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WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1975

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ENROLLED

HOUSE BILL No. 1338

Originating in the House Committee on
(By ~~Ar.~~ *the Judiciary*)

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PASSED March 8, 1975

In Effect July 1, 1975 Passage



ENROLLED

H. B. 1338

(Originating in the House Committee on the Judiciary)

[Passed March 8, 1975; in effect July 1, 1975.]

AN ACT to repeal sections one hundred fifty-nine and one hundred sixty, article one, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections three, six, eight, nine, fifteen, nineteen, twenty-seven, twenty-eight, thirty-six, forty-six, forty-eight, forty-nine, fifty-three, fifty-five, fifty-six, sixty, sixty-two, sixty-three, ninety, one hundred four, one hundred eight, one hundred nine, one hundred thirty-one, one hundred forty-four, one hundred forty-eight and one hundred forty-nine of said article one; to further amend said article one by adding thereto two new sections, designated sections fifty-six-a and fifty-six-b; and to amend and reenact sections seventy-seven, eighty, eighty-one and eighty-three, article twelve, chapter eleven of said code, all relating to corporations generally, including business and nonprofit corporations; relating to the application of the West Virginia corporation act; defining terms; relating to the general powers of any such corporation; permitting the indemnification of corporate officers, directors, employees and agents in certain cases; designating the secretary of state as the attorney in fact for all domestic corporations and for foreign corporations conducting affairs or doing or transacting business in this state; setting forth procedures for the service of notice and process upon the secretary of state and the acceptance of such service by him as attorney in fact; defining acts which constitute the conducting of affairs or the doing or transacting of business by foreign corporations notwithstanding

failure to be authorized so to do; relating to notice required of meetings of shareholders or members; relating to articles of incorporation, contents thereof, filing with secretary of state and other requirements with respect thereto; relating to issuance of certificate of incorporation and recordation thereof; relating to articles of merger or consolidation and the filing thereof with secretary of state; relating to issuance of certificate of merger or consolidation, recordation thereof and admission in evidence of such certificate and the effect thereof; relating to order of involuntary dissolution and filing and recordation thereof; relating to survival of certain remedies and corporate powers following dissolution and effects of such dissolution; relating to admission and qualification of foreign corporations to conduct affairs or do or transact business in this state; relating to activities of foreign corporations permitted to be done in this state without certificate of authority; relating to application by foreign corporation for certificate of authority and contents thereof; prohibiting certificate of authority to transact business to churches and religious denominations which are foreign corporations; relating to effect of certificate of authority; setting forth procedures by which corporation may appoint person to whom notice or process to corporation may be sent by the secretary of state and procedures for change of principal office or name and address of such person; requiring annual reports of domestic and foreign corporations and providing certain requirements in respect thereto; relating to failure to file annual report, notice to corporation of its failure to file same and hearing thereon and appeal therefrom; relating to procedure for withdrawal of foreign corporations and publication of notice and other requirements relating to such withdrawal; relating to issuance of certificate of withdrawal by secretary of state and recordation thereof; relating to grounds for which secretary of state may revoke certificate of authority of foreign corporation, issuance of orders in connection therewith and appeals in such cases; relating to preemptive rights of shareholders of business corporation; relating to corporate officers, their authority and the removal of such officers; relating to articles of amendment, contents thereof and prescribing class voting on proposed amendments in certain cases; relating to voluntary dissolution and revocation of such dissolution by act of corporation; relating to nonprofit corporations, membership certificates therein

and prohibiting dividends of such corporations; providing procedure for articles of amendment of such corporation; providing right to restate articles of incorporation and procedure therefor and contents thereof; providing for appeal to circuit court from assessment of corporate license tax by tax commissioner; requiring filing of annual report with the tax commissioner by domestic and foreign corporations; providing for license tax on foreign corporations and for amount, assessment and collection thereof and other requirements with respect thereto; prescribing filing of preliminary report by foreign corporation and information to be contained therein; providing that payment of such license tax shall be in addition to payment of annual fee to secretary of state as attorney in fact; providing for notice to corporations of license tax due and payable; requiring submission of report to tax commissioner with payment of tax and statutory attorney fee and transmission of a copy of such report by tax commissioner to the secretary of state, together with a list of all corporations which have paid license tax; providing that license tax shall be deemed a debt due the state and shall be a lien; and providing criminal offenses and penalties.

Be it enacted by the Legislature of West Virginia:

That sections one hundred fifty-nine and one hundred sixty, article one, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections three, six, eight, nine, fifteen, nineteen, twenty-seven, twenty-eight, thirty-six, forty-six, forty-eight, forty-nine, fifty-three, fifty-five, fifty-six, sixty, sixty-two, sixty-three, ninety, one hundred four, one hundred eight, one hundred nine, one hundred thirty-one, one hundred forty-four, one hundred forty-eight and one hundred forty-nine of said article one, be amended and reenacted; that said article one be further amended by adding thereto two new sections, designated sections fifty-six-a and fifty-six-b; and that sections seventy-seven, eighty, eighty-one and eighty-three, article twelve, chapter eleven of said code be amended and reenacted, all to read as follows:

CHAPTER 31. CORPORATIONS.

ARTICLE 1. BUSINESS AND NONPROFIT CORPORATIONS.

