

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1935

ENROLLED

HOUSE BILL No. 440

(By Mr. James)

PASSED March 9th 1935

In Effect from Passage

440

**ENROLLED**  
**House Bill No. 440**

(BY MR. JAMES)

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[Passed March 9, 1935; in effect ninety days from passage.]

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AN ACT to provide for the reduction of capital by corporations of  
this state by adding to article one, chapter thirty-one of the  
code of West Virginia, one thousand nine hundred thirty-one,  
a new section to be designated section thirteen (a).

*Be It Enacted by the Legislature of West Virginia:*

That there be added to article one, chapter thirty-one of the code  
of West Virginia, one thousand nine hundred thirty-one, a new  
section to be designated section thirteen-(a) and to read as follows:

Section 13-(a). Every corporation of this state heretofore or  
2 hereafter incorporated may reduce its capital at any time and  
3 in the manner herein provided, by a resolution or resolutions  
4 adopted by a majority vote of all of the shares of capital stock  
5 of the corporation entitled to vote, at a meeting of the stock-

6 holders called for that purpose by notice given as provided by  
7 the by-laws of the corporation, or in the absence of a provision  
8 in the by-laws for such notice, in the manner provided in this  
9 article. The president or a vice-president of the corporation,  
10 under his signature and the seal of the corporation, shall certify  
11 the resolution or resolutions and the fact and manner of the  
12 adoption of the same, and of the assenting of all stockholders,  
13 the consent of whom is required under this section for such re-  
14 duction of capital, to the secretary of state, who shall issue his  
15 certificate reciting such resolution, corporate action and facts  
16 certified in like manner as an original certificate of incorpora-  
17 tion and transmit the same to the corporation. Such certificate  
18 or a certified copy thereof shall be recorded and received in evi-  
19 dence as provided for the recordation and admission in evidence  
20 of an original certificate of incorporation or a certified copy of  
21 such original. Such certificate shall declare the reduction of  
22 capital as in effect from the date thereof. No such reduction,  
23 however, shall be made in the capital of the corporation unless  
24 the assets of the corporation remaining after such reduction are  
25 sufficient to pay any debts, the payment of which shall not have  
26 been otherwise provided for and the certification of said pres-

27 ident or vice-president shall so state.

28 Such reduction of the capital of the corporation may be ef-  
29 fected by retiring or reducing the outstanding shares of any  
30 class or by drawing the necessary number of the outstanding  
31 shares of any class by lot for retirement, or by the exchange by  
32 the holders of outstanding shares of any class of the shares of  
33 such class held by them for a decreased number of shares of  
34 stock of the same or of a different class of stock, or by the ex-  
35 change of shares having par value for shares having no par  
36 value, or of shares without par value for shares with par value,  
37 or by reducing (in conjunction with appropriate action under  
38 Section 11 of this article) the par value of the shares of any  
39 class of stock having par value, or where the amount of capital  
40 represented by shares of stock having par value exceeds such  
41 par value, by reducing the amount of capital represented by  
42 such shares by an amount not greater than such excess, or by  
43 reducing the amount of capital represented by shares of stock  
44 having no par value, or, in case the capital shall have been in-  
45 creased by the transfer thereto from surplus and the transfer  
46 shall not have been made in respect of any designated class or  
47 classes of stock, by retransferring to surplus all or any part of

48 the amount by which capital shall have been so increased, or by  
49 the purchase of shares for retirement, either pro rata from all  
50 holders of shares of that class of stock or by purchasing such  
51 shares from time to time in the open market or at private sale  
52 in both cases at not exceeding such price or prices as may be  
53 fixed or approved by the stockholders entitled to vote upon the  
54 reduction of capital to be effected in that manner, or by retiring  
55 shares owned by the corporation. If such reduction of capital  
56 of the corporation be effected by retiring shares, then, if the  
57 resolution or resolutions of stockholders above referred to shall  
58 so provide, an amount not exceeding that part of the capital of  
59 the corporation represented by such shares may be charged  
60 against or paid out of the capital of the corporation in respect  
61 of such shares.

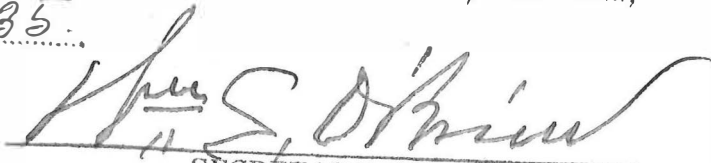
62 When any corporation shall decrease the amount of its capital  
63 as hereinbefore provided, the above-mentioned certificate of the  
64 secretary of state shall be published by the corporation for three  
65 weeks successively at least once in each week, in a newspaper  
66 published in the county in which the principal office of the cor-  
67 poration is located; the first publication to be made within  
68 fifteen days after the issuance of such certificate, and in default

69 thereof the directors of the corporation shall be jointly and  
70 severally liable to any creditors of the corporation who shall  
71 suffer loss by reason of the non-compliance with the provisions  
72 of this section and the stockholders shall be similarly liable up  
73 to the amount of such sums as they may respectively receive of  
74 the amount so reduced: *Provided*, That no such decrease of cap-  
75 ital shall release the liability of any stockholder, whose shares  
76 have not been fully paid, for debts of the corporation thereto-  
77 fore contracted.

78 If the principal office of any corporation mentioned in this  
79 section is not located within West Virginia, the notice provided  
80 by the foregoing paragraph may be published in any county  
81 in this state in which it has an office or does business; and if it  
82 neither has any office nor does any business in any county in  
83 this state, then such notice may be published in the county of  
84 this state wherein the seat of government is located.

I certify that the foregoing act,  
having been presented to the Governor for  
his approval, and not having been returned  
by him to the House of the Legislature in  
which it originated within the time pre-  
scribed by the constitution of the state, has  
become a law without his approval.

This the 15th day of March,  
1925.

  
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SECRETARY OF STATE

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*Clinton L. Howard*

Chairman Senate Committee

*Arnold M. Vickers*

Chairman House Committee

Originated in the

*House*

Takes effect

*from*

passage.

*Thurmond*

Clerk of the Senate

*Wm. S. Hall*

Clerk of the House of Delegates

*Ph. E. Hobbs*

President of the Senate

*Samuel R. Duff*

Speaker House of Delegates.

The within

this the

day of , 1935.

Governor.

Filed in the office of the Secretary of State  
of West Virginia.

**MAR 15 1935**  
Wm. S. O'BRIEN,  
Secretary of State