

H. B. 4512

(By Delegates Poore, Manypenny, Sponaugle and
D. Poling)

(By Request of the Secretary of State)

[Introduced February 13, 2014; referred to the
Committee on Small Business, Entrepreneurship and
Economic Development then the Judiciary.]

A Bill to amend and reenact §31B-10-1003, of the Code of West
Virginia, 1931, as amended; to amend and reenact §31D-15-1501
of said code; to amend and reenact §31E-14-1401; to amend said
code by adding thereto a new section, designated §47-9-64; and
to amend said code by adding thereto a new section, designated
§47B-10-6, all relating to consistency regarding exemptions
for businesses; standardization of limited liability
companies, limited partnership, and limited liability
partnership in accordance to existing corporate exemptions.

Be it enacted by the Legislature of West Virginia:

That §31B-10-1003 of the Code of West Virginia, 1931, as
amended, be amended and reenacted; that §31D-15-1501 of said code
be amended and reenacted; that §31E-14-1401 of said code be amended
and reenacted; that said code be amended by adding thereto a new

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

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

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

6 **§31B-10-1003. Activities not constituting transacting business.**

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

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

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

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

19 (3) Maintaining bank accounts;

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

- 1 ~~(5)~~ (4) Selling through independent contractors;
- 2 ~~(6)~~ (5) Soliciting or obtaining orders, whether by mail or
3 through employees or agents or otherwise, if the orders require
4 acceptance outside this state before they become contracts;
- 5 ~~(7)~~ (6) Creating or acquiring indebtedness, mortgages or
6 security interests in real or personal property;
- 7 ~~(8)~~ (7) Securing or collecting debts or enforcing mortgages or
8 other security interests in property securing the debts: ~~and~~
9 ~~holding, protecting and maintaining property so acquired; Provided,~~
10 That this exemption does not include debts collected by collection
11 agencies as defined in subdivision(b), section two, article
12 sixteen, chapter forty-seven of this code;
- 13 ~~(9)~~ (8) Conducting an isolated transaction that is completed
14 within thirty days and is not one in the course of similar
15 transactions of a like ~~manner~~ nature;
- 16 ~~(10)~~ (9) ~~Transacting business~~ Conducting affairs in interstate
17 commerce;
- 18 (10) Granting funds or other gifts;
- 19 (11) Distributing information to its shareholders or members;
- 20 (12) Effecting sales through independent contractors;
- 21 (13) The acquisition by purchase of lands secured by mortgage
22 or deeds;
- 23 (14) 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 (15) 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 ~~(11)~~ (16) Applying for withholding tax on an employee residing
9 in the State of West Virginia who works for the foreign limited
10 liability company in another state; and

11 ~~(12)~~ (17) Holding all, or a portion thereof, of the
12 outstanding stock of another corporation authorized to transact
13 business in the State of West Virginia: *Provided*, That the foreign
14 limited liability company does not produce goods, services or
15 otherwise conduct business in the State of West Virginia.

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

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

1 is not exhaustive.

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

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

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

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

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

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

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

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

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

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

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

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

12 **ARTICLE 15. FOREIGN CORPORATIONS.**

13 **§31D-15-1501. Authority to transact business and jurisdiction**
14 **over foreign corporations.**

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

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

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

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

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

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

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

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

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

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

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

23 (2) The corporation commits a tort, in whole or in part, in

1 this state; or

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

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

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

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

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

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

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

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

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

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

6 **ARTICLE 14. FOREIGN CORPORATIONS.**

7 **§31E-14-1401. Authority to conduct affairs required.**

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

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

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

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

17 (3) Maintaining bank accounts;

18 (4) Selling through independent contractors;

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

22 (6) Creating or acquiring indebtedness, mortgages, and
23 security interests in real or personal property: *Provided, That*

1 this exemption does not include debts collected by collection
2 agencies as defined in subdivision (b), section two, article
3 sixteen, chapter forty-seven of this code;

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

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

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

10 (10) Conducting affairs in interstate commerce;

11 (11) Granting funds or other gifts;

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

13 (13) Effecting sales through independent contractors;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 **CHAPTER 47. REGULATION OF TRADE.**

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

17 **§47-9-64. Activities not constituting transacting business.**

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

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

- 1 (1) Maintaining, defending or settling any proceeding;
- 2 (2) Holding meetings of the board of directors or shareholders
3 or carrying on other activities concerning internal corporate
4 affairs;
- 5 (3) Maintaining bank accounts;
- 6 (4) Selling through independent contractors;
- 7 (5) Soliciting or obtaining orders, whether by mail or through
8 employees or agents or otherwise, if the orders require acceptance
9 outside this state before they become contracts;
- 10 (6) Creating or acquiring indebtedness, mortgages and security
11 interests in real or personal property;
- 12 (7) Securing or collecting debts or enforcing mortgages and
13 security interests in property securing the debts: *Provided, That*
14 this exemption does not include debts collected by collection
15 agencies as defined in subdivision (b), section two, article
16 sixteen, chapter forty-seven of this code;
- 17 (8) Owning, without more, real or personal property;
- 18 (9) Conducting an isolated transaction that is completed
19 within thirty days and that is not one in the course of repeated
20 transactions of a like nature;
- 21 (10) Conducting affairs in interstate commerce;
- 22 (11) Granting funds or other gifts;
- 23 (12) Distributing information to its shareholders or members;

1 (13) Effecting sales through independent contractors;

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (1) Name of the organization applying for exemption;
2 (2) The state the organization was organized in and date of
3 its formation in that state;
4 (3) The address of the principal office of the organization;
5 (4) The type of business to be conducted in West Virginia; and
6 (5) Any other information the Secretary of State deems
7 appropriate to determine if an exemption is to be granted.

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

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

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

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

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

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

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

21 (3) Maintaining bank accounts;

22 (4) Selling through independent contractors;

23 (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;

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

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

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

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

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

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

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

22 (3) The corporation manufactures, sells, offers for sale or
23 supplies any product in a defective condition and that product

1 causes injury to any person or property within this state
2 notwithstanding the fact that the corporation had no agents,
3 servants or employees or contacts within this state at the time of
4 the injury.

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

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

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

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

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

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

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

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

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

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

§47-9-64 and §47B-10-6 are new; therefore they have been completely underscored.