

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1959

ENROLLED

HOUSE BILL No. 143

(By Mr. Knight & Mr. Bachmann)

PASSED Feb 17 1959

In Effect from Passage

Filed in Office of the Secretary of State  
of West Virginia MAR 2 1959  
JOE F. BURDETT  
SECRETARY OF STATE

**ENROLLED**

**House Bill No. 143**

(By MR. KNIGHT and MR. BACHMANN)

[Passed February 17, 1959; in effect from passage.]

AN ACT to amend chapters thirty-one and thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by amending and reenacting sections six, eleven, twelve, thirteen, twenty-one, twenty-two, thirty-seven, thirty-eight, thirty-nine, sixty-six, and sixty-seven, article one, chapter thirty-one thereof, and sections two and nine, article seven, chapter thirty-one thereof, and sections three and five, article five, chapter thirty-three thereof, relating to corporate stock and voting classes thereof and the rights of stockholders of corporations to vote for directors or managers.

*Be it enacted by the Legislature of West Virginia:*

That chapters thirty-one and thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by amending and reenacting sections six, eleven,

twelve, thirteen, twenty-one, twenty-two, thirty-seven, thirty-eight, thirty-nine, sixty-six, and sixty-seven, article one, chapter thirty-one thereof, and sections two and nine, article seven, chapter thirty-one thereof, and sections three and five, article five, chapter thirty-three thereof, to read as follows:

### **CHAPTER 31. CORPORATIONS**

#### **Article 1. Provisions Relating to Corporations Generally.**

Section 6. *Agreement of Incorporation.*—The persons  
2 desiring to form a corporation as provided in section four  
3 hereof, shall sign, acknowledge and file with the secretary  
4 of state an agreement, in the general form prescribed by  
5 the secretary of state, in which shall be set forth:

6 (a) The name of the corporation, which name shall  
7 contain one of the words “association,” “company,” “corp-  
8 oration,” “club,” “incorporated,” “society,” “union,” or  
9 “syndicate,” or one of the abbreviations, “co.” or “inc.”;  
10 but no name shall be assumed already in use by another  
11 existing corporation of this state, or by a foreign corpora-  
12 tion lawfully doing business in this state, or so similar  
13 thereto, in the opinion of the secretary of state, as to lead  
14 to confusion.

15 (b) The post-office address of its principal office or  
16 place of business.

17 (c) The object or objects for which the corporation is  
18 formed and the location of its chief works, if it proposes  
19 to have any.

20 (d) If the corporation is to be authorized to issue only  
21 one class of stock, the total number of shares of stock  
22 which the corporation shall have authority to issue and  
23 (1) the par value of each of such shares, or (2) a state-  
24 ment that all such shares are to be without par value; or,  
25 if the corporation is to be authorized to issue more than  
26 one class of stock, the total number of shares of all classes  
27 of stock which the corporation shall have authority to  
28 issue and (1) the number of the shares of each class there-  
29 of that are to have a par value and the par value of each  
30 share of each such class, and/or (2) the number of such  
31 shares that are to be without par value, and (3) a state-  
32 ment of all or any of the designations and the powers,  
33 preferences and rights, and the qualifications, limitations  
34 or restrictions thereof, which are permitted by the pro-  
35 visions of section twenty-two of this article in respect of

36 any class or classes of stock of the corporation and the  
37 fixing of which by the agreement of incorporation is de-  
38 sired, and an express grant of such authority as it may  
39 then be desired to grant to the board of directors to fix by  
40 resolution or resolutions any thereof that may be desired  
41 but which shall not be fixed by such agreement. In each  
42 case the agreement of incorporation shall also set forth  
43 the minimum amount of capital with which the corpora-  
44 tion will commence business, which shall not be less than  
45 one thousand dollars. The provisions of this subdivision  
46 (d) shall not apply to corporations which are not organ-  
47 ized for profit and which are not to have authority to  
48 issue capital stock. In the case of such corporations, the  
49 fact that they are not to have authority to issue capital  
50 stock shall be stated in the agreement of incorporation,  
51 and the conditions of membership shall be stated therein.

52 (e) The names and post-office addresses of the incorp-  
53 orators, and, if a stock corporation, the number of shares  
54 subscribed by each.

55 (f) Whether or not the corporation is to have perpetual

56 existence; if not, the time when its existence is to com-  
57 mence and the time when its existence is to cease.

58 (g) The agreement may also contain any provision  
59 which the incorporators may choose to insert for the  
60 management of the business and for the conduct of the  
61 affairs of the corporation, and any provisions creating, de-  
62 fining, limiting and regulating the powers of the corpora-  
63 tion, the directors and the stockholders, or any class of  
64 the stockholders, or, in the case of a corporation which is  
65 to have no capital stock, of the members of such corpora-  
66 tion: *Provided*, Such provisions are not contrary to the  
67 laws of this state.