PART I—SHORT TITLE, CONSTRUCTION AND APPLICATION OF ARTICLE, EFFECT OF REPEAL, AND SEVERABILITY.

§31-1-3. Application of article; application to foreign and interstate commerce.

1 Except as may be otherwise provided by the provisions
2 of this article, this article shall become and be operative as
3 of the effective date hereof, and the provisions thereof shall
4 apply to and govern all corporations then existing or there-
5 after formed, and all corporate acts thereafter done: *Provided,*
6 That nothing contained in this article shall be construed to af-
7 fect the existence of any then existing corporation or to impair
8 the validity of any corporate act done and performed in ac-
9 cordance with the preexisting law. In the event of any incon-
10 sistency between any of the provisions of this article and the
11 rights conferred by any special act of the Legislature of the
12 state of Virginia before the formation of the state of West
13 Virginia, or the Legislature of the state of West Virginia sub-
14 sequent to such date, the provisions of such special act shall
15 prevail to the extent of such inconsistency.

16 The provisions of this article shall apply to commerce
17 with foreign nations and among the several states only in-
18 sofar as the same may be permitted under the provisions of
19 the constitution and treaties of the United States.

PART II—CORPORATIONS GENERALLY.

§31-1-6. Definitions.

1 As used in this article, unless the context otherwise re-
2 quires a different meaning, the term:

3 (a) "Articles of incorporation" means the orginial or
4 restated articles of incorporation or articles of consolida-
5 tion and all amendments thereto including articles of mer-
6 ger.

7 (b) "Authorized shares" means the shares of all classes
8 which a business corporation is authorized to issue.

9 (c) "Business corporation" means a corporation organized
10 for profit.

11 (d) "Bylaws" means the code or codes of rules adopted
12 for the regulation or management of the affairs of the corpo-
13 ration, irrespective of the name or names by which such
14 rules are designated.

15 (e) "Capital surplus" means the entire surplus of a busi-
16 ness corporation other than its earned surplus.

17 (f) As used in Part I and Part II of this article, "corpora-
18 tion" or "domestic corporation" means a business corporation
19 or a nonprofit corporation, subject to the provisions of this
20 article, except a foreign corporation.

21 (g) "Director or directors" or "board of directors" shall in-
22 clude those who are vested with the management of the affairs
23 of the corporation, by whatever name they may be called.

24 (h) "Earned surplus" means the portion of the surplus
25 of a business corporation equal to the balance of its net
26 profits, income, gains and losses from the date of incor-
27 porations, or from the latest date when a deficit was elimi-
28 nated by an application of its capital surplus or stated capital
29 or otherwise, after deducting subsequent distributions to share-
30 holders and transfers to stated capital and capital surplus to
31 the extent such distributions and transfers are made out of
32 earned surplus. Earned surplus shall include also any portions
33 of surplus allocated to earned surplus in mergers, consoli-
34 dations or acquisitions of all or substantially all of the out-
35 standing shares or of the property and assets of another cor-
36 poration, domestic or foreign.

37 (i) "Employee" includes officers but not directors. A di-
38 rector may accept duties which make him also an employee.

39 (j) As used in Part I and Part II of this article, "foreign
40 corporation" means a business corporation or nonprofit cor-
41 poration organized under laws other than the laws of this
42 state for a purpose or purposes for which a corporation may
43 be organized under this article.

44 (k) "Insolvent" means inability of a corporation to pay its
45 debts as they become due in the usual course of its business.

46 (l) "Member" means one having membership in a nonpro-
47 fit corporation in accordance with the provisions of its articles
48 of incorporation or bylaws and shall include shareholders where
49 such corporation issues shares.

50 (m) "Net assets" means the amount by which the total
51 assets of a corporation exceed the total debt of the corpora-
52 tion.

53 (n) "Nonprofit corporation" means a corporation no part
54 of the income or profit of which is distributable to its
55 shareholders, members, directors or officers.

56 (o) "Shareholder" means one who is a holder of record of
57 shares in a corporation and may include the term "member."

58 (p) "Shares" means the units into which the proprietary
59 interests in a corporation are divided.

60 (q) "Stated capital" means, at any particular time, the sum
61 of (1) the par value of all shares of a business corporation
62 having a par value that have been issued, (2) the amount of
63 the consideration received by a business corporation for all
64 shares of such corporation without par value that have been
65 issued, except such part of the consideration therefor as may
66 have been allocated to capital surplus in a manner permitted
67 by law, and (3) such amounts not included in clauses (1) and
68 (2) of this subdivision as have been transferred to stated capital
69 of such corporation, whether upon the issue of shares as a
70 share dividend or otherwise, minus all reductions from such
71 sums as have been effected in a manner permitted by law.
72 Irrespective of the manner of designation thereof by the laws
73 under which a foreign corporation is organized, the stated
74 capital of a foreign corporation shall be determined on the
75 same basis and in the same manner as the stated capital of a
76 domestic corporation, for the purpose of computing fees, fran-
77 chise taxes and other charges prescribed by law.

78 (r) "Subscriber" means one who subscribes for shares in
79 a corporation, whether before or after incorporation.

80 (s) "Surplus" means the excess of the net assets of a busi-
81 ness corporation over its stated capital.

