

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

Senate Bill 583

BY SENATOR MAYNARD

[Introduced February 07, 2022; referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §31B-2-203 of the Code of West Virginia, 1931, as amended; to
 2 amend and reenact §31B-10-1002 of said code; to amend and reenact §31D-2-202 of said
 3 code; to amend and reenact §31E-2-202 of said code; to amend and reenact §47-9-8 of
 4 said code; and to amend and reenact §59-1-2a of said code, all relating to permitting
 5 registered business organizations to voluntarily submit a public telephone number to the
 6 Secretary of State.

Be it enacted by the Legislature of West Virginia:

CHAPTER 31B. UNIFORM LIMITED LIABILITY COMPANY ACT.

ARTICLE 2. ORGANIZATION.

§31B-2-203. Articles of organization.

- 1 (a) Articles of organization of a limited liability company must set forth:
- 2 (1) The name of the company;
- 3 (2) The address of the initial designated office in West Virginia, if any, and the mailing
 4 address of the principal office;
- 5 (3) The name and address of the initial agent for service of process, if any;
- 6 (4) The name and address of each organizer and of each member having authority to
 7 execute instruments on behalf of the limited liability company;
- 8 (5) Whether the company is to be a term company and, if so, the term specified;
- 9 (6) Whether the company is to be manager-managed and, if so, the name and address of
 10 each initial manager;
- 11 (7) Whether one or more of the members of the company are to be liable for its debts and
 12 obligations under §31B-3-303(c) of this code;
- 13 (8) The purpose or purposes for which the limited liability company is organized; and
- 14 (9) An e-mail address where informational notices and reminders of annual filings may be
 15 sent, unless there is a technical inability to comply.

- 16 (b) Articles of organization of a limited liability company may set forth:
- 17 (1) A public telephone number, which will be made available to the public;
- 18 ~~(4)~~ (2) Provisions permitted to be set forth in an operating agreement; or
- 19 ~~(2)~~(3) Other matters not inconsistent with law.

20 (c) Articles of organization of a limited liability company may not vary the nonwaivable

21 provisions of §31B-1-103(b) of this code. As to all other matters, if any provision of an operating

22 agreement is inconsistent with the articles of organization:

- 23 (1) The operating agreement controls as to managers, members and members'
- 24 transferees; and
- 25 (2) The articles of organization control as to persons other than managers, members and
- 26 their transferees who reasonably rely on the articles to their detriment.

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 certificate of authority to transact

2 business in this state by delivering an application to the Secretary of State for filing, together with

3 the fee prescribed by §59-1-2 of this code.

4 The application shall set forth:

- 5 (1) The name of the foreign company or, if its name is unavailable for use in this state, a
- 6 name that satisfies the requirements of §31B-10-1005 of this code;
- 7 (2) The name of the state or country under whose law it is organized;
- 8 (3) The mailing address of its principal office;
- 9 (4) The name and address of each member having authority to execute instruments on
- 10 behalf of the limited liability company;
- 11 (5) The address of its initial designated office in this state, if any;
- 12 (6) The name and address of its initial agent for service of process in this state, if any;
- 13 (7) Whether the duration of the company is for a specified term and, if so, the period

14 specified;

15 (8) Whether the company is manager-managed and, if so, the name and address of each
16 initial manager;

17 (9) Whether the members of the company are to be liable for its debts and obligations
18 under a provision similar to §31B-3-303(c) of this code;

19 (10) The purpose or purposes for which the limited liability company is organized; ~~and~~

20 (11) An e-mail address where informational notices and reminders of annual filings may
21 be sent, unless there is a technical inability to comply; and

22 (12) A public telephone number for the limited liability company, unless one is not available
23 or desired to be made available to the public.

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

CHAPTER 31D. WEST VIRGINIA BUSINESS CORPORATION ACT.

ARTICLE 2. INCORPORATION.

§31D-2-202. Articles of incorporation.