68 (h) The agreement may also contain the following  
69 provision in haec verba, viz:

70 “Whenever a compromise or arrangement is proposed  
71 between this corporation and its creditors or any class of  
72 them and/or between this corporation and its stockhold-  
73 ers or any class of them, any court of equitable jurisdic-  
74 tion within the state of West Virginia may, on the appli-  
75 cation in a summary way of this corporation or of any  
76 creditor or stockholder thereof, or on the application of

77 trustees in dissolution or of any receiver or receivers  
78 appointed for this corporation under the laws of the state  
79 of West Virginia, order a meeting of the creditors or class  
80 of creditors, and/or of the stockholders or class of stock-  
81 holders of this corporation, as the case may be, to be sum-  
82 moned in such manner as the court directs. If a majority  
83 in number representing three-fourths in value of the  
84 creditors or class of creditors, and/or of the stockholders  
85 or class of stockholders of this corporation, as the case  
86 may be, agree to any compromise or arrangement and to  
87 any reorganization of this corporation as consequence of  
88 such compromise or arrangement, such compromise or  
89 arrangement and such reorganization shall, if sanctioned  
90 by the court to which such application has been made, be  
91 binding on all the creditors or class of creditors, and/or  
92 on all the stockholders or class of stockholders of this  
93 corporation, as the case may be, and also on this corpora-  
94 tion.”

95 (i) The agreement may also contain such provisions  
96 as may be desired limiting or denying to the stockholders  
97 the preemptive right to subscribe to any or all additional

98 issues of stock of the corporation of any or all classes.

99 (j) The agreement may also contain provisions requir-  
100 ing for any corporate action the vote of a larger propor-  
101 tion of the stock or any class thereof than is required by  
102 this chapter.

103 The agreement shall be acknowledged by the incorpora-  
104 tors and transmitted with the proper fees to, and shall be  
105 filed with, the secretary of state.

Sec. 11. *Amendment of Charter.*—Every corporation of  
2 this state heretofore or hereafter incorporated may, from  
3 time to time and in the manner herein provided, when and  
4 as desired, amend its charter by addition to its corporate  
5 powers and purposes, or diminution thereof, or both; or  
6 by substitution of other powers and purposes, in whole or  
7 in part, for those set forth in its charter; or by increasing  
8 or decreasing its authorized capital stock or classifying or  
9 reclassifying the same, by changing the number, par value,  
10 designations, preferences, or relative, participating, option-  
11 al, or other special rights of the shares, or the qualifica-  
12 tions, limitations or restrictions of such rights, or by  
13 changing shares with par value into shares without par

14 value or shares without par value into shares with par  
15 value either with or without increasing or decreasing the  
16 number of shares: or by changing its corporate name, or  
17 by making any other change or alteration in its charter  
18 that may be desired; and any or all such changes or altera-  
19 tions may be effected by one amendment: *Provided, That*  
20 every charter as so amended, changed or altered, shall  
21 contain only such provisions as it would be lawful and  
22 proper to have in an original agreement of incorporation  
23 made at the time of making such amendment.

24 Whenever issued shares having par value are changed  
25 into the same or a greater or less number of shares with-  
26 out par value, whether of the same or of a different class  
27 or classes of stock, the aggregate amount of the capital of  
28 the corporation represented by such shares without par  
29 value shall be the same as the aggregate amount of capital  
30 represented by the shares so changed; and whenever  
31 issued shares without par value are changed into other  
32 shares without par value to a greater or lesser number,  
33 whether of the same or of a different class or classes, the  
34 amount of capital represented by the new shares in the

35 aggregate shall be the same as the aggregate amount of  
36 capital represented by the shares so changed; and the  
37 amendment of the charter of the corporation effecting any  
38 such change shall set forth that the capital of the corpora-  
39 tion will not be reduced under or by reason of such amend-  
40 ment.

Sec. 12. *Same; How Made.*—Except as hereinafter in  
2 this section provided, a resolution or resolutions specific-  
3 ally stating the proposed amendment or amendments shall  
4 be adopted by a majority vote of all of the shares of  
5 capital stock of the company entitled to vote at a regular  
6 or special meeting of the stockholders, and notice of such  
7 meeting shall be given as provided by the by-laws of the  
8 corporation, or, in the absence of a provision in the by-  
9 laws for such notice, in the manner provided in this  
10 article. The notice to stockholders shall inform them of  
11 the amendments of the charter proposed to be made and  
12 that the stockholders at the meeting will vote upon the  
13 question or questions of making such amendments: *Pro-*  
14 *vided, however,* That if the corporation have only one class  
15 of stock, and any such amendment would increase or de-