82 (t) "Treasury shares" means shares of a business corpora-
83 tion which have been issued and have been subsequently
84 acquired by and belong to such corporation, and have not,
85 either by reason of the acquisition or thereafter, been can-
86 celled or restored to the status of authorized but unissued
87 shares. Treasury shares shall be deemed to be issued shares, but
88 not outstanding shares.

§31-1-8. General powers of corporations.

1 Every corporation shall have the power:

2 (a) To have perpetual succession by its corporate name
3 unless a limited period of duration is stated in its articles of
4 incorporation. Any corporation chartered heretofore and still
5 in existence, which under its agreement of incorporation, had
6 less than perpetual existence, is hereby granted perpetual
7 existence, provided all license fees and taxes due the state of
8 West Virginia shall have been paid.

9 (b) To sue and be sued, complain and defend, in its cor-
10 porate name.

11 (c) To have a corporate seal which may be altered at plea-
12 sure, and to use the same by causing it, or a facsimile there-
13 of, to be impressed or affixed or in any other manner repro-
14 duced.

15 (d) To purchase, take, receive, lease, take by gift, devise
16 or bequest, or otherwise acquire, own, hold, improve, use and
17 otherwise deal in and with real or personal property, or any
18 interest therein, wherever situated.

19 (e) To sell, convey, mortgage, pledge, lease, exchange,
20 transfer and otherwise dispose of all or any part of its prop-
21 erty and assets.

22 (f) To lend money and use its credit to assist its em-
23 ployees.

24 (g) To purchase, take, receive, subscribe for, or otherwise
25 acquire, own, hold, vote, use, employ, sell, mortgage, lend,
26 pledge, or otherwise dispose of, and otherwise use and deal
27 in and with, shares or other interests in, or obligations of,
28 other domestic or foreign corporations, associations, partner-

29 ships, joint ventures or individuals, or direct or indirect obli-
30 gations of the United States or of any other government,
31 state, territory, governmental district or municipality or of any
32 instrumentality thereof.

33 (h) To make contracts and guarantees and incur liabilities,
34 borrow money at such rates of interest as the corporation may
35 determine, issue its notes, bonds and other obligations, and
36 secure any of its obligations by mortgage, deed of trust or
37 pledge of all or any of its property, franchises and income.

38 (i) To lend money for its corporate purposes, invest and
39 reinvest its funds, and take and hold real and personal prop-
40 erty as security for the payment of funds so loaned or in-
41 vested.

42 (j) To conduct its business and affairs, carry on its opera-
43 tions, and have offices and exercise the powers granted by
44 this article, within or without this state.

45 (k) To elect or appoint officers and agents of the corpor-
46 ation, and define their duties and fix their compensation.

47 (l) To make and alter bylaws, not inconsistent with its
48 articles of incorporation or with the laws of this state, for the
49 administration and regulation of the business and affairs of
50 the corporation.

51 (m) To make donations for the public welfare or for char-
52 itable, scientific or educational purposes.

53 (n) To transact any lawful business which the board of
54 directors shall find will be in the aid of governmental policy.

55 (o) To pay pensions and establish pension plans or pension
56 trusts for any or all of its directors, officers and employees,
57 and in the case of business corporations, to establish profit
58 sharing plans, stock bonus plans, stock option plans and other
59 incentive plans for any or all of its directors, officers and em-
60 ployees.

61 (p) To be a promoter, partner, member, associate, or man-
62 ager of any partnership, joint venture, trust or other enter-
63 prise.

64 (q) To cease its corporate activities and surrender its
65 corporate franchise in accordance with the provisions of this
66 article.

67 (r) To have and exercise all powers necessary or convenient
68 to effect its purposes.

§31-1-9. Indemnification of officers, directors, employees and agents.

1 (a) A corporation shall have power to indemnify any
2 person who was or is a party or is threatened to be made a
3 party to any threatened, pending or completed action or
4 proceeding, whether civil, criminal, administrative or investiga-
5 tive (other than an action by or in the right of the corporation)
6 by reason of the fact that he is or was a director, officer,
7 employee or agent of the corporation, or is or was serving at the
8 request of the corporation as a director, officer, employee or
9 agent of another corporation, partnership, joint venture, trust
10 or other enterprise, against expenses (including attorneys' fees),
11 judgments, fines, taxes and penalties and interest thereon, and
12 amounts paid in settlement actually and reasonably incurred by
13 him in connection with such action or proceeding if he
14 acted in good faith and in a manner he reasonably believed
15 to be in or not opposed to the best interests of the cor-
16 poration, and, with respect to any criminal action or pro-
17 ceeding, had no reasonable cause to believe his conduct was
18 unlawful. The termination of any action or proceeding by
19 judgment, order, settlement, conviction, or upon a plea of nolo
20 contendere or its equivalent, shall not, of itself, create a pre-
21 sumption that the person did not act in good faith and in a
22 manner which he reasonably believed to be in or not opposed
23 to the best interest of the corporation, and, with respect to
24 any criminal action or proceeding, that such person did have
25 reasonable cause to believe that his conduct was unlawful.