1 (a) The articles of incorporation must set forth:

2 (1) A corporate name for the corporation that satisfies the requirements of §31D-4-401 of
3 this code;

4 (2) The number of shares the corporation is authorized to issue, the par value of each of
5 the shares or a statement that all shares are without par value;

6 (3) The street address of the corporation's initial registered office, if any, and the name of
7 its initial registered agent at that office, if any;

8 (4) The name and address of each incorporator;

- 9 (5) The purpose or purposes for which the corporation is organized;
- 10 (6) The mailing address of the corporation's principal office; and
- 11 (7) An e-mail address where informational notices and reminders of annual filings may be
12 sent, unless there is a technical inability to comply.
- 13 (b) The articles of incorporation may set forth:
- 14 (1) The names and addresses of the individuals who are to serve as the initial directors;
- 15 (2) A public telephone number for the corporation, unless one is not available or desired
16 to be made available to the public; and
- 17 ~~(2)~~ (3) Provisions not inconsistent with law regarding:
- 18 (A) Managing the business and regulating the affairs of the corporation;
- 19 (B) Defining, limiting and regulating the powers of the corporation, its board of directors
20 and shareholders; or
- 21 (C) The imposition of personal liability on shareholders for the debts of the corporation to
22 a specified extent and upon specified conditions;
- 23 ~~(3)~~ (4) Any provision that, under this chapter, is required or permitted to be set forth in the
24 bylaws;
- 25 ~~(4)~~ (5) A provision eliminating or limiting the personal liability of a director to the corporation
26 or its stockholders for monetary damages for breach of fiduciary duty as a director: Provided, That
27 a provision may not eliminate or limit the liability of a director: (A) For any breach of the director's
28 duty of loyalty to the corporation or its stockholders; (B) for acts or omissions not in good faith or
29 which involve intentional misconduct or a knowing violation of law; (C) under §31E-8-833 of this
30 code for unlawful distributions; or (D) for any transaction from which the director derived an
31 improper personal benefit. No provision may eliminate or limit the liability of a director for any act
32 or omission occurring prior to the date when that provision becomes effective; and
- 33 ~~(5)~~ (6) A provision permitting or making obligatory indemnification of a director for liability
34 as that term is defined in §31D-8-850 of this code to any person for any action taken, or any failure

35 to take any action, as a director except liability for: (A) Receipt of a financial benefit to which he
36 or she is not entitled; (B) an intentional infliction of harm on the corporation or its shareholders;
37 (C) a violation of §31D-8-833 of this code for unlawful distributions; or (D) an intentional violation
38 of criminal law.

39 (c) The articles of incorporation need not set forth any of the corporate powers enumerated
40 in this chapter.

CHAPTER 31E. WEST VIRGINIA NONPROFIT CORPORATION ACT.

ARTICLE 2. INCORPORATION.

§31E-2-202. Articles of incorporation.

1 (a) The articles of incorporation must set forth:

2 (1) A corporate name for the corporation that satisfies the requirements of §31E-4-401 of
3 this code;

4 (2) A statement that the corporation is nonprofit and that the corporation may not have or
5 issue shares of stock or make distributions;

6 (3) Whether the corporation is to have members and, if it is to have members, the
7 provisions required by §31E-6-601 of this code to be set forth in the certificate of incorporation;

8 (4) The mailing address of the corporation's initial registered office, if any, and the name
9 of its initial registered agent at that office, if any;

10 (5) The name and address of each incorporator;

11 (6) The mailing address of the corporation's principal office; and

12 (7) An e-mail address where informational notices and reminders of annual filings may be
13 sent, unless there is a technical inability to comply.

14 (b) The articles of incorporation may set forth:

15 (1) The names and addresses of the individuals who are to serve as the initial directors;

16 (2) A public telephone number for the corporation, unless one is not available or desired

17 to be made available to the public; and

18 ~~(2)~~ (3) Provisions not inconsistent with law regarding:

19 (A) Managing and regulating the affairs of the corporation; or

20 (B) Defining, limiting and regulating the powers of the corporation, its board of directors
21 and members or any class of members;

22 ~~(3)~~ (4) Any provision that under this chapter is required or permitted to be set forth in the
23 bylaws;

24 ~~(4)~~ (5) A provision eliminating or limiting the personal liability of a director to the corporation
25 or its members for monetary damages for any action taken, or any failure to take any action, as a
26 director or member, except liability for: (A) The amount of a financial benefit received by a director
27 or member to which he or she is not entitled; (B) an intentional infliction of harm on the corporation
28 or the members; (C) a violation of §31E-8-833 of this code regarding unlawful distributions; or (D)
29 an intentional violation of criminal law; and

30 ~~(5)~~ (6) A provision permitting or making obligatory indemnification of a director for liability
31 as that term is defined in §31E-8-850 of this code to any person for any action taken, or any failure
32 to take any action, as a director, except liability for: (A) Receipt of a financial benefit to which he
33 or she is not entitled; (B) an intentional infliction of harm on the corporation or its members; (C) a
34 violation of §31E-8-833 of this code for unlawful distributions; or (D) an intentional violation of
35 criminal law.