16 crease the amount of the authorized capital stock, or would  
17 increase or decrease the par value thereof, then the affirm-  
18 ative vote of two-thirds of all the stockholders shall be  
19 necessary to the adoption thereof: *Provided further*, That  
20 if the corporation have more than one class of stock, and  
21 if any such proposed amendment would alter or change  
22 the preferences given to any one or more classes of stock,  
23 by the charter, or would increase or decrease the amount  
24 of the authorized stock of such class or classes of stock,  
25 or would increase or decrease the par value thereof, then  
26 the holders of the stock of each class of stock affected by  
27 the amendment shall be entitled to vote as a class upon  
28 such amendment, whether by the terms of the charter  
29 such class be entitled to vote or not, and the affirmative  
30 vote of two-thirds in interest of each such class of stock  
31 affected by the amendment shall be necessary to the adop-  
32 tion thereof, in addition to the affirmative vote of a ma-  
33 jority of every other class of stock entitled to vote there-  
34 on: *Provided further*, That the amount of the authorized  
35 stock of any such class or classes of stock if more than one  
36 class exists, or if only one class that class of stock, may be

37 increased or decreased by the affirmative vote of the hold-  
38 ers of a majority of the stock of the corporation entitled  
39 to vote, if so provided in the original charter or in any  
40 amendment thereto which created such stock, or class or  
41 classes of stock, or in any amendment thereto which was  
42 authorized by a resolution or resolutions adopted by the  
43 affirmative vote of the holders of two-thirds of such stock,  
44 or class or classes of stock: *And provided further*, That any  
45 amendment to the charter under a right reserved therein  
46 to make such amendment may be made in the manner  
47 specified in the charter and by a vote of the proportion  
48 of the shares of outstanding stock and of the class or  
49 classes of stock authorized to amend, as set out in the  
50 charter.

51 The president or a vice president of the corporation,  
52 under his signature and the seal of the corporation, shall  
53 certify the resolution or resolutions and the fact and the  
54 manner of the adoption of the same, and of the assenting  
55 of all stockholders, the consent of whom is required under  
56 this article to the making of such amendment, or amend-  
57 ments, to the secretary of state, who shall issue his certifi-

58 cate reciting such resolution, corporate action and facts  
59 certified in like manner and with like effect as an original  
60 certificate of incorporation and transmit the same to the  
61 corporation. Such certificate or a certified copy thereof  
62 shall be recorded and received in evidence as provided  
63 for the recordation and admission in evidence of an orig-  
64 inal certificate of incorporation or a certified copy of such  
65 original. Such certificate shall declare the changes or  
66 amendments as in effect from the date thereof.

Sec. 13. *Same; Increase or Reduction of Authorized*

2 *Stock.*—If an increase of the authorized capital stock of  
3 any corporation shall have been duly authorized as pro-  
4 vided in section eleven of this article, the amendment  
5 shall set forth:

6 (a) The amount of capital stock theretofore author-  
7 ized;

8 (b) The amount of additional stock authorized;

9 (c) The classes, if any, into which the additional stock  
10 is to be divided, with the preferences, voting powers, re-  
11 strictions and qualifications of the newly authorized  
12 shares; and

13 (d) The number and par value of the shares of the  
14 newly authorized stock, and, if more than one class, the  
15 number and par value of the shares of each class, and if  
16 any new or authorized stock is of nominal or without par  
17 value that fact and the number of shares of such stock  
18 shall be stated.

19 If a reduction of the authorized but unissued capital  
20 stock of any corporation shall have been duly authorized  
21 as provided in section eleven of this article, the amend-  
22 ment shall set forth:

23 (a) The amount of capital stock theretofore authorized  
24 and the number and par value of the shares, and if more  
25 than one class, the amounts of each class and the number  
26 and par value of the shares of each class;

27 (b) The amount of capital stock issued and, if more  
28 than one class, the amount of each class;

29 (c) The amount of the reduction of authorized but un-  
30 issued stock, specifying in which class or classes, if more  
31 than one class, the reduction is to be effected and the  
32 amount of the reduction of each class; and

33 (d) The number and par value of the shares of each

34 class as reduced and the number of shares of stock of  
35 nominal or without par value theretofore authorized and  
36 the number of such shares of stock as reduced.

Sec. 21. *Corporate Meetings; Time; Place; Notice; Quorum.*—The stockholders and/or directors of any corporation created under the laws of this state may hold all regular, annual and special meetings for the transaction of the lawful business of the corporation, including the first general meeting for purposes of organization, and keep the principal office of such corporation, either in or out of this state. Regular meetings of the stockholders shall be held at such time and place as the by-laws may prescribe, or if there be no such by-laws, then annually on the fourth Tuesday of January, at eleven o'clock in the forenoon, at the principal office of the company. Notice of regular and special meetings shall be given as required by the by-laws, and if none is prescribed therein, then by mailing to each stockholder, at least ten days prior to the date of meeting, a written notice thereof; or by publication once a week for two weeks in some newspaper published and of general circulation, in the county of the

19 principal office or place of business of the corporation.  
20 Special meetings may be held at such places and after  
21 such notice as the by-laws prescribe, or, if none, then at  
22 the same place and after the same notice as a regular  
23 meeting. Special meetings of the stockholders may be  
24 called by the board of directors, the president and secre-  
25 tary, or any number of stockholders owning in the aggre-  
26 gate at least one-tenth of the number of shares outstand-  
27 ing. The notice of special meetings shall state the business  
28 to be transacted, and no business other than that included  
29 in the notice or incidental thereto shall be transacted at  
30 such meeting.