26 (b) A corporation shall have power to indemnify any
27 person who was or is a party or is threatened to be made a
28 party to any threatened, pending or completed action or
29 proceeding by or in the right of the corporation to procure
30 judgment in its favor by reason of the fact that he is or
31 was a director, officer, employee or agent of the corpora-
32 tion, or is or was serving at the request of the corporation

33 as a director, officer, employee or agent of another corporation,
34 partnership, joint venture, trust or other enterprise against
35 expenses (including attorneys' fees) actually and reasonably
36 incurred by him in connection with the defense or settlement
37 of such action or proceeding if he acted in good faith and in
38 a manner he reasonably believed to be in or not opposed to the
39 best interests of the corporation, except that no indemnifica-
40 tion shall be made in respect of any claim, issue or matter,
41 including, but not limited to, taxes or any interest or penalties
42 thereon, as to which such person shall have been adjudged to
43 be liable for negligence or misconduct in the performance of
44 his duty to the corporation unless and only to the extent
45 that the court in which such action or proceeding was brought
46 shall determine upon application that, despite the adjudication
47 of liability but in view of all circumstances of the case, such
48 person is fairly and reasonably entitled to indemnity for such
49 expenses which such court shall deem proper.

50 (c) To the extent that a director, officer, employee or
51 agent of a corporation has been successful on the merits or
52 otherwise in defense of any action or proceeding referred
53 to in subsections (a) or (b), or in defense of any claim,
54 issue or matter therein, he shall be indemnified against ex-
55 penses (including attorneys' fees) actually and reasonably
56 incurred by him in connection therewith.

57 (d) Any indemnification under subsections (a) or (b)
58 (unless ordered by a court) shall be made by the corpora-
59 tion only as authorized in the specific case upon a deter-
60 mination that indemnification of the director, officer, em-
61 ployee or agent is proper in the circumstances because he
62 has met the applicable standard of conduct set forth in
63 subsections (a) or (b). Such determination shall be made
64 (1) by the board of directors by a majority vote of a quo-
65 rum consisting of directors who were not parties to such
66 action or proceeding, or (2) if such a quorum is not obtain-
67 able, or even if obtainable a quorum of disinterested direc-
68 tors so directs, by independent legal counsel in a written
69 opinion, or (3) by the shareholders or members.

70 (e) Expenses (including attorneys' fees) incurred in de-
71 fending a civil or criminal action or proceeding may be

72 paid by the corporation in advance of the final disposition
73 of such action or proceeding as authorized in the manner
74 provided in subsection (d) upon receipt of an undertaking
75 by or on behalf of the director, officer, employee or agent
76 to repay such amount unless it shall ultimately be determined
77 that he is entitled to be indemnified by the corporation as
78 authorized in this section.

79 (f) The indemnification provided by this section shall
80 not be deemed exclusive of any other rights to which any
81 shareholder or member may be entitled under any bylaw,
82 agreement, vote of shareholders, members or disinterested
83 directors or otherwise, both as to action in his official capacity
84 and as to action in another capacity while holding such office,
85 and shall continue as to a person who has ceased to be a
86 director, officer, employee or agent and shall inure to the
87 benefit of the heirs, executors and administrators of such a
88 person.

89 (g) A corporation shall have power to purchase and
90 maintain insurance on behalf of any person who is or was
91 a director, officer, employee or agent of the corporation, or
92 is or was serving at the request of the corporation as a
93 director, officer, employee or agent of another corporation,
94 partnership, joint partnership, joint venture, trust or other
95 enterprise against any liability asserted against him and
96 incurred by him in any such capacity or arising out of his
97 status as such, whether or not the corporation would have
98 the power to indemnify him against such liability under the
99 provisions of this section.

**§31-1-15. Secretary of state constituted attorney in fact for all
corporations; manner of acceptance or service of
notices and process upon secretary of state; what
constitutes conducting affairs or doing or transacting
business in this state for purposes of this section.**

1 The secretary of state is hereby constituted the attorney
2 in fact for and on behalf of every corporation created by
3 virtue of the laws of this state and every foreign corporation
4 authorized to conduct affairs or do or transact business
5 herein pursuant to the provisions of this article, with authority
6 to accept service of notice and process on behalf of every

7 such corporation and upon whom service of notice and
8 process may be made in this state for and upon every such
9 corporation. No act of such corporation appointing the
10 secretary of state such attorney in fact shall be necessary.
11 Immediately after being served with or accepting any such
12 process or notice, of which process or notice two copies for
13 each defendant shall be furnished the secretary of state with
14 the original notice or process, together with a fee of two
15 dollars, the secretary of state shall file in his office a copy
16 of such process or notice, with a note thereon endorsed of
17 the time of service, or acceptance, as the case may be,
18 and transmit one copy of such process or notice by registered
19 or certified mail, return receipt requested, to the person
20 to whom notice and process shall be sent, whose name and
21 address were last furnished to the state officer at the time
22 authorized by statute to accept service of notice and process
23 and upon whom notice and process may be served; and if no
24 such person has been named, to the principal office of the
25 corporation at the address last furnished to the state officer
26 at the time authorized by statute to accept service of process
27 and upon whom process may be served, as required by law.
28 No process or notice shall be served on the secretary of state or
29 accepted by him less than ten days before the return day
30 thereof. Such corporation shall pay the annual fee prescribed
31 by article twelve, chapter eleven of this code for the services
32 of the secretary of state as its attorney in fact.