36 (c) The articles of incorporation need not set forth any of the corporate powers enumerated
37 in this chapter.

CHAPTER 47. REGULATION OF TRADE.

ARTICLE 9. UNIFORM LIMITED PARTNERSHIP ACT.

§47-9-8. Certificate and formation of limited partnership.

1 (a) In order to form a limited partnership, two or more persons must execute a certificate

2 of limited partnership. The certificate shall be filed in the office of the Secretary of State and set
3 forth:

4 (1) The name of the limited partnership;

5 (2) The general character of its business;

6 (3) The mailing address of the principal office and the name and address of the agent for
7 service of process, if any;

8 (4) The name and the business address of each general partner; ~~and~~

9 (5) A public telephone number for the limited partnership, unless one is not available or
10 desired to be made available to the public; and

11 ~~(5)~~ (6) Any other matters the general partners determine to include therein.

12 (b) A limited partnership is formed at the time of the filing of the certificate of limited
13 partnership in the office of the Secretary of State or at any later time specified in the certificate of
14 limited partnership if, in either case, there has been substantial compliance with the requirements
15 of this section.

CHAPTER 59. REGULATION OF TRADE

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-2a. Annual business fees to be paid to the Secretary of State; filing of annual reports; purchase of data.

1 (a) *Definitions.* — As used in this section:

2 (1) “Annual report fee” means the fee described in subsection (c) of this section that is to
3 be paid to the Secretary of State each year by corporations, limited partnerships, domestic limited
4 liability companies, and foreign limited liability companies. After June 30, 2008, any reference in
5 this code to a fee paid to the Secretary of State for services as a statutory attorney in fact shall
6 mean the annual report fee described in this section.

7 (2) “Business activity” means all activities engaged in or caused to be engaged in with the

8 object of gain or economic benefit, direct or indirect, but does not mean any of the activities of
9 foreign corporations enumerated in §31D-15-1501(b) of this code, except for the activity of
10 conducting affairs in interstate commerce when activity occurs in this state, nor does it mean any
11 of the activities of foreign limited liability companies enumerated in §31B-10-1003(a) of this code,
12 except for the activity of conducting affairs in interstate commerce when activity occurs in this
13 state.

14 (3) "Corporation" means a "domestic corporation", a "foreign corporation", or a "nonprofit
15 corporation".

16 (4) "Deliver or delivery" means any method of delivery used in conventional commercial
17 practice, including, but not limited to, delivery by hand, mail, commercial delivery, and electronic
18 transmission.

19 (5) "Domestic corporation" means a corporation for profit, which is not a foreign
20 corporation, incorporated under or subject to Chapter 31D of this code.

21 (6) "Domestic limited liability company" means a limited liability company, which is not a
22 foreign limited liability company, under or subject to chapter 31B of this code.

23 (7) "Foreign corporation" means a for-profit corporation incorporated under a law other
24 than the laws of this state.

25 (8) "Foreign limited liability company" means a limited liability company organized under
26 a law other than the laws of this state.

27 (9) "Limited partnership" means a partnership as defined by §47-9-1 of this code.

28 (10) "Nonprofit corporation" means a nonprofit corporation as defined by §31E-1-150 of
29 this code.

30 (11) "Registration fee" means the fee for the issuance of a certificate relating to the initial
31 registration of a corporation, limited partnership, domestic limited liability company or foreign
32 limited liability company described in §59-1-2(a)(2) of this code. The term "initial registration" also
33 means the date upon which the registration fee is paid.

34 (12) "Veteran" means any person who has served as an active member of the armed
35 forces of the United States, the National Guard, or a reserve component as described in 38 U. S.
36 C. §101. Notwithstanding any provision in this code to the contrary, a veteran must be honorably
37 discharged or under honorable conditions as described in 38 U. S. C. §101.

38 (13) "Veteran-owned business" or "Active-duty member-owned business" mean a
39 business that meets the following criteria:

40 (A) Is at least 51 percent unconditionally owned by one or more veterans, active-duty
41 members of any branch of the United States military or their respective spouses; or

42 (B) In the case of a publicly owned business, at least 51 percent of the stock is
43 unconditionally owned by one or more veterans, active-duty members of any branch of the United
44 States military or their respective spouses.

45 (b) Required payment of annual report fee and filing of annual report. — After June 30,
46 2008, no corporation, limited partnership, domestic limited liability company, or foreign limited
47 liability company may engage in any business activity in this state without paying the annual report
48 fee and filing the annual report as required by this section.