31 Regular meetings of the board of directors may be held  
32 at such time and place as the by-laws may prescribe, or  
33 the board may from time to time designate by resolution.

34 Special meetings of the board of directors may be called  
35 by the president, vice president, any two directors of a  
36 stock or nonstock corporation, or by any two members of  
37 a nonstock corporation. Notice of such meetings shall be  
38 given as required by the by-laws, and if none is pre-  
39 scribed therein, then by mailing a written notice to each

40 director at his last known postoffice address at least five  
41 days before the time of the meeting.

42 A quorum of the stockholders shall consist of at least a  
43 majority of all of the shares of stock entitled to vote.  
44 Unless otherwise prescribed in the by-laws, or provided  
45 in the charter, a quorum of the directors shall consist of  
46 a majority of the board of directors. Any number less  
47 than a quorum present may adjourn any stockholders' or  
48 directors' meeting until a quorum is present: *Provided,*  
49 *however,* That a quorum of the stockholders or members  
50 of a cooperative association organized under the provi-  
51 sions of this chapter shall consist of at least fifteen per  
52 cent of such stockholders or members.

Sec. 22. *Classes of Stock; Certificates Filed and Re-*  
2 *corded in Certain Cases.*—Every corporation, other than  
3 a banking institution, shall have power to issue one or  
4 more classes of stock or one or more series of stock within  
5 any class thereof, any or all of which classes may be of  
6 stock with par value or stock without par value, with  
7 such voting powers, full or limited, or without voting  
8 powers and in such series and with such designations,

9 preferences and relative, participating, optional or other  
10 special rights, and qualifications, limitations or restric-  
11 tions thereof, as shall be stated and expressed in the char-  
12 ter, or in any amendment thereto, or in the resolution or  
13 resolutions providing for the issue of such stock adopted  
14 by the board of directors pursuant to authority expressly  
15 vested in it by the provisions of the charter or of any  
16 amendment thereto. The power to increase or decrease  
17 or otherwise adjust the capital stock as in this chapter  
18 elsewhere provided shall apply to all or any of such  
19 classes of stock. Any preferred or special stock may be  
20 made subject to redemption at such time or times and at  
21 such price or prices and may be issued in such series,  
22 with such designations, preferences and relative, partici-  
23 pating, optional or other special rights, and qualifications,  
24 limitations or restrictions thereof as shall be stated and  
25 expressed in the charter, or in any amendment thereto,  
26 or in the resolution or resolutions providing for the issue  
27 of such stock adopted by the board of directors as herein-  
28 above provided. The holders of preferred or special stock  
29 of any class or of any series thereof shall be entitled to

30 receive dividends at such rates, on such conditions and at  
31 such times as shall be stated and expressed in the charter,  
32 or in any amendment thereto, or in the resolution or res-  
33 olutions providing for the issue of such stock adopted by  
34 the board of directors as hereinabove provided, payable in  
35 preference to, or in such relation to, the dividends payable  
36 on any other class or classes of stock, and cumulative or  
37 noncumulative as shall be so stated and expressed. When  
38 dividends upon the preferred and special stocks, if any,  
39 to the extent of the preference to which such stocks are  
40 entitled, shall have been paid or declared and set apart  
41 for payment, a dividend on the remaining class or classes  
42 of stock may then be paid out of the remaining assets of  
43 the corporation available for dividends as elsewhere in  
44 this article provided. The holders of the preferred or  
45 special stock of any class or of any series thereof shall be  
46 entitled to such rights upon the dissolution of, or upon  
47 any distribution of the assets of, the corporation as shall  
48 be stated and expressed in the charter, or in any amend-  
49 ment thereto, or in the resolution or resolutions providing  
50 for the issue of such stock adopted by the board of direc-

51 tors as hereinabove provided; and any preferred or special  
52 stock of any class or of any series thereof may be made  
53 convertible into, or exchangeable for, shares of any other  
54 class or classes or of any other series of the same or any  
55 other class or classes of stock of the corporation at such  
56 price or prices or at such rates of exchange and with such  
57 adjustments as shall be stated and expressed or provided  
58 for in the charter, or in any amendment thereto, or in the  
59 resolution or resolutions providing for the issue of such  
60 stocks adopted by the board of directors as hereinabove  
61 provided. If any corporation shall be authorized to issue  
62 more than one class of stock or more than one series of  
63 any class, the designations, preferences and relative, par-  
64 ticipating, optional or other special rights of each class  
65 of stock or series thereof and the qualifications, limita-  
66 tions or restrictions of such preferences and/or rights  
67 shall be set forth in full or summarized on the face or back  
68 of the certificate which the corporation shall issue to rep-  
69 resent such class or series of stock. Before any corpora-  
70 tion shall issue any shares of stock of any class or of any  
71 series of any class of which the voting powers, designa-