33 Any foreign corporation which shall conduct affairs or
34 do or transact business in this state without having been
35 authorized so to do pursuant to the provisions of this
36 article shall be conclusively presumed to have appointed
37 the secretary of state as its attorney in fact with authority
38 to accept service of notice and process on behalf of such
39 corporation and upon whom service of notice and process
40 may be made in this state for and upon every such corpora-
41 tion in any action or proceeding described in the next
42 following paragraph of this section. No act of such corporation
43 appointing the secretary of state as such attorney in fact shall
44 be necessary. Immediately after being served with or accept-
45 ing any such process or notice, of which process or notice
46 two copies for each defendant shall be furnished the secretary

47 of state with the original notice or process, together with
48 a fee of two dollars, the secretary of state shall file in his
49 office a copy of such process or notice, with a note thereon
50 endorsed of the time of service or acceptance, as the case
51 may be, and transmit one copy of such process or notice
52 by registered or certified mail, return receipt requested, to
53 such corporation at the address of its principal office, which
54 address shall be stated in such process or notice. Such
55 service or acceptance of such process or notice shall be
56 sufficient if such return receipt shall be signed by an agent
57 or employee of such corporation, or the registered or certified
58 mail so sent by the secretary of state is refused by the
59 addressee and the registered or certified mail is returned to
60 the secretary of state, or to his office, showing thereon the
61 stamp of the United States postal service that delivery thereof
62 has been refused, and such return receipt or registered or
63 certified mail is appended to the original process or notice
64 and filed therewith in the clerk's office of the court from
65 which such process or notice was issued. No process or
66 notice shall be served on the secretary of state or accepted
67 by him less than ten days before the return date thereof.
68 The court may order such continuances as may be reasonable
69 to afford each defendant opportunity to defend the action
70 or proceedings.

71 For the purpose of this section, a foreign corporation
72 not authorized to conduct affairs or do or transact business
73 in this state pursuant to the provisions of this article shall
74 nevertheless be deemed to be conducting affairs or doing or
75 transacting business herein (a) if such corporation makes a
76 contract to be performed, in whole or in part, by any party
77 thereto, in this state, (b) if such corporation commits a tort
78 in whole or in part in this state, or (c) if such corporation
79 manufactures, sells, offers for sale or supplies any product
80 in a defective condition and such product causes injury to
81 any person or property within this state notwithstanding the
82 fact that such corporation had no agents, servants or employees
83 or contacts within this state at the time of said injury.
84 The making of such contract, the committing of such tort
85 or the manufacture or sale, offer of sale or supply of such
86 defective product as hereinabove described shall be deemed

87 to be the agreement of such corporation that any notice or
88 process served upon, or accepted by, the secretary of state
89 pursuant to the next preceding paragraph of this section
90 in any action or proceeding against such corporation arising
91 from, or growing out of, such contract, tort, or manufacture
92 or sale, offer of sale or supply of such defective product
93 shall be of the same legal force and validity as process duly
94 served on such corporation in this state.

§31-1-19. Notice of shareholders' or members' meetings.

1 Unless otherwise provided in the bylaws, written notice
2 stating the place, day and hour of the meeting and, in case
3 of a special meeting, the purpose or purposes for which the
4 meeting is called, shall be delivered not less than ten nor
5 more than fifty days before the date of the meeting, either
6 personally or by mail, by or at the direction of the president,
7 the secretary, or the officer or persons calling the meeting, to
8 each shareholder of record or member entitled to vote at such
9 meeting. If mailed, such notice shall be deemed to be de-
10 livered when deposited in the United States mail addressed to
11 the shareholder or member at his address as it appears on the
12 corporate records, with postage thereon prepaid.

**§31-1-27. Articles of incorporation; contents; matters not required
to be set forth; inconsistencies with bylaws; acknowl-
edgement.**

- 1 (a) The articles of incorporation shall set forth:
- 2 (1) The name of the corporation.
- 3 (2) The period of duration, which may be perpetual.
- 4 (3) The purpose or purposes for which the corporation
5 is organized.
- 6 (4) The address of its principal office, and the name and
7 address of the person to whom shall be sent notice or process
8 served upon, or service of which is accepted by, the secretary
9 of state, if such person has been appointed by the corpora-
10 tion.
- 11 (5) The name and address of each incorporator.

12 (b) In the case of a business corporation, in addition
13 to those matters required to be set forth by the provisions
14 of subsection (a) of this section, the articles of incorporation
15 shall set forth:

16 (1) The aggregate number of shares which the cor-
17 poration shall have authority to issue; if such shares are
18 to consist of one class only, the par value of each of such
19 shares, or a statement that all of such shares are without
20 par value; or, if such shares are to be divided into classes,
21 the number of shares of each class, and a statement of
22 the par value of the shares of each such class or that such
23 shares are to be without par value.

24 (2) If the shares are to be divided into classes, the
25 designation of each class and a statement of the preferences,
26 limitations and relative rights in respect of the shares of
27 each class.

28 (3) If the corporation is to issue the shares of any
29 preferred or special class in series, the designation of each
30 series and a statement of the variations in the relative rights
31 and preferences as between series insofar as the same are
32 to be fixed in the articles of incorporation, and a statement
33 of any authority to be vested in the board of directors to
34 establish series and fix and determine the variations in the
35 relative rights and preferences as between series.

36 (4) Any provision limiting or denying to shareholders the
37 preemptive right to acquire additional unissued or treasury
38 shares of the corporation.

