

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1965



ENROLLED

Committee Substitute For
HOUSE BILL No. 454

(By Mr. Speaker, Mr. White)



PASSED February 23, 1965

In Effect twenty days from Passage



FILED IN THE OFFICE OF
JOE F. BURDETT
SECRETARY OF STATE
THIS DATE 3-3-65

9597#

ENROLLED
COMMITTEE SUBSTITUTE
FOR
House Bill No. 656
(Originating in the Committee on the Judiciary.)

[Passed February 23, 1965; in effect ninety days from passage.]

AN ACT to amend and reenact section six, article one, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, specifying the information to be contained in an agreement of incorporation to be filed with the secretary of state and authorizing the reservation of a corporate name by the incorporators for a period of sixty days prior to the formal filing of an application for incorporation.

Be it enacted by the Legislature of West Virginia:

That section six, article one, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Article 1. Provisions Relating to Corporations Generally.

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

7 (a) The name of the corporation, which name shall
8 contain one of the words “association,” “company,” “cor-
9 poration,” “club,” “incorporated,” “society,” “union,” or
10 “syndicate,” or one of the abbreviations, “co.” or “inc.”;
11 but no name shall be assumed already in use by another
12 existing corporation of this state, or by a foreign corpo-
13 ration lawfully doing business in this state, or so similar
14 thereto, in the opinion of the secretary of state, as to lead
15 to confusion. The name desired by the incorporators
16 may be reserved for a period of sixty days prior to the
17 formal filing of an application for incorporation. In no
18 case shall the period of reservation exceed sixty days.

19 (b) The address, including the street name and street
20 number, if any, and the city, town or village, of its prin-

21 cipal office or place of business and the location of its
22 chief works, if any.

23 (c) The object or objects for which the corporation
24 is formed.

25 (d) If the corporation is to be authorized to issue only
26 one class of stock, the total number of shares of stock
27 which the corporation shall have authority to issue and

28 (1) the par value of each of such shares, or (2) a state-
29 ment that all such shares are to be without par value;

30 or, if the corporation is to be authorized to issue more
31 than one class of stock, the total number of shares of all

32 classes of stock which the corporation shall have au-
33 thority to issue and (1) the number of the shares of each

34 class thereof that are to have a par value and the par
35 value of each share of each such class, and/or (2) the

36 number of such shares that are to be without par value,
37 and (3) a statement of all or any of the designations and

38 the powers, preferences and rights, and the qualifica-
39 tions, limitations or restrictions thereof, which are per-

40 mitted by the provisions of section twenty-two of this
41 article in respect of any class or classes of stock of the

42 corporation and the fixing of which by the agreement
43 of incorporation is desired, and an express grant of such
44 authority as it may then be desired to grant to the board
45 of directors to fix by resolution or resolutions any thereof
46 that may be desired but which shall not be fixed by such
47 agreement. In each case the agreement of incorporation
48 shall also set forth the minimum amount of capital with
49 which the corporation will commence business, which
50 shall not be less than one thousand dollars. The provi-
51 sions of this subdivision (d) shall not apply to corpora-
52 tions which are not organized for profit and which are
53 not to have authority to issue capital stock. In the case
54 of such corporations, the fact that they are not to have
55 authority to issue capital stock shall be stated in the
56 agreement of incorporation, and the conditions of mem-
57 bership shall be stated therein.

58 (e) The full names and addresses, including street
59 and street numbers, if any, and the city, town or village,
60 of the incorporators, and, if a stock corporation, the num-
61 ber of shares subscribed by each.

62 (f) Whether or not the corporation is to have per-
63 petual existence. If not, the time when its existence is
64 to commence and the time its existence is to cease.

65 (g) The agreement may also contain any provision
66 which the incorporators may choose to insert for the
67 management of the business and for the conduct of the
68 affairs of the corporation, and any provisions creating,
69 defining, limiting and regulating the powers of the corpo-
70 ration, the directors and the stockholders, or any class
71 of the stockholders, or, in the case of a corporation which
72 is to have no capital stock, of the members of such cor-
73 poration: *Provided*, That such provisions are not con-
74 trary to the laws of this state.

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

77 "Whenever a compromise or arrangement is proposed
78 between this corporation and its creditors or any class of
79 them and/or between this corporation and its stockholders
80 or any class of them, any court of equitable jurisdiction
81 within the state of West Virginia may, on the applica-
82 tion in a summary way of this corporation or of any

83 creditor or stockholder thereof, or on the application of
84 trustees in dissolution or of any receiver or receivers ap-
85 pointed for this corporation under the laws of the state
86 of West Virginia, order a meeting of the creditors or
87 class of creditors, and/or of the stockholders or class of
88 stockholders of this corporation, as the case may be, to
89 be summoned in such manner as the court directs. If a
90 majority in number representing three fourths in value
91 of the creditors or class of creditors, and/or of the stock-
92 holders or class of stockholders of this corporation, as
93 the case may be, agree to any compromise or arrange-
94 ment and to any reorganization of this corporation as
95 consequence of such compromise or arrangement, such
96 compromise or arrangement and such reorganization
97 shall, if sanctioned by the court to which such applica-
98 tion has been made, be binding on all the creditors or
99 class of creditors, and/or on all the stockholders or class
100 of stockholders of this corporation, as the case may be,
101 and also on this corporation.”

102 (i) The agreement may also contain such provisions
103 as may be desired limiting or denying to the stockholders

104 the preemptive right to subscribe to any or all additional
105 issues of stock of the corporation of any or all classes.

106 (j) The agreement may also contain provisions re-
107 quiring for any corporate action the vote of a larger pro-
108 portion of the stock or any class thereof than is required
109 by this chapter.

110 The agreement of incorporation shall be acknowledged
111 by the incorporators before a notary public and trans-
112 mitted with the proper fees to, and shall be filed with,
113 the secretary of state.

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

O. Roy Parker

Chairman Senate Committee

James W. Doop

Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

Howard Keyes

Clerk of the Senate

A. Blankenship

Clerk of the House of Delegates

Samuel W. Garrison

President of the Senate

H. Raban White

Speaker House of Delegates

The within *approved* this the *2nd*
day of *March*, 1965.

Lucius C. Smith

Governor



Presented to the Governor's Office

Feb. 26, 1965

10:05 a.m.