72 tions, preferences and relative, participating, optional or  
73 other rights, if any, or the qualifications, limitations or  
74 restrictions thereof, if any, shall not have been set forth  
75 in the charter, or in any amendment thereto, but shall be  
76 provided for in a resolution or resolutions adopted by the  
77 board of directors pursuant to authority expressly vested  
78 in it by the provisions of the charter or an amendment  
79 thereto, a certificate setting forth a copy of such resolution  
80 or resolutions and the number of shares of stock of such  
81 class or series shall be made under the seal of the cor-  
82 poration and signed by the president or a vice president  
83 and by the secretary or an assistant secretary of the cor-  
84 poration and acknowledged by such president or vice  
85 president before an officer authorized by the laws of West  
86 Virginia to take acknowledgments of deeds, and shall be  
87 filed and a copy thereof shall be recorded in the same  
88 manner as agreements and certificates of incorporation are  
89 required to be filed and recorded by the provisions of sec-  
90 tions six and ten of this article. Unless otherwise provided  
91 in any such resolution or resolutions, the number of shares  
92 of stock of any such class or series so set forth in such

93 resolution or resolutions may be increased or decreased  
94 (but not below the number of shares thereof then out-  
95 standing) by a certificate likewise made, signed, filed and  
96 recorded setting forth a statement that a specified increase  
97 or decrease therein had been authorized and directed by  
98 a resolution or resolutions likewise adopted by the board  
99 of directors; and in case the number of such shares shall  
100 be so decreased, the number of shares so specified in such  
101 certificate shall resume the status which they had prior  
102 to the adoption of the first resolution or resolutions.

103 In any case in which stock having a par value shall  
104 have been issued together with stock without par value  
105 for a particular consideration, in determining the amount  
106 of the stock without par value issued therefor, the par  
107 value of such stock having a par value shall first be de-  
108 ducted from the amount of money or actual value of the  
109 consideration determined as aforesaid, and the excess  
110 thereof, if any, shall be taken to be the amount of stock  
111 without par value so issued.

Sec. 37. *Certificate for Stock; Lost or Destroyed Cer-*  
2 *tificate.*—Every holder of stock in a corporation shall be

3 entitled to have a certificate, signed by, or in the name of  
4 the corporation by, the president or a vice president and  
5 the treasurer or an assistant treasurer, or the secretary  
6 or an assistant secretary of such corporation, certifying  
7 the number of shares owned by him in such corporation:  
8 *Provided, however, That,* where such certificate is signed  
9 by a transfer agent or an assistant transfer agent or by  
10 a transfer clerk acting on behalf of such corporation  
11 and a registrar, the signature of any such president, vice  
12 president, treasurer, assistant treasurer, secretary or as-  
13 sistant secretary may be facsimile. In case any officer  
14 or officers who shall have signed, or whose facsimile sig-  
15 nature or signatures shall have been used on, any such  
16 certificate or certificates shall cease to be such officer  
17 or officers of such corporation, whether because of death,  
18 resignation or otherwise, before such certificate or cer-  
19 tificates shall have been delivered by such corporation,  
20 such certificate or certificates may nevertheless be  
21 adopted by such corporation and be issued and de-  
22 livered as though the person or persons who signed such  
23 certificate or certificates or whose fascimile signature

24 shall have been used thereon had not ceased to be such  
25 officer or officers of such corporation.

26 All certificates for stock which is given any preference,  
27 priority or preferred rights over any other shares as to  
28 dividends or otherwise, or which contains any limita-  
29 tion or restriction of voting or other rights, shall con-  
30 tain an accurate statement of all such preferences, priori-  
31 ties or preferred rights, restrictions and limitations. No  
32 certificate for any share of stock shall be issued or de-  
33 livered to the stockholder until his subscription or sale  
34 price for such share is paid in full.

35 A certificate may be issued in lieu of a certificate lost  
36 or destroyed upon such terms and conditions as may be  
37 prescribed by the by-laws of the corporation, upon com-  
38 pliance with such terms and conditions by the person  
39 who appears by the books of the corporation to be the  
40 owner of the lost or destroyed certificate; and the owner  
41 may require the officers of the corporation to issue a  
42 certificate in the place and stead of one lost or destroyed  
43 upon the following conditions: (a) He shall file with  
44 the officers of the corporation, first, an affidavit setting

45 forth the time, place and circumstances of the loss to the  
46 best of his knowledge and belief; second, proof of his  
47 having advertised the loss in a newspaper of general  
48 circulation published near the principal office of the  
49 corporation, once a week for two weeks; (b) he shall  
50 execute and deliver to the corporation a bond with good  
51 security in a penalty of at least the value of the shares  
52 of stock represented by the lost or destroyed certificate,  
53 conditioned to indemnify the corporation and all per-  
54 sons whose rights may be affected by the issuance of  
55 the new certificate against any loss in consequence of  
56 the new certificate being issued: *Provided, however,*  
57 That a new certificate may be issued in lieu of the one  
58 lost, in the discretion of the board of directors, without  
59 requiring the publication of the above notice or the giv-  
60 ing of a bond.