49 (c) *Annual report fee.* — After June 30, 2008, each corporation, limited partnership,
50 domestic limited liability company, and foreign limited liability company engaged in or authorized
51 to do business in this state shall pay an annual report fee of \$25 for the services of the Secretary
52 of State as attorney-in-fact for the corporation, limited partnership, domestic limited liability
53 company, or foreign limited liability company and for such other administrative services as may
54 be imposed by law upon the Secretary of State. The fee is due and payable each year after the
55 initial registration of the corporation, limited partnership, domestic limited liability company, or
56 foreign limited liability company with the annual report described in subsection (d) of this section
57 on or before the dates specified in subsection (e) of this section. The fee is due and payable each
58 year with the annual report from corporations, limited partnerships, domestic limited liability
59 companies, and foreign limited liability companies that paid the registration fee prior to July 1,

60 2008, on or before the dates specified in subsection (e) of this section. The annual report fees
61 received by the Secretary of State pursuant to this subsection shall be deposited by the Secretary
62 of State in the general administrative fees account established by §59-1-2 of this code.

63 (d) *Annual report.* —

64 (1) After June 30, 2008, each corporation, limited partnership, domestic limited liability
65 company, and foreign limited liability company engaged in or authorized to do business in this
66 state shall file an annual report. The report is due each year after the initial registration of the
67 corporation, limited partnership, domestic limited liability company, or foreign limited liability
68 company with the annual report fee described in subsection (c) of this section on or before the
69 dates specified in subsection (e) of this section. The report is due each year from corporations,
70 limited partnerships, domestic limited liability companies, and foreign limited liability companies
71 that paid the registration fee prior to July 1, 2008, on or before the dates specified in subsection
72 (e) of this section.

73 (2)(A) The annual report shall be filed with the Secretary of State on forms provided by
74 the Secretary of State for that purpose. The annual report shall, in the case of corporations,
75 contain: (i) The address of the corporation's principal office; (ii) the names and mailing addresses
76 of its officers and directors; (iii) the name and mailing address of the person on whom notice of
77 process may be served; (iv) the name and address of the corporation's parent corporation and of
78 each subsidiary of the corporation licensed to do business in this state; (v) in the case of limited
79 partnerships, domestic limited liability companies, and foreign limited liability companies, similar
80 information with respect to their principal or controlling interests as determined by the Secretary
81 of State or otherwise required by law to be reported to the Secretary of State; (vi) the county or
82 county code in which the principal office address or mailing address of the company is located;
83 (vii) business class code; (viii) a public telephone number unless one is not available or desired
84 to be made available to the public; and ~~(viii)~~ (iv) any other information the Secretary of State
85 considers appropriate.

86 (B) Notwithstanding any other provision of law to the contrary, the Secretary of State shall,
87 upon request of any person, disclose, with respect to corporations: (i) The address of the
88 corporation's principal office; (ii) the names and addresses of its officers and directors; (iii) the
89 name and mailing address of the person on whom notice of process may be served; (iv) the name
90 and address of each subsidiary of the corporation and the corporation's parent corporation; (v)
91 the county or county code in which the principal office address or mailing address of the company
92 is located; ~~and~~ (vi) a public telephone number unless one was not provided to the Secretary of
93 State; and ~~(vi)~~ (vii) the business class code. The Secretary of State shall provide similar
94 information with respect to information in its possession relating to limited partnerships, domestic
95 limited liability companies, and foreign limited liability companies, similar information with respect
96 to their principal or controlling interests.

97 (e) *Annual reports and fees due July 1.* — Each domestic and foreign corporation, limited
98 partnership, limited liability company, and foreign limited liability company shall file with the
99 Secretary of State the annual report and pay the annual report fee by July 1 of each year.

100 (f) *Deposit of fees.* — The annual report fees received by the Secretary of State pursuant
101 to this section shall be deposited by the Secretary of State in the general administrative fees
102 account established by §59-1-2 of this code.

103 (g)(1) *Duty to pay.* — It shall be the duty of each corporation, limited partnership, limited
104 liability company, and foreign limited liability company required to pay the annual report fees
105 imposed under this article to remit them with a properly completed annual report to the Secretary
106 of State, and if it fails to do so it shall be subject to the late fees prescribed in subsection (h) of
107 this section and dissolution or revocation, pursuant to this code: *Provided*, That before dissolution
108 or revocation for failure to pay fees may occur, the Secretary of State shall notify the entity by
109 certified mail, return receipt requested, of its failure to pay, all late fees or bad check fees
110 associated with the failure to pay, and the date upon which dissolution or revocation will occur if
111 all fees are not paid in full. The certified mail required by this subdivision shall be postmarked at

112 least 30 days before the dissolution or revocation date listed in the notice.

