

FOREIGN BUSINESS CORPORATIONS



Courtesy of Secretary of State

The purpose of this guide is to assist foreign corporations which choose to do business in South Dakota. This guide is only for informative purposes and not a substitute for legal or accounting advice.

Foreign Business Corporations

No foreign corporation may do business in South Dakota without obtaining a Certificate of Authority from the secretary of state.
(See exceptions to this rule at the end of the brochure.)



To receive a Certificate of Authority, a foreign corporation must file an application with the Secretary of State containing the corporate name and address, date of incorporation, officers and directors names and addresses, the South Dakota registered agent and registered office address, and the period of its duration.



The application for Certificate of Authority to transact business in South Dakota must be accompanied by a Certificate of Good Standing from the Secretary of State of the state of its incorporation. The certificate must be dated within 90 days prior to the application date.



Some states refer to a Good Standing Certificate as a Certificate of Fact or Certificate of Existence. The application with the Certificate of Good Standing must be filed with the Secretary of State and accompanied by the filing fee.

Name Availability

Under SDCL 47-1A-1506.1, a corporate name should be distinguishable upon the records of the Secretary of State from another corporate name on file. The law does provide that a similar name may be used provided one or more words are added to make the name distinguishable from the other name on file.

The law requires the corporate name to include the word “corporation,” “incorporated,” “company,” “limited” or an abbreviation of one of these words. If the foreign corporate name does not include one of these words it may be added for use in South Dakota.

A foreign corporation may also use an assumed name to transact business in this state if its real name is unavailable. The corporation must deliver a resolution of its board of directors, certified by its secretary, to the Secretary of State adopting the assumed name.

A name availability check can be made on line on the Secretary of State's website at <http://sosenterprise.sd.gov/businessservices/> or by calling the Secretary of State's office. A telephone search is only a preliminary check and does not guarantee that the name will be available when the articles are submitted for filing.

A corporate name may be reserved for a period of 120 days by submitting an application for reservation of name and paying the \$25 filing fee. An application for reservation of name form is available on the website or from the Secretary of State's office.

Registered Agent

South Dakota law requires every corporation to maintain a registered agent. The registered agent must be an individual who has a physical and mailing address in South Dakota. A commercial registered agent is also acceptable and a list of commercial registered agents can be found at the Secretary of State's website. The registered agent will be designated to receive all legal service of process for that corporation.

The corporation's place of business does not have to be in South Dakota but the law requires that the registered agent's registered office be maintained in South Dakota. A post office box number can be added for mailing but it is necessary to list the full physical address including street address or rural route and box number.

In the event the registered agent and/or the registered address changes, the corporation must file a Statement of Change with the Secretary of State's office and pay the required \$10 filing fee.

Foreign Nonprofit Corporations

Foreign nonprofit corporations are required to file a Non-Stock Application for Certificate of Authority with the Secretary of State prior to doing any business in South Dakota.

The application for authority, amended authority, withdrawal, and filing of the Annual Report are also required of foreign nonprofit corporations.

Good Standing Certificate

An active corporation that has completed all of the required filings including the Annual Report can obtain a Certificate of Good Standing or Certificate of Existence verifying that it is on file with the Secretary of State's office.

Amended Certificate of Authority

A foreign corporation authorized to transact business in the state of South Dakota is required to file an amended certificate of authority if it changes its corporate name, the period of its duration, or the state or country of its incorporation.

The amended certificate of authority must be accompanied by a Certificate of Existence from the Secretary of State in the state in which the corporation is incorporated. The application must be filed with the South Dakota Secretary of State and accompanied by the appropriate filing fee.

Withdrawal

A foreign corporation authorized to transact business in South Dakota may voluntarily withdraw the authorization by filing an Application for Withdrawal containing the corporate name, that it is not transacting business in the state of South Dakota, and that it surrenders its authority to transact business in this state. The address of the corporation's principal address must be included for service of process.

The Application for Withdrawal must be filed with the Secretary of State accompanied by the appropriate fee.

Annual Reports

- Every foreign business corporation must file an Annual Report during the anniversary month of incorporation. The first annual report will be due one year after your qualification on the first of the month. The Secretary of State's office will mail a reminder to the registered agent on file prior to the filing month.
- The Annual Report must be filled each year whether or not the corporation is actively engaged in business. The Annual Report filing is extremely important, as failure to file the report allows the Secretary of State to administratively revoke the corporation.
- **EFFECTIVE JULY 1ST, 2016** - Annual Reports filed after the due date will be charged an additional \$50 Late Fee.
- **EFFECTIVE JULY 1ST, 2016** - Annual Reports filed via paper with the Secretary of State's office will be charged an additional \$15 Paper Processing Fee. This additional fee can be avoided by filing on the website at: <https://sosenterprise.sd.gov/businessservices/>.

Information Requests/Telephone Inquiries

All corporate filings are public record and information is available by telephone inquiry or letter request. There is no fee for information. Copies may be obtained for \$2.00 per page. There is an additional \$15.00 fee if certified copies are requested.

Filing Standards / Checklist

If filings are in proper order with the necessary information, they are usually processed within three business days, in the order of which they are received. Any corporate documents may be expedited with an additional \$50.00 fee. Some common problems that delay filings are:

- ✓ *Certificate of Good Standing not enclosed*
- ✓ *South Dakota registered agent and address not listed*
- ✓ *Failure to sign filings*
- ✓ *Incorrect fee or failure to include the filing fee*
- ✓ *The corporate name isn't available for use.*

Exceptions

SDCL 47-1A-1501 details what actions do not constitute doing business in South Dakota. If you have questions regarding the exceptions, or if you may fall under one of them, please contact an attorney or accountant. The Secretary of State does NOT provide legal advice.

The exceptions are as follows:

- *Maintaining, defending, or settling any proceeding*
- *Holding meetings of the board of directors or shareholders or carrying on other activities concerning internal corporate affairs*
- *Maintaining bank accounts*
- *Maintaining offices or agencies for the transfer, exchange, and registration of the corporation's own securities or maintaining trustees or depositories with respect to those securities*
- *Selling through independent contractors*
- *Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts*
- *Creating or acquiring indebtedness, mortgages, and security interests in real or personal property*
- *Securing or collecting debts or enforcing mortgages and security interests in property securing the debts*
- *Owning, without more, real or personal property*
- *Conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like nature*
- *Transacting business in interstate commerce.*

Notice: Formally organizing a business carries both great advantages and legal consequences. Care should be taken when deciding which business form to utilize and while operating the venture. The Business Services Division is available to help, but cannot offer legal advice. It is strongly suggested that an attorney, accountant, and or trusted business advisor be contacted for additional guidance.

Questions?



Call the Business Filings Office at
(605) 773-4845



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