39 (5) Any provision, not inconsistent with law, which the
40 incorporators elect to set forth in the articles of incorporation
41 for the regulation of the internal affairs of the corporation,
42 including any provision restricting the transfer of shares and
43 any provision which under this article is required or permitted
44 to be set forth in the bylaws.

45 (c) In the case of a nonprofit corporation, in addition
46 to those matters required to be set forth by the provisions
47 of subsection (a) of this section, the articles of incorpora-
48 tion shall set forth any provisions, not inconsistent with

49 law, which the incorporators elect to set forth in such articles
50 of incorporation for the regulation of the internal affairs of
51 the corporation, including any provisions for distribution of
52 assets on dissolution or final liquidation.

53 (d) It shall not be necessary to set forth in the articles
54 of incorporation any of the corporate powers enumerated
55 in this article.

56 (e) Whenever a provision of the articles of incorporation
57 is inconsistent with a bylaw, the provision of the articles of
58 incorporation shall be controlling.

59 (f) The articles of incorporation shall contain a statement
60 of the name and address of the person who, or the firm
61 which, prepared such articles of incorporation.

62 (g) The articles of incorporation shall be acknowledged
63 by the incorporators before a notary public and transmitted
64 with the proper fees to, and shall be filed with, the secretary
65 of state.

**§31-1-28. Filing of articles of incorporation; issuance of certificate
of incorporation; recordation of certificate in county
clerk's office.**

1 (a) Duplicate originals, which as used in this article shall
2 mean two copies, howsoever reproduced, both of which are
3 executed in the original, of the articles of incorporation shall
4 be delivered to the secretary of state. If the secretary of state
5 finds that the articles of incorporation conform to law, he
6 shall, when all fees have been paid as prescribed by law, (i)
7 endorse on each of such duplicate originals the word "Filed,"
8 and the month, day and year of the filing thereof; (ii) file one
9 of such duplicate originals in his office; and (iii) issue a certi-
10 ficate of incorporation to which he shall affix the other dupli-
11 cate original.

12 The certificate of incorporation, together with the dupli-
13 cate original of the articles of incorporation affixed thereto
14 by the secretary of state, shall be returned to the incorporators
15 or their representative.

16 (b) If the corporation has its principal office in this state,

17 it shall cause such certificate, or a duly certified copy thereof
18 to be recorded in the office of the clerk of the county commis-
19 sion of the county in which such principal office is located; if its
20 principal office is not within this state but it conducts affairs
21 or does or transacts business herein, then in the county or one
22 of the counties in which it conducts its affairs or does or trans-
23 acts its principal business. If its principal office is without the
24 state and it does not conduct affairs or do or transact business
25 within the state, such charter need not be recorded in a county
26 clerk's office. A failure to comply with the foregoing recorda-
27 tion provision within six months from the date of such certifi-
28 cate shall subject the corporation to a fine of not more than one
29 thousand dollars.

**§31-1-36. Articles of merger or consolidation; filing; issuance of
certificate; recordation; admission in evidence.**

1 (a) Upon approval by the shareholders or members in
2 accordance with the provisions of section one hundred seven-
3 teen or section one hundred fifty of this article, whichever is
4 applicable, the articles of merger or articles of consolidation
5 shall be executed in duplicate by each corporation by its
6 president or a vice president and by its secretary or an assistant
7 secretary, and verified by one of the officers of each corporation
8 signing such articles.

9 (b) Duplicate originals of the articles of merger or articles
10 of consolidation shall be delivered to the secretary of state. If
11 the secretary of state finds that such articles conform to law,
12 he shall, when all fees have been paid as prescribed by law,
13 (i) endorse on each of such duplicate originals the word
14 "Filed," and the month, day and year of the filing thereof; (ii)
15 file one of such duplicate originals in his office; and (iii)
16 issue a certificate of merger or a certificate of consolidation to
17 which he shall affix the other duplicate original.

18 The certificate of merger or certificate of consolidation, to-
19 gether with the duplicate original of the articles of merger or
20 articles of consolidation affixed thereto by the secretary of state,
21 shall be returned to the surviving or new corporation, as the
22 case may be, or its representative.

23 (c) The certificate of merger or certificate of consolidation,

24 or certified copy thereof, shall be recorded in the office of the
25 appropriate county clerk in the same manner as original certi-
26 ficates of incorporation are required to be recorded, in ac-
27 cordance with the provisions of subsection (b) of section
28 twenty-eight of this article and received in evidence to the same
29 extent as an original certificate of incorporation or a certified
30 copy of such original.

§31-1-46. Order of involuntary dissolution; filing with the secretary of state; recordation.

1 In proceedings to liquidate the assets and business or affairs
2 of a corporation, when the costs and expenses of such pro-
3 ceedings and all debts, obligations and liabilities of the corp-
4 oration shall have been paid and discharged and all of its re-
5 maining property and assets distributed to its shareholders, or
6 in the case of a nonprofit corporation, in accordance with the
7 provisions of sections one hundred fifty-five and one hundred
8 fifty-six of this article, the court shall enter an order dis-
9 solving the corporation, whereupon the existence of the cor-
10 poration shall cease. In case its property and assets are not
11 sufficient to satisfy and discharge such costs, expenses, debts
12 and obligations and all the property and assets have been
13 applied so far as they will go to their payment, the court shall
14 likewise enter an order dissolving the corporation, whereupon
15 the existence of the corporation shall cease.

