the law of this
41 state with respect to corporations to the voluntary association.

42 (e) An application for registration may contain the nota-
43 rized signature of at least one organizer or member of the
44 voluntary association.

45 (f) If the secretary of state determines that an application
46 for registration has been properly filed in complete form and
47 that the fee prescribed in section two, article one, chapter fifty-
48 nine of this code has been paid, he or she shall file it and deliver
49 to the voluntary association or its representative a receipt for
50 the record and the fees.

**§47-9A-4. Application of laws relating to corporations; name of
business trust or voluntary association; adoption
and use of trade name and seal; amendment of
declaration, articles or agreement; change of
agent for service of process, trustees, and mem-
bers; dissolution; filing.**

1 (a) Unless otherwise specifically provided in this article,
2 any business trust or voluntary association conducting business
3 in this state is subject to the laws of this state with respect to
4 corporations, including laws relating to license fees and all
5 other taxes, to the extent such laws are applicable.

6 (b) The name of any business trust or voluntary association
7 applying for registration shall meet the requirements for

8 corporate names set forth in section four hundred one, article
9 four, chapter thirty-one-d or section four hundred one, chapter
10 thirty-one-e, except that the name shall not contain the words
11 “incorporated,” “corporation,” “limited,” or any abbreviation of
12 these terms.

13 (c) Any business trust or voluntary association may use a
14 trade name upon complying with the provisions of section four,
15 article eight, chapter forty-seven of this code. Any business
16 trust or voluntary association may adopt and use a common
17 seal.

18 (d) Upon the adoption of an amendment to the declaration,
19 articles or agreement of trust of a business trust or the agree-
20 ment of association of a voluntary association, the business
21 trust or voluntary association shall file one executed original
22 copy of the amendment, and may contain the notarized signa-
23 ture of at least one trustee of the business trust or at least one
24 organizer or member of the voluntary association, with the
25 office of the secretary of state.

26 (e) Upon any change of trustees, organizers, members or
27 other persons previously recorded as having authority to act on
28 behalf of the business trust or voluntary association, or upon
29 any change of the agent of the business trust or voluntary
30 association for service of process, a business trust or voluntary
31 association shall file notice of the change with the secretary of
32 state.

33 (f) Upon the determination of the majority of trustees of a
34 business trust or a majority of members of a voluntary associa-
35 tion that the business trust or voluntary association shall be
36 dissolved; and after all debts, liabilities and obligations of the
37 business trust or voluntary association have been paid and
38 discharged, the business trust or voluntary association shall
39 distribute all of the remaining assets of the business trust or

40 voluntary association and file articles of dissolution with the
41 secretary of state in the manner provided for corporations in
42 section fourteen hundred three, article fourteen, chapter thirty-
43 one-d, or section thirteen hundred three, article thirteen, chapter
44 thirty-one-e of this code. Upon verification by the appropriate
45 state agencies that the business trust or voluntary association
46 has paid all taxes, assessments and fees due to the state, the
47 secretary of state shall file it and deliver to the voluntary
48 association or business trust or its representative a receipt for
49 the record and the fees.

50 (g) A business trust or voluntary association organized
51 outside the state and registered to do business within this state
52 may withdraw from the state in the manner provided for
53 corporations in section fifteen hundred twenty, article fifteen,
54 chapter thirty-one-d or section fourteen hundred twenty, article
55 fourteen, chapter thirty-one-e of this code.

56 (h) No document required to be filed by this section shall
57 be filed with the secretary of state unless the trustee of the
58 business trust or the organizer or member of the voluntary
59 association is currently authorized as such.

CHAPTER 47B. UNIFORM PARTNERSHIP ACT.

ARTICLE 1. GENERAL PROVISIONS.

§47B-1-1. Definitions.

1 In this chapter:

2 (1) "Business" includes every trade, occupation and
3 profession.

4 (2) "Debtor in bankruptcy" means a person who is the
5 subject of:

6 (i) In order for relief under Title 11 of the United States
7 Code or a comparable order under a successor statute of general
8 application; or

9 (ii) A comparable order under federal, state or foreign law
10 governing insolvency.

