WEST VIRGINIA CODE CHAPTER 31e ARTICLE 10

WV Legislature

PART 1. AMENDMENT OF ARTICLES OF INCORPORATION.

§31E-10-1001. Authority to amend.

(a) A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles of incorporation or to delete a provision not required in the articles of incorporation. Whether a provision is required or permitted in the articles of incorporation is determined as of the effective date of the amendment.

(b) A member of the corporation does not have a vested property right resulting from any provision in the articles of incorporation, including provisions relating to management, control, purpose or duration of the corporation.

WV Legislature

§31E-10-1002. Certain amendments by board of directors.

Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt one or more amendments to the corporation's articles of incorporation without member action:

(1) To extend the duration of the corporation if it was incorporated at a time when limited duration was required by law;(2) To delete the names and addresses of the initial directors;

(3) To delete the name and address of the initial registered agent or registered office, if any, if a statement of change is on file with the Secretary of State;

(4) To change the corporate name by substituting the word "corporation," "incorporated" or "company", or the abbreviation "corp.", "inc." or "co.", for a similar word or abbreviation in the name, or by adding, deleting or changing a geographical attribution to the name; or

(5) To make any other change expressly permitted by this chapter to be made without member action.

WV Legislature

§31E-10-1003. Amendment by board of directors and members.

(a) A corporation's board of directors may propose one or more amendments to the articles of incorporation for submission to those members who are entitled to vote on amendments, if any.

(b) For the amendment to be adopted: (1) The board of directors must approve the amendment; (2) the board of directors must recommend the amendment to the members entitled to vote on the amendment, if any, unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the members entitled to vote on the amendment with the submission of the amendment; and (3) the members entitled to vote on the amendment must approve the amendment, either before or after the actions required in subdivisions (1) and (2) of this subsection, as provided in subsection (e) of this section.

(c) The board of directors may condition its submission of the proposed amendment on any basis.

(d) The corporation shall notify each member entitled to vote on the amendment, if any, of the proposed meeting of members in accordance with section seven hundred five, article seven of this chapter. The notice of meeting must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed amendment and contain or be accompanied by a copy or summary of the amendment.

(e) Unless this chapter, the articles of incorporation or the board of directors acting pursuant to subsection (c) of this section requires a greater vote or a vote by class of members, the amendment to be adopted must be approved by: (1) If no class of members is entitled to vote separately on the amendment as a class, at least two thirds of the votes cast by the members entitled to vote on the amendment; and (2) if any class of members is entitled to vote on the amendment separately as a class, at least two thirds of the votes cast by the members of each class.

(f) If the corporation has no members, or no members entitled to vote, the proposed amendment must be adopted by vote of at least two thirds of the directors present at a meeting of the board of directors at which a quorum is present.

WV Legislature

§31E-10-1004. Amendment by incorporators.

If a corporation has no members entitled to vote on the proposed amendment to the articles of incorporation, the incorporators may, at any time and from time to time, before the corporation has directors amend the articles of incorporation by resolution adopted by a vote of at least two thirds of the incorporators.

WV Legislature

§31E-10-1005. Articles of amendment.

A corporation amending its articles of incorporation shall deliver to the Secretary of State for filing articles of amendment setting forth:

(1) The name of the corporation;

(2) The text of each amendment adopted;

(3) The date of each amendment's adoption;

(4) A statement that the amendment was approved by the board of directors as required under section one thousand three of this article or, if approval of members was not required, a statement to that effect and a statement that the amendment was approved by a sufficient vote of either: (A) The incorporators, if the vote was before the corporation had directors; or (B) the board of directors, in either case in accordance with section one thousand two or one thousand four of this article; and

(5) If approval by members was required: (A) The designation of each class of members entitled to vote separately on the amendment; and (B) the total number of votes cast for and against the amendment by each class of members entitled to vote separately on the amendment and a statement that the number cast for the amendment by each class was sufficient for approval by that class.

WV Legislature

§31E-10-1006. Restated articles of incorporation.