16 If the court shall enter an order dissolving a corporation,
17 it shall be the duty of the clerk of such court to cause a certi-
18 fied copy of the order to be filed with the secretary of state, and
19 a certified copy of the order to be recorded in the office of
20 the clerk of the county commission in which the certificate of
21 incorporation is recorded and such county clerk shall make a
22 marginal notation thereof in the manner required by section
23 forty of this article. No fee shall be charged by the secretary of
24 state or county clerk for the filing or recording thereof.

§31-1-48. Survival of remedy after dissolution; effect of dissolution.

1 The dissolution of a corporation either (1) by the issuance
2 of a certificate of dissolution by the secretary of state, or (2)
3 by an order of court when the court has not liquidated the
4 assets and business or affairs of the corporation as provided in

5 this article, or (3) by expiration of its period of duration, shall
6 not take away or impair any remedy available to or against
7 such corporation, its shareholders or members, directors and
8 officers, for any right or claim existing, or any liability incur-
9 red, prior to such dissolution if action or other proceeding
10 thereon is commenced within two years after the date of such
11 dissolution. Any such action or proceeding by or against the
12 corporation may be prosecuted or defended by the corporation
13 in its corporate name. The shareholders or members, directors
14 and officers shall have power to take such corporate or other
15 action as shall be appropriate to protect such remedy, right or
16 claim. If such corporation was dissolved by the expiration of
17 its period of duration, such corporation may amend its articles
18 of incorporation at any time during such period of two years
19 so as to extend its period of duration.

20 At any time after the date of such expiration or dissolution,
21 the shareholders may elect a new board of directors; the di-
22 rector or directors remaining in office may fill any vacancies in
23 the board of directors, and in any executive office, by election
24 or appointment; and such directors or officers and their suc-
25 cessors in office may cause actions or proceedings to be
26 brought, conducted, prosecuted or defended, the real and per-
27 sonal property of the corporation to be conveyed or trans-
28 ferred under the common seal or otherwise, further assurances
29 of previous conveyances to be made, and all lawful acts to be
30 done, in the corporate name, in like manner and with like
31 effect as before such dissolution or expiration; but so far only
32 as shall be necessary or proper to do and perform every act
33 and thing which should have been or should be done and per-
34 formed by the corporation, and for collecting the debts and
35 claims due to the corporation, converting its property and
36 assets into money, prosecuting, defending and protecting its
37 rights, enforcing all claims in its favor, and paying over and
38 distributing its property and assets, or the proceeds thereof, to
39 those entitled thereto.

X **§31-1-49. Admission of foreign corporation; acts permitted to be
done without certificate of authority.**

- 1 (a) No foreign corporation shall have the right to conduct
- 2 affairs or do or transact business in this state until it shall have

3 procured a certificate of authority so to do from the secretary
4 of state. No foreign corporation shall be entitled to procure a
5 certificate of authority under this article to conduct affairs or
6 do or transact any business in this state which would not be
7 permitted to be conducted, done or transacted by a corpora-
8 tion organized under this article. A foreign corporation shall
9 not be denied a certificate of authority by reason of the fact
10 that the laws of the state or county under which such corpora-
11 tion is organized governing its organization and internal affairs
12 differ from the laws of this state, and nothing in this article
13 contained shall be construed to authorize this state to regulate
14 the organization or the internal affairs of such corporation.

15 (b) Without excluding other activities which may not con-
16 stitute conducting affairs or doing or transacting business in
17 this state, a foreign corporation shall not be considered to be
18 conducting affairs or doing or transacting business in this state,
19 for the purposes of this article, by reason of carrying on in
20 this state any one or more of the following activities:

21 (1) Maintaining or defending any legal action or proceeding
22 or any administrative or arbitration proceeding, or effecting
23 the settlement thereof or the settlement of claims or disputes;

24 (2) Holding meetings of its directors, shareholders or mem-
25 bers or carrying on other activities concerning its internal
26 affairs;

27 (3) Maintaining bank accounts;

28 (4) Creating evidences of debt, mortgages or liens on real
29 or personal property;

30 (5) Securing or collecting debts or enforcing any rights in
31 property securing the same;

32 (6) Conducting its affairs or doing or transacting business
33 in interstate commerce;

34 (7) Granting funds or other gifts;

35 (8) Distributing information to its shareholders or mem-
36 bers; or

37 (9) Conducting an isolated transaction completed within a

38 period of thirty days and not in the course of a number of
39 repeated transactions of like nature.

40 (c) In addition to those activities enumerated in subsection
41 (b) of this section, a foreign corporation shall not be consider-
42 ed to be conducting affairs or doing or transacting business in
43 this state, for the purposes of this article, by reason of carrying
44 on in this state one or more of the following activities:

45 (1) Maintaining offices or agencies for the transfer, exchange
46 and registration of its securities, or appointing and maintain-
47 ing trustees or depositaries with relation to its securities;

48 (2) Effecting sales through independent contractors; or

49 (3) Soliciting or procuring orders, whether by mail or
50 through employees or agents or otherwise, where such orders
51 require acceptance without this state before becoming binding
52 contracts.

