

Topic: Non Profit Corporation Act Question
 Question by: Penney Barker
 Jurisdiction: West Virginia
 Date: November 20, 2013

Jurisdiction	Question(s)
	<p>1. Has your State adopted the Model NonProfit Corporation Act? Specifically the section relating to "Effect of Certificate of Authority" - that states "This chapter does not authorize this State to regulate the organization or internal affairs of a foreign corporation authorized to conduct affairs in this State.</p> <p>2. If so, or if you have similar language, do you interpret that to mean that if there are any conflicting laws between the corporation's incorporation State and the laws in the State where the corporation is qualifying to do business that the laws of the State where they are incorporated in is what governs the corporation in both States?</p>
Manitoba	
Corporations Canada	
Alabama	
Alaska	
Arizona	<p>Arizona didn't adopt the Model Act as such, but we have a similar provision:</p> <p>10-11505. Effect of grant of authority</p> <p>A. A grant of authority to conduct affairs authorizes the foreign corporation to conduct affairs in this state subject to the right of the state to revoke the grant of authority as provided in chapters 24 through 40 of this title.</p> <p>B. A foreign corporation with a valid grant of authority has the same but no greater rights and enjoys the same but no greater privileges as and except as otherwise provided by chapters 24 through 40 of this title and is subject to the same duties, restrictions, penalties and liabilities now or later imposed on a domestic corporation of like character.</p> <p>C. Chapters 24 through 40 of this title do not authorize this state to regulate the organization or internal affairs of a foreign corporation authorized to conduct affairs in this state.</p> <p>We haven't had to interpret the provision you mention. I think it means procedural issues such as filing documents and obtaining authority to conduct affairs are governed by Arizona law and substantive issues such as board of director issues or members, etc. would be governed by the state of incorporation.</p>
Arkansas	
California	

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Colorado	
Connecticut	
Delaware	
District of Columbia	<p>In District of Columbia we have adopted the latest model laws as of 2010.</p> <p>We have a section about all foreign entities that reads as follows: (note sections “b” and especially “c”)</p> <p>See my response below to your questions.</p> <p>§ 29-105.01. Governing law</p> <p>(a) The law of the jurisdiction of formation of an entity shall govern the:</p> <ul style="list-style-type: none"> (1) Internal affairs of the entity; (2) Liability that a person has as an interest holder or governor for a debt, obligation, or other liability of the entity; (3) Liability of a series of a series limited liability company; and (4) Liability of a series of a statutory trust. <p>(b) A foreign entity shall not be precluded from registering to do business in the District because of any difference between the laws of the entity's jurisdiction of formation and the laws of the District.</p> <p>(c) Registration of a foreign entity to do business in the District shall not authorize it to engage in any activity or exercise any power that a domestic entity of the same type may not engage in or exercise in the District.</p>
Florida	
Georgia	

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Hawaii	<p>We are similar to Montana, we also have an "Effect of certificate of Authority."</p> <p>[§414D-275] Effect of certificate of authority. (a) A certificate of authority authorizes the foreign corporation to which it is issued to transact business in this State subject to the right of the State to revoke the certificate as provided in this chapter.</p> <p>(b) A foreign corporation with a valid certificate of authority has the same rights and enjoys the same privileges as and, except as otherwise provided by this chapter, is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, a domestic corporation of like character.</p> <p>(c) This chapter does not authorize this State to regulate the organization or internal affairs of a foreign corporation authorized to transact business in this State. [L 2001, c 105, pt of §1]</p> <p>A registered foreign nonprofit corporation would comply with the filing requirements of this chapter such as name change, agent change, withdrawal, annual reports, but, we do not regulate the organization or its internal affairs.</p>
Idaho	
Illinois	
Indiana	Indiana has not adopted this act.
Iowa	
Kansas	
Kentucky	
Louisiana	Louisiana has not adopted this act.
Maine	
Maryland	
Massachusetts	
Michigan	
Minnesota	Minnesota has not adopted the Model Non-Profit Corporation Act.
Mississippi	

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Missouri	Missouri has not adopted the Model Non-Profit Act.
Montana	<p>Montana code for foreign corporations does include "Effect of Certificate of Authority":</p> <p>35-2-824. Effect of certificate of authority. (3) This chapter does not authorize this state to regulate the organization or internal affairs of a foreign corporation authorized to transact business in this state.</p> <p>We do require when a foreign corporation qualifies for a Certificate of Authority that they provide a current Certificate of Existence:</p> <p>(2) The foreign corporation shall deliver with the completed application a certificate of existence or a similar document authenticated by the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated.</p> <p>We use this to determine that the corporation is in compliance with the laws of its state of jurisdiction. If they are operating within the laws of their state of incorporation, we accept that and do not have requirements beyond what that state requires.</p>
Nebraska	
Nevada	Nor has Nevada.
New Hampshire	
New Jersey	
New Mexico	
New York	
North Carolina	
North Dakota	North Dakota has not adopted this Act.
Ohio	Ohio has not adopted this act.