61 Whenever a certificate for shares of the capital stock  
62 of a corporation of this state which has heretofore been  
63 or may hereafter be issued to a person as agent or  
64 trustee, and as to which the stock ledger of such cor-  
65 poration does not disclose the principal or cestui que

66 trust, is lost or destroyed, and no person, except the  
67 administrator of the person to whom such certificate was  
68 issued as agent or trustee, has made claim to it against  
69 the corporation for more than twenty-five years, and  
70 such corporation has been a going concern for more  
71 than ten years during such period of twenty-five years,  
72 and has declared five or more dividends upon its capital  
73 stock during the last twenty-five years, and such divi-  
74 dends declared upon the shares of stock alleged to be lost  
75 or destroyed have not been paid to any person, and such  
76 agent or trustee, the holder of such certificate, is dead,  
77 then, and in such case, the administrator of the person  
78 to whom the alleged lost or destroyed certificate was  
79 issued as agent or trustee aforesaid, and who is still  
80 the owner of record of such certificate, shall, after ten  
81 days' written notice to such corporation demanding the  
82 issuance of a new certificate of stock to him as such ad-  
83 ministrator, be entitled to receive, in his name as ad-  
84 ministrator, such new certificate in place of the one  
85 alleged to be lost or destroyed, and such administrator  
86 shall be entitled to receive all dividends that may have

87 been declared upon such certificate or number of shares  
88 of stock alleged to be lost or destroyed and remaining  
89 unpaid, under and upon the following conditions: (a)  
90 If such administrator of such holder of record as agent  
91 or trustee of such certificate of stock has given the afore-  
92 said ten days' notice in writing to the corporation, he  
93 shall cause to be advertised in a newspaper of general  
94 circulation published in the county wherein he was  
95 granted his letters of administration, once a week for  
96 four successive weeks, the fact that he gave to such cor-  
97 poration the required ten days' notice in writing; that  
98 more than twenty-five years prior thereto a certificate  
99 for the number of shares of the capital stock of such  
100 corporation was issued to his intestate as agent or trustee;  
101 that it is unknown to him who such principal or cestui  
102 que trust may be; that no person except the adminis-  
103 trator of such agent or trustee has made claim to such  
104 certificate for more than twenty-five years; that such  
105 certificate has been lost or destroyed; that such stock  
106 represented by the certificate lost or destroyed and all  
107 dividends payable in respect thereto are claimed by such

108 administrator for the purpose of distributing and ac-  
109 counting for the same to the person or persons entitled  
110 thereto; that at least two weeks after the last publica-  
111 tion thereof such administrator, unless such corporation  
112 issues and delivers unto him such new certificate in  
113 the place of the one lost or destroyed and pays over  
114 and delivers to him as such administrator all dividends  
115 payable in respect thereto, will institute suit for the  
116 same; and such notice shall warn any and all persons,  
117 except such administrator, to produce to such corporation,  
118 on or before the expiration of two weeks after the last  
119 publication thereof as aforesaid, a statement in writing  
120 under oath of such claimant or his administrator, of  
121 the origin, circumstances and grounds upon which his  
122 claim as principal or cestui que trust to such stock and  
123 dividends is asserted, as well as the reasons for his  
124 delay in asserting title thereto; (b) if within such period  
125 of time for producing such certificate to such corpora-  
126 tion such statement, satisfactory to such corporation, be  
127 not forthcoming, such corporation shall issue and de-  
128 liver to such administrator a new certificate of stock

129 in the place and stead of that alleged to be lost or des-  
130 troyed and also deliver and pay over to him all dividends  
131 payable in respect thereto.

132 Such issuance and delivery of a new certificate and  
133 the payment of such dividends by the corporation to  
134 such administrator shall relieve such corporation from  
135 any and all liability whatsoever to any person claiming  
136 in any capacity such shares of stock represented by the  
137 certificates lost or destroyed or such dividends in respect  
138 thereto.

139 The procedure provided in this section is cumulative  
140 and not exclusive, and nothing herein contained shall  
141 be taken or construed as limiting in any way the right  
142 of any party who claims to be entitled to a new certifi-  
143 cate of stock in the place of a lost or destroyed certifi-  
144 cate, or the accumulated dividends thereon, which was  
145 issued in the manner hereinbefore provided, to have his  
146 or its rights to such new certificate and dividends de-  
147 termined and adjudicated without regard to this section  
148 by resort to any court of law or equity having jurisdic-  
149 tion to determine and adjudicate such rights, before

150 the corporation shall have paid such dividends and is-  
151 sued a new certificate under the requirements of this  
152 section. The right to prosecute any suit pending at the  
153 time this article takes effect and growing out of the loss  
154 of a certificate of stock issued in the name of the trustee  
155 or agent shall not be impaired by anything herein con-  
156 tained.