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

15 (4) “Distribution” means a transfer of money or other
16 property from a partnership to a partner in the partner’s
17 capacity as a partner or to the partner’s transferee.

18 (5) “Electronic transmission” or “electronically transmit-
19 ted”, means any process of communication not directly involv-
20 ing the physical transfer of paper that is suitable for the
21 retention, retrieval and reproduction of information by the
22 recipient.

23 (6) “Foreign limited liability partnership” means a partner-
24 ship or association formed under or pursuant to an agreement
25 governed by the laws of any state or jurisdiction other than this
26 state that is denominated as a registered limited liability
27 partnership or limited liability partnership under the laws of
28 such other jurisdiction.

29 (7) “Partnership” means an association of two or more
30 persons to carry on as coowners a business for profit formed
31 under section two, article two of this chapter, predecessor law,
32 or comparable law of another jurisdiction and includes, for all
33 purposes of the laws of this state, a registered limited liability
34 partnership.

35 (8) “Partnership agreement” means the agreement, whether
36 written, oral or implied, among the partners concerning the
37 partnership, including amendments to the partnership agree-
38 ment.

39 (9) “Partnership at will” means a partnership in which the
40 partners have not agreed to remain partners until the expiration
41 of a definite term or the completion of a particular undertaking.

42 (10) “Partnership interest” or “partner’s interest in the
43 partnership” means all of a partner’s interests in the partnership,
44 including the partner’s transferable interest and all management
45 and other rights.

46 (11) “Person” means an individual, corporation, business
47 trust, estate, trust, partnership, limited liability company,
48 professional limited liability company, association, joint
49 venture, government, governmental subdivision, agency or
50 instrumentality, or any other legal or commercial entity.

51 (12) “Property” means all property, real, personal or mixed,
52 tangible or intangible, or any interest therein.

53 (13) “Registered limited liability partnership” means a
54 partnership formed pursuant to an agreement governed by the
55 laws of this state, registered under section one, article ten of this
56 chapter.

57 (14) “Sign” or “signature” includes, but is not limited to,
58 any manual, facsimile, conformed or electronic signature.

59 (15) “State” means a state of the United States, the District
60 of Columbia, the Commonwealth of Puerto Rico, or any
61 territory or insular possession subject to the jurisdiction of the
62 United States.

63 (16) "Statement" means a statement of partnership author-
64 ity under section three, article three of this chapter, a statement
65 of denial under section four of said article, a statement of
66 dissociation under section four, article seven of this chapter, a
67 statement of dissolution under section five, article eight of this
68 chapter, a statement of merger under section seven, article nine
69 of this chapter, a statement of registration and a statement of
70 withdrawal under section one, article ten of this chapter, or an
71 amendment or cancellation of any of the foregoing.

72 (17) "Transfer" includes an assignment, conveyance, lease,
73 mortgage, deed and encumbrance.

ARTICLE 10. LIMITED LIABILITY PARTNERSHIPS.

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

1 (a) To become a registered limited liability partnership, a
2 partnership shall deliver and file with the secretary of state a
3 statement of registration stating the name of the partnership; the
4 address of its principal office; the address of a registered office
5 and the name and address of a registered agent for service of
6 process; a brief statement of the business in which the partner-
7 ship engages; any other matters that the partnership determines
8 to include; and that the partnership thereby registers as a
9 registered limited liability partnership.

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

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

14 (d) The secretary of state shall register as a registered
15 limited liability partnership any partnership that submits a
16 completed registration with the required fee and deliver to the

17 partnership or its representative a receipt for the record and the
18 fees.

19 (e) A partnership registered under this section shall pay, in
20 each year following the year in which its registration is filed, on
21 a date specified by the secretary of state, an annual fee of five
22 hundred dollars. The fee shall be accompanied by a notice, on
23 a form provided by the secretary of state, of any material
24 changes in the information contained in the partnership's
25 registration.

26 (f) Registration is effective:

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

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

31 (g) Registration remains effective until:

32 (1) It is voluntarily withdrawn by filing with the secretary
33 of state a statement of withdrawal; or

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

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

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

45 (2) Changes after the filing of the statement of registration
46 or notice in the information stated in the registration or notice.

