

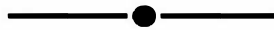
HB 4464

FILED

2008 MAR 13 PM 4: 19

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

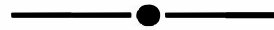
WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2008



ENROLLED

House Bill No. 4464

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



Passed March 6, 2008

In Effect Ninety Days from Passage

ENROLLED

FILED

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H. B. 4464

OFFICE WEST VIRGINIA
SECRETARY OF STATE

(BY DELEGATES WEBSTER, PROUDFOOT, STEMPLER, HRUTKAY,
GUTHRIE, SOBONYA, LONGSTRETH, VARNER, BURDISS, AZINGER
AND SCHADLER)

[Passed March 6, 2008; in effect ninety days from passage.]

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

Be it enacted by the Legislature of West Virginia:

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

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

ARTICLE 10. FOREIGN LIMITED LIABILITY.

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

1 (a) Activities of a foreign limited liability company that
2 do not constitute transacting business in this state within the
3 meaning of this article include:

4 (1) Maintaining, defending or settling an action or
5 proceeding;

6 (2) Holding meetings of its members or managers or
7 carrying on any other activity concerning its internal affairs;

8 (3) Maintaining bank accounts;

9 (4) Maintaining offices or agencies for the transfer,
10 exchange and registration of the foreign company's own
11 securities or maintaining trustees or depositories with respect
12 to those securities;

13 (5) Selling through independent contractors;

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

18 (7) Creating or acquiring indebtedness, mortgages or
19 security interests in real or personal property;

20 (8) Securing or collecting debts or enforcing mortgages
21 or other security interests in property securing the debts, and
22 holding, protecting and maintaining property so acquired;

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

26 (10) Transacting business in interstate commerce;

27 (11) Applying for withholding tax on an employee
28 residing in the State of West Virginia who works for the
29 foreign limited liability company in another state; and

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

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

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

CHAPTER 31D. WEST VIRGINIA BUSINESS CORPORATION ACT.

ARTICLE 15. FOREIGN CORPORATIONS.

PART 1. CERTIFICATE OF AUTHORITY.

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

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

4 (b) The following activities, among others, do not
5 constitute conducting affairs within the meaning of
6 subsection (a) of this section:

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

8 (2) Holding meetings of the board of directors or
9 shareholders or carrying on other activities concerning
10 internal corporate affairs;

11 (3) Maintaining bank accounts;

12 (4) Selling through independent contractors;

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

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

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

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

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

28 (10) Conducting affairs in interstate commerce;

- 29 (11) Granting funds or other gifts;
- 30 (12) Distributing information to its shareholders or
31 members;
- 32 (13) Effecting sales through independent contractors;
- 33 (14) The acquisition by purchase of lands secured by
34 mortgage or deeds;
- 35 (15) Physical inspection and appraisal of property in
36 West Virginia as security for deeds of trust, or mortgages and
37 negotiations for the purchase of loans secured by property in
38 West Virginia;
- 39 (16) The management, rental, maintenance and sale or the
40 operating, maintaining, renting or otherwise dealing with
41 selling or disposing of property acquired under foreclosure
42 sale or by agreement in lieu of foreclosure sale;
- 43 (17) Applying for withholding tax on an employee
44 residing in the State of West Virginia who works for the
45 foreign corporation in another state; and
- 46 (18) Holding all, or a portion thereof, of the outstanding
47 stock of another corporation authorized to transact business
48 in the State of West Virginia. *Provided*, That the foreign
49 corporation does not produce goods, services or otherwise
50 conduct business in the State of West Virginia.
- 51 (c) The list of activities in subsection (b) of this section
52 is not exhaustive.
- 53 (d) A foreign corporation is deemed to be transacting
54 business in this state if:

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

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

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

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

CHAPTER 31E. WEST VIRGINIA NONPROFIT CORPORATION ACT.

ARTICLE 14. FOREIGN CORPORATIONS.

PART 1. CERTIFICATE OF AUTHORITY.

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

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

4 (b) The following activities, among others, do not
5 constitute conducting affairs within the meaning of
6 subsection (a) of this section:

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

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

11 (3) Maintaining bank accounts;

12 (4) Selling through independent contractors;

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

17 (6) Creating or acquiring indebtedness, mortgages, and
18 security interests in real or personal property: *Provided*, That
19 this exemption does not include debts collected by collection
20 agencies as defined in subdivision (b), section two, article
21 sixteen, chapter forty-seven of this code;

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

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

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

28 (10) Conducting affairs in interstate commerce;

29 (11) Granting funds or other gifts;

30 (12) Distributing information to its shareholders or
31 members;

32 (13) Effecting sales through independent contractors;

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

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

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

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

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

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

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

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

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

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

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



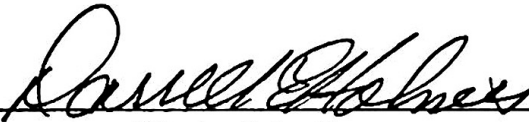
Chairman Senate Committee



Chairman House Committee

Originating in the House.

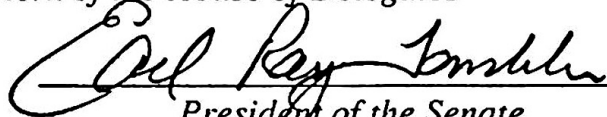
In effect ninety days from passage.



Clerk of the Senate



Clerk of the House of Delegates



President of the Senate



Speaker of the House of Delegates

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



Governor

PRESENTED TO THE
GOVERNOR

MAR 11 2008

Time 1:55 p