Sec. 38. *Ownership of Capital Stock; Who May Vote;*

2 *Transfer Books.*—The person in whose name shares of  
3 stock stand on the books of the corporation shall be  
4 deemed the owner thereof so far as the corporation is  
5 concerned. The words “trustee,” “agent,” or other like  
6 term, after the name of a person in whose name stock  
7 stands on the books of the company, without other words  
8 disclosing a trust, beneficiary or principal or other fidu-  
9 ciary relationship, shall be deemed descriptive of the  
10 person and shall in no way restrict the right of such  
11 person to vote the shares of stock for any purpose. The  
12 personal representative of a deceased stockholder shall  
13 be entitled to vote the shares of stock of his decedent  
14 without having such shares transferred to him. The

15 pledgor shall have the sole right to vote shares of stock  
16 pledged for any purpose unless the agreement pledging  
17 such shares confers that right upon the pledgee or his  
18 or its agent, in which event the person so authorized  
19 shall have such voting rights. No voting right shall be  
20 given to any stock while owned by the corporation, nor  
21 shall any stock so held be entitled to any dividend.  
22 Shares of its own stock held by a corporation in any  
23 fiduciary capacity may be voted by it in any case in  
24 which such shares could be voted by the owner. Stock  
25 transfer books shall be kept by the corporation, or by  
26 one or more transfer agents appointed by it, in which  
27 the shares shall be transferred under such regulations as  
28 may be prescribed by the by-laws or board of directors.

Sec. 39. *Corporation May Purchase, Hold, Sell and*

2 *Transfer Its Own Stock; Not to be Voted While Held.—*

3 Every corporation organized under this chapter, or exist-  
4 ing under the laws of this state, shall have the power  
5 to purchase, hold, sell and transfer shares of its own  
6 capital stock: *Provided*, That no such corporation shall  
7 use its funds or property for the purchase of its own

8 shares of capital stock when such use would cause any  
9 impairment of the capital of the corporation: *Provided*  
10 *further*, That shares of its own capital stock belonging  
11 to the corporation shall not be voted upon, directly or  
12 indirectly: *And provided further*, That nothing in this  
13 section shall be construed as limiting the exercise of the  
14 rights given by the next succeeding section of this  
15 article. This section shall not apply to, or authorize the  
16 purchase of its shares by, any banking institution in  
17 this state.

Sec. 66. *Voting Rights; Cumulative Voting.*—In all  
2 elections of directors of corporations each stockholder  
3 shall have the right to cast one vote for each share of  
4 stock owned by him and entitled to a vote, and he may  
5 cast the same in person or by proxy, for as many persons  
6 as there are directors to be elected, or he may cumulate  
7 such votes and give one candidate as many votes as the  
8 number of directors to be elected multiplied by the  
9 number of his shares of stock shall equal; or he may  
10 distribute them on the same principle among as many  
11 candidates and in such manner as he shall desire, and the

12 directors shall not be elected in any other manner; and  
13 on any other question to be determined by a vote of shares  
14 at any meeting of stockholders each stockholder shall  
15 be entitled to one vote for each share of stock owned  
16 by him and entitled to a vote, and he may exercise this  
17 right in person or by proxy.

Sec. 67. *Same; Fractional Shares; Duration of Proxy;*  
2 *Death of Giver of Proxy.*—No voting rights shall attach  
3 to any fractional part of a share of stock, and no person  
4 shall vote on any proxy after three years from the date  
5 thereof unless the proxy specifically confers the right  
6 to vote for a longer period, and then only within the  
7 period specified. The acts of the holder of any proxy  
8 heretofore or hereafter done in good faith without fraud  
9 after the death of the stockholder and without knowledge  
10 on the part of the person exercising the proxy after such  
11 death shall not be invalidated because of the death of  
12 such stockholder.

#### **Article 7. Industrial Loan Companies.**

Section 2. *Incorporators; Name; Capital Stock.*—Any  
2 number of persons, not fewer than thirteen, citizens of

3 this state, may become an industrial loan company on  
4 the terms and conditions and subject to the liabilities  
5 prescribed by this article. The name of any corporation  
6 formed under this article may contain the words "in-  
7 dustrial loan company," but such name shall not be that  
8 of any other existing corporation of this state. The  
9 capital stock of any such corporation shall not be less than  
10 twenty-five thousand dollars, and shall consist of shares  
11 of common stock. The voting power and control of the  
12 corporation during its life shall be vested in the common  
13 stock only if more than one class of stock is to be issued.  
14 Such common stock, with which it will commence busi-  
15 ness, shall be paid in before such corporation shall be  
16 authorized to engage in business, except such business  
17 as is incidental and necessarily preliminary to its or-  
18 ganization.