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Oklahoma	
Oregon	<p>Oregon is similar to Virginia.</p> <p>We have the Model act and the Effect of Authority statement you refer to. Similarly to Virginia, a prior paragraph of that section states, " A foreign corporation authorized to transact business in this state has the same but no greater rights and enjoys the same but no greater privileges as, and except as otherwise provided by this chapter is subject to the same duties, restrictions, penalties and liabilities now or later imposed on, a domestic corporation of like character."</p> <p>Like Chuck, I believe the paragraph about not authorized to regulate the organization is just saying that getting authority to do business doesn't take away a business's election of state corporate law it wants to be domiciled under. Anything else would be a nightmare for a company in multiple jurisdictions. However, the law I cited above speaks to your question 2 about what takes place if there is a conflict: you can go as far as the law allows in Oregon, but no farther, IMHO.</p> <p>For example, if the purpose of the corporation in the domicile state was "any lawful activity" and the state they are a foreign in was for "nonprofit activities only," I would think the corporation could not conduct profitable activities in that foreign state. Regardless, I don't think this is an issue the registry office should be involved with. So long as the foreign qualifies for authority, that's what you do. When it no longer meets those qualifications, you revoke the authority. Let others worry about whether the corporation is behaving properly.</p>
Pennsylvania	
Rhode Island	<p>Rhode Island has not adopted the Model Non-profit Corporation Act; however, we do have similar statutory language to the clause you provided. I've attached a copy of our corresponding section of the Rhode Island General Laws.</p>
South Carolina	
South Dakota	<p>South Dakota has not adopted this act.</p>
Tennessee	

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Texas	<p>Texas has not adopted the Model NonProfit Corporation Act.</p> <p>However, the Texas Business Organizations Code contains provisions (Sections 1.102 through 1.105) that state that the law of the jurisdiction of formation governs the formation, internal affairs, and liability of an owner, member, or managerial official of a foreign entity.</p> <p>For example, Texas law requires a Texas nonprofit corporation that is managed by a board of directors to have at least three individuals on the board of directors. However, when reviewing an application for registration of a foreign nonprofit corporation, which requires the entity to list the names and addresses of its board of directors, we would not apply the same criteria.</p>
Utah	See additional comments below
Vermont	
Virginia	<p>We have not adopted the Model Act, but we do have the questioned provision in Section 13.1-923 of the Code of Virginia, which is in our Nonstock Corporation Act.</p> <p>I take the provision to mean that our laws regarding incorporation, amendments to the charter, meeting notices, the election and terms of directors, etc. are not applicable to foreign corporations that are registered in Virginia. That is, a foreign corporation would not need to amend its articles of incorporation or document or conduct any of its internal activities in accordance with Virginia law as if it were a Virginia corporation, as a result of it being authorized to transact business in Virginia.</p> <p>However, the same Code section also provides that “[a] foreign corporation holding a valid certificate of authority shall have no greater rights and privileges than a domestic corporation. The certificate of authority shall not be deemed to authorize it to exercise any of its corporate powers or purposes that a foreign corporation is forbidden by law to exercise in the Commonwealth.”</p>
Washington	See additional comments below
West Virginia	
Wisconsin	

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Wyoming	

Additional comments:

WASHINGTON:

I've included the text from our nonprofit laws. <http://apps.leg.wa.gov/rcw/default.aspx?cite=24.03&full=true>

24.03.305

Admission of foreign corporation.

No foreign corporation shall have the right to conduct affairs in this state until it shall have procured a certificate of authority so to do from the secretary of state. No foreign corporation shall be entitled to procure a certificate of authority under this chapter to conduct in this state any affairs which a corporation organized under this chapter is not permitted to conduct. A foreign corporation shall not be denied a certificate of authority by reason of the fact that the laws of the state or country under which such corporation is organized governing its organization and internal affairs differ from the laws of this state, and nothing in this chapter contained shall be construed to authorize this state to regulate the organization or the internal affairs of such corporation.