47 (i) The secretary of state may provide forms for the
48 statement of registration under subsection (a) of this section or
49 a notice under subsection (e) of this section.

50 (j) All fees and moneys collected by the secretary of state
51 pursuant to the provisions of this article shall be deposited by
52 the secretary of state as follows: One-half shall be deposited in
53 the state general revenue fund and one-half shall be deposited
54 in the service fees and collections account established by
55 section two, article one, chapter fifty-nine of this code for the
56 operation of the office of the secretary of state. The secretary of
57 state shall dedicate sufficient resources from that fund or other
58 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 under
2 this article may conduct its business, carry on its operations,
3 and have and exercise the powers granted by this chapter in any
4 state, territory, district or possession of the United States or in
5 any foreign country.

6 (b) It is the intent of the Legislature that the legal existence
7 of registered limited liability partnerships formed under this
8 article be recognized outside the boundaries of this state and
9 that the laws of this state governing such registered limited
10 liability partnerships doing business outside this state be
11 granted the protection of full faith and credit under the Consti-
12 tution of the United States.

13 (c) Notwithstanding section six, article one of this chapter,
14 the internal affairs of registered limited liability partnerships
15 formed under this article, including the liability of partners for

16 debts, obligations and liabilities of or chargeable to the partner-
17 ship, shall be subject to and governed by the laws of this state.

18 (d) Before transacting business in this state, a foreign
19 registered limited liability partnership shall:

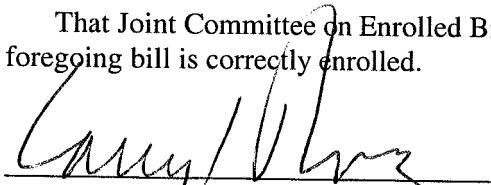
20 (i) Comply with any statutory or administrative registration
21 or filing requirements governing the specific type of business
22 in which the partnership is engaged; and

23 (ii) File a notice with the secretary of state, stating the name
24 of the partnership; the address of its principal office; the
25 address of a registered office and the name and address of a
26 registered agent for service of process; any other matters that
27 the partnership determines to include; and a brief statement of
28 the business in which the partnership engages. Such notice shall
29 be effective for two years from the date of filing, after which
30 time the partnership shall file a new notice.

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

35 (f) Notwithstanding section six, article one of this chapter,
36 the internal affairs of foreign registered limited liability
37 partnerships, including the liability of partners for debts,
38 obligations and liabilities of or chargeable to the partnership,
39 shall be subject to and governed by the laws of the jurisdiction
40 in which the foreign registered limited liability partnership is
41 registered.

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



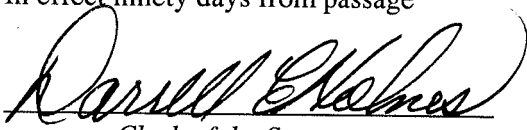
Chairman Senate Committee



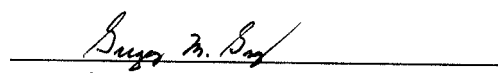
Chairman House Committee

Originating in the House.

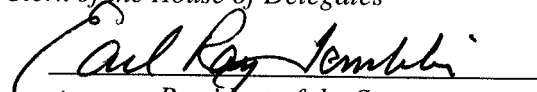
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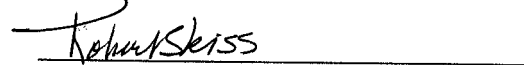
Clerk of the Senate



Clerk of the House of Delegates

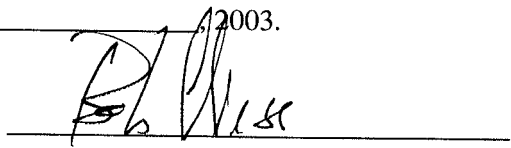


President of the Senate



Speaker of the House of Delegates

The within approved this the 18
day of March 2003.



Governor

PRESENTED TO THE
GOVERNOR

Date 3/12/03

Time 9:07am