Sec. 9. *Annual and Special Meeting of Stockholders;*  
2 *Voting; Proxy; Fiscal Year.*—The stockholders of each in-  
3 dustrial loan company shall meet annually in the month  
4 of January, a majority of the outstanding voting stock to  
5 constitute a quorum; and it shall be the duty of the sec-

6 retary to prepare and submit to the stockholders a clear  
7 and concise statement of the financial condition of the  
8 corporation as of the close of business on the first day of  
9 the month next preceding. At such meeting the stock-  
10 holders shall elect a board of directors of not less than  
11 five, a majority of which shall be bona fide residents of  
12 the state of West Virginia. Special meetings may be called  
13 by order of the board of directors or by request in writing  
14 of ten per centum of the stockholders.

15 In all elections of directors of the corporation each  
16 stockholder shall have the right to cast one vote for each  
17 share of stock owned by him and entitled to vote, and he  
18 may cast the same in person or by proxy, for as many  
19 persons as there are directors to be elected, or he may  
20 cumulate such votes and give one candidate as many votes  
21 as the number of directors to be elected multiplied by  
22 the number of his shares of stock shall equal; or he may  
23 distribute them on the same principle among as many  
24 candidates and in such manner as he may desire, and the  
25 directors shall not be elected in any other manner, and  
26 on any other question to be determined by a vote of shares

27 at any meeting of stockholders each stockholder shall be  
28 entitled to one vote for each share of stock owned by him  
29 and entitled to vote, and he may exercise this right in  
30 person or by proxy, but if by proxy, in no instance can  
31 it be voted in any meeting other than which it was first  
32 intended.

### CHAPTER 33. INSURANCE

#### Article 5. Organization and Procedures of Domestic Stock and Mutual Insurers.

Section 3. *Articles of Incorporation.*—In addition to the  
2 matters and things required generally in articles of in-  
3 corporation, those of a domestic stock or mutual insurer  
4 shall state:

- 5 (a) the name of the corporation;
- 6 (b) the duration of its existence, which may be per-  
7 petual;
- 8 (c) the kinds of insurance the corporation is formed  
9 to transact according to the definitions thereof in this  
10 chapter;
- 11 (d) if a stock insurer, its authorized capital, the classes  
12 and number of shares into which divided, the par value

13 of each such share, and the respective rights of each such  
14 class. Shares without par value shall not be authorized;

15 (e) if a mutual insurer, the maximum contingent lia-  
16 bility of its members (other than as to nonassessable poli-  
17 cies) for payment of losses and expenses incurred, which  
18 liability shall be as stated in the articles of incorporation  
19 but not less than one nor more than six times the premium  
20 for the member's policy at the annual premium rate for a  
21 term of one year;

22 (f) the number of directors, not less than five nor more  
23 than fifteen, who shall conduct the affairs of the corpora-  
24 tion;

25 (g) the city or town in West Virginia in which is to be  
26 located the principal place of business, and states and  
27 countries in which business may be transacted;

28 (h) the limitations, if any, on the corporation's indebt-  
29 edness;

30 (i) if a stock insurer, the extent, if any, to which its  
31 stock shall be assessable;

32 (j) such other provisions, not inconsistent with law, as  
33 are deemed appropriate.

Sec. 5. *Amendment of Articles of Incorporation.*—

2 (a) A stock insurer may amend its articles of incor-  
3 poration in the same manner as other corporations, but  
4 no such amendment shall reduce authorized capital below  
5 the amount required by this chapter for the kinds of  
6 insurance thereafter to be transacted and except that no  
7 such amendment shall be filed with or accepted by the  
8 secretary of state unless approved in writing by the com-  
9 missioner.

10 (b) A mutual insurer may amend its articles of incor-  
11 poration by the affirmative vote of two-thirds of its mem-  
12 bers present in person or by proxy at a regular or special  
13 meeting of members of which notice in writing setting  
14 forth the proposed amendment was mailed to all members  
15 at least thirty days in advance, except that no such amend-  
16 ment shall reduce the surplus below the amount required  
17 by this chapter for the kinds of insurance thereafter to be  
18 transacted and except that no such amendment shall be  
19 filed with or accepted by the secretary of state unless ap-  
20 proved in writing by the commissioner.

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

*Wm Jasper*  
Chairman Senate Committee

*Eudora Andrews*  
Chairman House Committee

Originated in the House of Delegates.

Takes effect *from* passage.

*Howard Myers*  
Clerk of the Senate

*C. A. Blankenship*  
Clerk of the House of Delegates

*Reeph Bean*  
President of the Senate

*N. P. Pauley*  
Speaker House of Delegates

The within *approved* this the *28th*  
day of *February*, 1959.

*Wm. H. Underwood*  
Governor