(a) A corporation's board of directors may restate its articles of incorporation at any time with or without member action.

(b) The restatement may include one or more amendments to the articles. If the restatement includes an amendment requiring member approval, it must be adopted as provided in section one thousand three of this article. If the restatement includes an amendment which does not require member approval, it must be adopted as provided in section one thousand two or one thousand four of this article.

(c) If the board of directors submits a restatement for member action, the corporation shall notify each member entitled to vote on the proposed amendment of the proposed members' meeting in accordance with section seven hundred five, article seven of this chapter. The notice of meeting must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed restatement and contain or be accompanied by a copy of the restatement that identifies any amendment or other change it would make in the articles.

(d) A corporation restating its articles of incorporation shall deliver to the Secretary of State for filing articles of restatement setting forth the name of the corporation and the text of the restated articles of incorporation together with a statement setting forth: (1) Whether the restatement contains an amendment to the articles of incorporation requiring member approval and, if it does not, that the board of directors, or the incorporators before the corporation had directors, adopted the restatement; or (2) if the restatement contains an amendment to the articles of incorporation requiring member approval, the information required by section one thousand five of this article.

(e) Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to it.

(f) The Secretary of State may certify a restated articles of incorporation, as the articles of incorporation currently in effect, without including the statement information required by subsection (d) of this section.

WV Legislature

§31E-10-1007. Amendment pursuant to reorganization.

(a) A corporation's articles of incorporation may be amended without action by the board of directors or the members to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under federal statute if the articles of incorporation after amendment contains only provisions required or permitted by section two hundred two, article two of this chapter.

(b) The individual or individuals designated by the court shall deliver to the Secretary of State for filing articles of amendment setting forth:

(1) The name of the corporation;

(2) The text of each amendment approved by the court;

(3) The date of the court's order or decree approving the articles of amendment;

(4) The title of the reorganization proceeding in which the order or decree was entered; and

(5) A statement that the court had jurisdiction of the proceeding under federal law.

(c) This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

WV Legislature

§31E-10-1008. Effect of amendment.

An amendment to the articles of incorporation does not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party or the existing rights of persons other than members of the corporation. An amendment changing a corporation's name does not abate a proceeding brought by or against the corporation in its former name.

WV Legislature

PART 2. AMENDMENT OF BYLAWS.

§31E-10-1020. Amendment by board of directors or members.

(a) A corporation's members entitled to vote may amend or repeal the corporation's bylaws.

(b) A corporation's board of directors may amend or repeal the corporation's bylaws, unless:

(1) The articles of incorporation or section one thousand twenty-one of this article reserve that power exclusively to the members in whole or part; or

(2) The members in amending, repealing, or adopting a bylaw expressly provide that the board of directors may not amend, repeal, or reinstate that bylaw.

WV Legislature

§31E-10-1021. Bylaw increasing quorum or voting requirement for directors.

(a) A bylaw that increases a quorum or voting requirement for the board of directors may be amended or repealed:

(1) If adopted by the members, only by the members, unless the bylaw otherwise provides; or

(2) If adopted by the board of directors, either by the members or by the board of directors.

(b) A bylaw adopted or amended by the members that increases a quorum or voting requirement for the board of directors may provide that it can be amended or repealed only by a specified vote of either the members or the board of directors.

(c) Action by the board of directors under subsection (a) of this section to amend or repeal a bylaw that changes the quorum or voting requirement for the board of directors must meet the same quorum requirement and be adopted by the same vote required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

WV Legislature

§31E-10-1022. Bylaw increasing quorum or voting requirement for members.

(a) If authorized by the articles of incorporation, the members may adopt or amend a bylaw that fixes a greater quorum or voting requirement for members or classes of members than is required by this chapter. The adoption or amendment of a bylaw that adds, changes or deletes a greater quorum requirement for members must meet the same quorum requirement and be adopted by the same vote and classes of members required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

(b) A bylaw that fixes a greater quorum or voting requirement for members under subsection (a) of this section may not be adopted, amended or repealed by the board of directors.

WV Legislature