

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 570**

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

6 \_\_\_\_\_  
7 [Originating in the Committee on the Judiciary;  
8 reported February 20, 2014.]  
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11  
12 A BILL to amend and reenact §31B-10-1003 of the Code of West  
13 Virginia, 1931, as amended; to amend and reenact §31D-15-1501  
14 of said code; to amend and reenact §31E-14-1401 of said code;  
15 to amend said code by adding thereto a new section, designated  
16 §47-9-64; and to amend said code by adding thereto a new  
17 section, designated §47B-10-6, all relating to making  
18 exemptions from obtaining certificates of authority from the  
19 Secretary of State for certain foreign corporations, companies  
20 and partnerships the same as for corporations in this state;  
21 and making language consistent with state corporation language  
22 as to when the named foreign businesses are or are not  
23 considered to be doing business in this state.

24 *Be it enacted by the Legislature of West Virginia:*

1 That §31B-10-1003 of the Code of West Virginia, 1931, as  
2 amended, be amended and reenacted; that §31D-15-1501 of said code  
3 be amended and reenacted; that §31E-14-1401 of said code be amended  
4 and reenacted; that said code be amended by adding thereto a new  
5 section, designated §47-9-64; and that said code be amended by  
6 adding thereto a new section, designated §47B-10-6, all to read as  
7 follows:

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

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

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

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

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

18 (1) Maintaining, defending or settling an action or  
19 proceeding;

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

23 (3) Maintaining bank accounts;

24 ~~(4) Maintaining offices or agencies for the transfer, exchange~~

1 ~~and registration of the foreign company's own securities or~~  
2 ~~maintaining trustees or depositories with respect to those~~  
3 ~~securities;~~

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

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

8       ~~(7)~~ (6) Creating or acquiring indebtedness, mortgages or  
9 security interests in real or personal property;

10       ~~(8)~~ (7) Securing or collecting debts or enforcing mortgages or  
11 other security interests in property securing the debts: ~~and~~  
12 ~~holding, protecting and maintaining property so acquired; Provided,~~  
13 That this exemption does not include debts collected by collection  
14 agencies as defined in subdivision (b), section two, article  
15 sixteen, chapter forty-seven of this code;

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

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

20       ~~(10) Transacting business~~ Conducting affairs in interstate  
21 commerce;

22       (11) Granting funds or other gifts;

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

24       (13) Effecting sales through independent contractors;

1       (14) The acquisition by purchase of lands secured by mortgage  
2 or deeds;

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

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

11       ~~(11)~~ (17) Applying for withholding tax on an employee residing  
12 in the State of West Virginia who works for the foreign limited  
13 liability company in another state; and

14       ~~(12)~~ (18) Holding all, or a portion thereof, of the  
15 outstanding stock of another corporation authorized to transact  
16 business in the State of West Virginia: *Provided*, That the foreign  
17 limited liability company does not produce goods, services or  
18 otherwise conduct business in the State of West Virginia.

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

23       ~~(c) This section does not apply in determining the contacts or~~  
24 ~~activities that may subject a foreign limited liability company to~~

1 ~~service of process, taxation or regulation under any other law of~~  
2 ~~this state~~ The list of activities in subsection (b) of this section  
3 is not exhaustive.

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

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

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

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

16 (e) A foreign limited liability company's making of a  
17 contract, the committing of a manufacture or sale, offer of sale or  
18 supply of defective product as described in subsection (d) of this  
19 section is deemed to be the agreement of that foreign limited  
20 liability company that any notice or process served upon, or  
21 accepted by, the Secretary of State in a proceeding against that  
22 foreign limited liability company arising from, or growing out of,  
23 contract, tort or manufacture or sale, offer of sale or supply of  
24 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  
24 or carrying on other activities concerning internal corporate