Without excluding other activities which may not constitute conducting affairs in this state, a foreign corporation shall not be considered to be conducting affairs in this state, for the purposes of this chapter, by reason of carrying on in this state any one or more of the following activities:

- (1) Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes.
- (2) Holding meetings of its directors or members or carrying on other activities concerning its internal affairs.
- (3) Maintaining bank accounts.
- (4) Creating evidences of debt, mortgages or liens on real or personal property.
- (5) Securing or collecting debts due to it or enforcing any rights in property securing the same.
- (6) Effecting sales through independent contractors.
- (7) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where such orders require acceptance without this state before becoming binding contracts.
- (8) Creating as borrower or lender, or acquiring, indebtedness or mortgages or other security interests in real or personal property.

(9) Securing or collecting debts or enforcing any rights in property securing the same.

(10) Transacting any business in interstate commerce.

(11) Conducting an isolated transaction completed within a period of thirty days and not in the course of a number of repeated transactions of like nature.

(12) Operating an approved branch campus of a foreign degree-granting institution in compliance with chapter 28B.90 RCW and in accordance with RCW 24.03.307.

24.03.335

Effect of certificate of authority.

Upon the filing of the application for certificate of authority by the secretary of state, the corporation shall be authorized to conduct affairs in this state for those purposes set forth in its application, subject, however, to the right of this state to suspend or to revoke such authority as provided in this chapter

UTAH:

Utah has not adopted the act. But we do have similar language (emphasis added):

Our Non-profit statute

16-6a-1501. Authority to conduct affairs required.

(1) (a) A foreign nonprofit corporation may not conduct affairs in this state until its application for authority to conduct affairs is filed by the division.

(b) This part shall be applicable to foreign nonprofit corporations that conduct affairs governed by other statutes of this state only to the extent this part is not inconsistent with such other statutes.

(2) A foreign nonprofit corporation may not be considered to be conducting affairs in this state within the meaning of Subsection (1) by reason of carrying on in this state any one or more of the following activities:

(a) maintaining, defending, or settling in its own behalf any proceeding or dispute;

(b) holding meetings of its board of directors or members or carrying on other activities concerning internal corporate affairs;

(c) maintaining bank accounts;

(d) maintaining offices or agencies for the transfer, exchange, and registration of memberships or securities;

(e) maintaining trustees or depositaries with respect to the memberships or securities described in Subsection (2)(d);

(f) selling through independent contractors;

(g) soliciting or obtaining orders, if the orders require acceptance outside this state before they become contracts, whether by mail or through employees or agents or otherwise;

(h) creating, as borrower or lender, or acquiring indebtedness, mortgages, or other security interests in real or personal property;

(i) securing or collecting debts in its own behalf or enforcing mortgages or security interests in property securing the debts;

(j) owning, without more, real or personal property;

(k) conducting an isolated transaction that is:

(i) completed within 30 days; and

(ii) not one in the course of repeated transactions of a like nature;

(l) conducting affairs in interstate commerce;

(m) granting funds;

(n) distributing information to its members; or

(o) any other activity not considered to constitute conducting affairs in this state in the discretion of the division.

(3) The list of activities in Subsection (2) is not exhaustive.

(4) Nothing in this section shall limit or affect the right to subject a foreign nonprofit corporation that does not, or is not required to, have authority to conduct affairs in this state:

(a) to the jurisdiction of the courts of this state; or

(b) to serve upon any foreign nonprofit corporation any process, notice, or demand required or permitted by law to be served upon a nonprofit corporation pursuant to:

(i) any applicable provision of law; or

(ii) any applicable rules of civil procedure.

Full text of email:

Good afternoon all,

1. Has your State adopted the Model NonProfit Corporation Act? Specifically the section relating to "Effect of Certificate of Authority" - that states "This chapter does not authorize this State to regulate the organization or internal affairs of a foreign corporation authorized to conduct affairs in this State.

2. If so, or if you have similar language, do you interpret that to mean that if there are any conflicting laws between the corporation's incorporation State and the laws in the State where the corporation is qualifying to do business that the laws of the State where they are incorporated in is what governs the corporation in both States?

Any guideness is appreciated.

Penney Barker, Manager

Business and Licensing Division

West Virginia Secretary of State's Office