113 (2) *Bad check fee.* — If any corporation, limited partnership, limited liability company, or
114 foreign limited liability company submits payment by check or money order for the annual report
115 fee imposed under this article and the check or money order is rejected because there are
116 insufficient funds in the account or the account is closed, the Secretary of State shall assess a
117 bad check fee to the corporation, limited partnership, limited liability company, or foreign limited
118 liability company that is equivalent to the service charge paid by the Secretary of State due to the
119 rejected check or money order. The bad check fee assessed under this subdivision shall be
120 deposited into the account or accounts from which the Secretary of State paid the service charge.

121 (h) *Late fees.* —

122 (1) The following late fees shall be in addition to any other penalties and remedies
123 available elsewhere in this code:

124 (A) *Administrative late fee.* — The Secretary of State shall assess upon each corporation,
125 limited partnership, limited liability company, and foreign limited liability company delinquent in
126 the payment of an annual report fee or the filing of an annual report an administrative late fee in
127 the amount of \$50.

128 (B) *Administrative late fees for nonprofit corporations.* — The Secretary of State shall
129 assess each nonprofit corporation delinquent in the payment of an annual report fee or the filing
130 of an annual report an administrative late fee in the amount of \$25.

131 (2) The Secretary of State shall deposit the first \$25,000 of fees collected under this
132 subsection into the General Administrative Fees Account established in §59-1-2(h) of this code
133 and shall deposit any additional fees collected under this section into the General Revenue Fund
134 of the state.

135 (i) *Reports to Tax Commissioner; suspension, cancellation or withholding of business*
136 *registration certificate.* —

137 (1) The Secretary of State shall, within 20 days after the close of each month, make a

138 report to the Tax Commissioner for the preceding month, in which he or she shall set out the
139 name of every business entity to which he or she issued a certificate to conduct business in the
140 State of West Virginia during that month. The report shall set out the names and addresses of all
141 corporations, limited partnerships, limited liability companies, and foreign limited liability
142 companies to which he or she issued certificates of change of name or of change of location of
143 principal office, dissolution, withdrawal, or merger. If the Secretary of State fails to make the
144 report, it shall be the duty of the Tax Commissioner to report such failure to the Governor. A writ
145 of mandamus shall lie for correction of such failure.

146 (2) Notwithstanding any other provisions of this code to the contrary, upon receipt of notice
147 from the Secretary of State that a corporation, limited partnership, limited liability company, and
148 foreign limited liability company is more than 30 days delinquent in the payment of annual report
149 fees or in the filing of an annual report required by this section, the Tax Commissioner may
150 suspend, cancel or withhold a business registration certificate issued to or applied for by the
151 delinquent corporation, limited partnership, limited liability company, or foreign limited liability
152 company until the same is paid and filed in the manner provided for the suspension, cancellation
153 or withholding of business registration certificates for other reasons under §11-12-1 *et seq.* of this
154 code.

155 (j) *Purchase of data.* — The Secretary of State will provide electronically, for purchase,
156 any data maintained in the Secretary of State's Business Organizations Database. For the
157 electronic purchase of the entire Business Organizations Database, the cost is \$12,000. For the
158 purchase of the monthly updates of the Business Organizations Database, the cost is \$1,000 per
159 month. The fees received by the Secretary of State pursuant to this subsection shall be deposited
160 by the Secretary of State in the general administrative fees account established by §59-1-2 of this
161 code.

162 (k) The Secretary of State is authorized to collect the service fee per transaction, if any,
163 charged for an online service from any customer who purchases data or conducts transactions

164 through an online service.

165 (l) *Rules.* — The Secretary of State may propose rules for legislative approval, in
166 accordance with the provisions of §29A-3-1 *et seq.* of this code, to implement this article.

167 (m) A veteran-owned business, as defined in subdivision (a)(13) of this section,
168 commenced on or after July 1, 2015, or an active-duty member-owned business, as defined in
169 subdivision (a)(13) of this section, commenced on or after July 1, 2021, is exempt from paying
170 the annual report fee, required by this section, for the first four years after its initial
171 registration: *Provided*, That a veteran-owned business or an active-duty member-owned business
172 is not exempt from any filing deadlines or other fees required by this section.

NOTE: The purpose of this bill is to permit registered business organizations to voluntarily submit a public telephone number to the Secretary of State.

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