WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1935

ENROLLED

HOUSE BILL No. 440

(By Mr. James)

PASSED March 9th 1935

In Effect from Passage
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House Bill No. 440
(By Mr. James)

(Passed March 9, 1935; in effect ninety days from passage.)

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 hereafter incorporated may reduce its capital at any time and in the manner herein provided, by a resolution or resolutions adopted by a majority vote of all of the shares of capital stock of the corporation entitled to vote, at a meeting of the stock-
holders called for that purpose by notice given as provided by
the by-laws of the corporation, or in the absence of a provision
in the by-laws for such notice, in the manner provided in this
article. The president or a vice-president of the corporation,
under his signature and the seal of the corporation, shall certify
the resolution or resolutions and the fact and manner of the
adoption of the same, and of the assenting of all stockholders,
the consent of whom is required under this section for such re-
duction of capital, to the secretary of state, who shall issue his
certificate reciting such resolution, corporate action and facts
certified in like manner as an original certificate of incorpora-
tion and transmit the same to the corporation. Such certificate
or a certified copy thereof shall be recorded and received in evi-
dence as provided for the recordation and admission in evidence
of an original certificate of incorporation or a certified copy of
such original. Such certificate shall declare the reduction of
capital as in effect from the date thereof. No such reduction,
however, shall be made in the capital of the corporation unless
the assets of the corporation remaining after such reduction are
sufficient to pay any debts, the payment of which shall not have
been otherwise provided for and the certification of said pres-
Such reduction of the capital of the corporation may be effected by retiring or reducing the outstanding shares of any class or by drawing the necessary number of the outstanding shares of any class by lot for retirement, or by the exchange by the holders of outstanding shares of any class of the shares of such class held by them for a decreased number of shares of stock of the same or of a different class of stock, or by the exchange of shares having par value for shares having no par value, or of shares without par value for shares with par value, or by reducing (in conjunction with appropriate action under Section 11 of this article) the par value of the shares of any class of stock having par value, or where the amount of capital represented by shares of stock having par value exceeds such par value, by reducing the amount of capital represented by such shares by an amount not greater than such excess, or by reducing the amount of capital represented by shares of stock having no par value, or, in case the capital shall have been increased by the transfer thereto from surplus and the transfer shall not have been made in respect of any designated class or classes of stock, by retransferring to surplus all or any part of
the amount by which capital shall have been so increased, or by
the purchase of shares for retirement, either pro rata from all
holders of shares of that class of stock or by purchasing such
shares from time to time in the open market or at private sale
in both cases at not exceeding such price or prices as may be
fixed or approved by the stockholders entitled to vote upon the
reduction of capital to be effected in that manner, or by retiring
shares owned by the corporation. If such reduction of capital
of the corporation be effected by retiring shares, then, if the
resolution or resolutions of stockholders above referred to shall
so provide, an amount not exceeding that part of the capital of
the corporation represented by such shares may be charged
against or paid out of the capital of the corporation in respect
of such shares.

When any corporation shall decrease the amount of its capital
as hereinbefore provided, the above-mentioned certificate of the
secretary of state shall be published by the corporation for three
weeks successively at least once in each week, in a newspaper
published in the county in which the principal office of the cor-
poration is located; the first publication to be made within
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 prescribed by the constitution of the state, has
become a law without his approval.

This the 15th day of March
1985.

[Signature]
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.

Norman
Clerk of the Senate

W. W. Sloane
Clerk of the House of Delegates

P. E. Hodges
President of the Senate

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