- 1 affairs;
- 2 (3) Maintaining bank accounts;
- 3 (4) Selling through independent contractors;
- 4 (5) Soliciting or obtaining orders, whether by mail or through  
5 employees or agents or otherwise, if the orders require acceptance  
6 outside this state before they become contracts;
- 7 (6) Creating or acquiring indebtedness, mortgages and security  
8 interests in real or personal property;
- 9 (7) Securing or collecting debts or enforcing mortgages and  
10 security interests in property securing the debts: *Provided*, That  
11 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 (8) Owning, without more, real or personal property;
- 15 (9) Conducting an isolated transaction that is completed  
16 within thirty days and that is not one in the course of repeated  
17 transactions of a like nature;
- 18 (10) Conducting affairs in interstate commerce;
- 19 (11) Granting funds or other gifts;
- 20 (12) Distributing information to its shareholders or members;
- 21 (13) Effecting sales through independent contractors;
- 22 (14) The acquisition by purchase of lands secured by mortgage  
23 or deeds;
- 24 (15) Physical inspection and appraisal of property in West

1 Virginia as security for deeds of trust, or mortgages and  
2 negotiations for the purchase of loans secured by property in West  
3 Virginia;

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

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

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

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

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

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

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

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

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

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

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

3 **ARTICLE 14. FOREIGN CORPORATIONS.**

4 **§31E-14-1401. Authority to conduct affairs required.**

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

8 (b) The following activities, among others, do not constitute  
9 conducting affairs within the meaning of subsection (a) of this  
10 section:

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

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

14 (3) Maintaining bank accounts;

15 (4) Selling through independent contractors;

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

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

24 (7) Securing or collecting debts or enforcing mortgages and

1 security interests in property securing the debts;

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

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

6 (10) Conducting affairs in interstate commerce;

7 (11) Granting funds or other gifts;

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

9 (13) Effecting sales through independent contractors;

10 (14) The acquisition by purchase of lands secured by mortgage  
11 or deeds;

12 (15) Physical inspection and appraisal of property in West  
13 Virginia as security for deeds of trust, or mortgages and  
14 negotiations for the purchase of loans secured by property in West  
15 Virginia;

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

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

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

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

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

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

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

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

23 (f) A person may apply for an exemption by delivering an  
24 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 47. REGULATION OF TRADE.**

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

11 **§47-9-64. Activities not constituting transacting business.**

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

24 (5) Soliciting or obtaining orders, whether by mail or through

1 employees or agents or otherwise, if the orders require acceptance  
2 outside this state before they become contracts;

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

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

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

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

14 (10) Conducting affairs in interstate commerce;

15 (11) Granting funds or other gifts;

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

17 (13) Effecting sales through independent contractors;

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

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

24 (16) The management, rental, maintenance and sale or the

1 operating, maintaining, renting or otherwise dealing with selling  
2 or disposing of property acquired under foreclosure sale or by  
3 agreement in lieu of foreclosure sale;

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

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

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

14 (d) A foreign limited partnership is deemed to be transacting  
15 business in this state if:

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

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

20 (3) The limited partnership manufactures, sells, offers for  
21 sale or supplies any product in a defective condition and that  
22 product causes injury to any person or property within this state  
23 notwithstanding the fact that the limited partnership had no  
24 agents, servants or employees or contacts within this state at the

1 time of the injury.

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

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

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

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

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

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

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

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

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

24 **§47B-10-6. Activities not constituting transacting business.**



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

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

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

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

11 (3) Maintaining bank accounts;

12 (4) Selling through independent contractors;

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

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

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

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

24 (9) Conducting an isolated transaction that is completed

1 within thirty days and that is not one in the course of repeated  
2 transactions of a like nature;

3 (10) Conducting affairs in interstate commerce;

4 (11) Granting funds or other gifts;

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

6 (13) Effecting sales through independent contractors;

7 (14) The acquisition by purchase of lands secured by mortgage  
8 or deeds;

9 (15) Physical inspection and appraisal of property in West  
10 Virginia as security for deeds of trust, or mortgages and  
11 negotiations for the purchase of loans secured by property in West  
12 Virginia;

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

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

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

1 Virginia.

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

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

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

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

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

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

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(NOTE: The bill makes exemptions from obtaining certificates of authority from the Secretary of State for certain foreign corporations, companies and partnerships the same as for corporations in this state. Language is made consistent as to when foreign businesses are or are not doing business in this state.

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.)