53 (d) In addition to those activities enumerated in subsections
54 (b) and (c) of this section, a foreign corporation shall not
55 be considered to be conducting affairs or doing or transacting
56 business in this state, for the purposes of this article, by reason
57 of carrying on in this state one or more of the following ac-
58 tivities:

59 (1) The acquisition by purchase of loans secured by mort-
60 gages or deeds of trust, drawn and executed in compliance with
61 section two, article one-a, chapter thirty-eight of this code on
62 real or personal property situated in West Virginia pursuant to
63 commitment agreements or arrangements made prior to or
64 following the origination or creation of said loans;

65 (2) The ownership, modification, renewal, extension, trans-
66 fer or foreclosure of such loans, or the acceptance of substi-
67 tute or additional obligors thereon;

68 (3) The maintaining or defending of any actions or suits
69 relative to such loans, mortgages or deeds of trust;

70 (4) The maintenance of bank accounts in West Virginia
71 banks in connection with the collection or servicing of such
72 loans;

73 (5) The making, collection and servicing of such loans

74 through a resident person, firm or corporation, or a foreign
75 corporation qualified to do business in West Virginia, engaged
76 in the business of servicing loans for investors;

77 (6) The taking of deeds to the mortgaged property either in
78 lieu of foreclosure or for the purpose of transferring title either
79 to the federal housing administration or to the veterans ad-
80 ministration as the insurer or guarantor;

81 (7) The acquisition of title to property under foreclosure
82 sale or from the owner in lieu of foreclosure;

83 (8) The management, rental, maintenance and sale, or the
84 operating, maintaining, renting or otherwise dealing with, sell-
85 ing or disposing of property acquired under foreclosure sale or
86 by agreement in lieu thereof;

87 (9) Physical inspection and appraisal of property in West
88 Virginia as security for deeds of trust or mortgages and nego-
89 tiations for the purchase of such loans;

90 (10) Any other transaction directly related to the activities
91 above described: *Provided*, That if property acquired in or by
92 reason of any of the activities defined in the provisions of (6),
93 (7) and (8) of this subsection shall be held longer than a
94 period of five years, the provisions of this section shall there-
95 after be inapplicable.

**§31-1-53. Application for certificate of authority by foreign cor-
poration; contents; churches or religious denomina-
tions in corporate capacity prohibited.**

1 (a) A foreign corporation, in order to procure a certificate
2 of authority to conduct affairs, or do or transact business in
3 this state, shall make application therefor to the secretary of
4 state, which application shall set forth:

5 (1) The name of the corporation and the state or country
6 under the laws of which it is incorporated.

7 (2) If the name of the corporation does not contain
8 the word "corporation," "company," "incorporated" or
9 "limited," or does not contain an abbreviation of one of
10 such words, then the name of the corporation with the word

11 or abbreviation which it elects to add thereto for use in this
12 state.

13 (3) The date of incorporation and the period of duration
14 of the corporation.

15 (4) The address of the principal office of the corporation.

16 (5) The name and address of the person to whom shall be
17 sent notice or process served upon, or service of which is
18 accepted by, the secretary of state, if one has been designated.

19 (6) The purpose or purposes of the corporation which
20 it proposes to pursue in conducting its affairs or doing
21 or transacting its business in this state.

22 (7) The names and respective addresses of the directors
23 and officers of the corporation.

24 (8) Such additional information as may be necessary or
25 appropriate in order to enable the secretary of state to deter-
26 mine whether such corporation is entitled to a certificate of
27 authority to conduct its affairs or do or transact business in
28 this state and to determine and assess the fees payable as
29 prescribed by law.

30 (9) The county wherein the corporation intends to record
31 its articles of incorporation, amendments or restatement of such
32 articles of incorporation, pursuant to the provisions of sub-
33 section (c) of section fifty-four of this article.

34 (b) In the case of a business corporation, in addition to
35 those matters required to be set forth under the provisions of
36 subsection (a) of this section, such application shall set forth:

37 (1) A statement of the aggregate number of shares which
38 the corporation has authority to issue, itemized by classes, par
39 value of shares, shares without par value, and series, if any,
40 within a class.

41 (2) A statement of the aggregate number of issued shares
42 itemized by classes, par value of shares, shares without par
43 value, and series, if any, within a class.

44 (3) A statement, expressed in dollars, of the amount of
45 stated capital of the corporation, as defined in this article.

46 (4) An estimate, expressed in dollars, of the value of all
47 property to be owned by the corporation, for the following year,
48 wherever located, and an estimate of the value of the property
49 of the corporation to be located within this state during such
50 year, and an estimate, expressed in dollars, of the gross amount
51 of business which will be done or transacted by the corporation
52 during such year, and an estimate of the gross amount thereof
53 which will be done or transacted by the corporation at
54 or from places of business in this state during such year.

55 (c) Such application shall be made on forms prescribed
56 and furnished by the secretary of state and shall be executed
57 in duplicate by the corporation by its president or vice president
58 and by its secretary or an assistant secretary, and verified by one
59 of the officers signing such application.

60 (d) No church, religious sect or denomination incorporated
61 by the laws of any other state or territory of the United States,
62 the District of Columbia or of any foreign country shall be
63 qualified to conduct affairs or do or transact business in this
64 state in a corporate capacity.

§31-1-55. Effect of certificate of authority.

1 Upon the issuance of a certificate of authority by the
2 secretary of state, the corporation shall be authorized to
3 conduct affairs or do or transact business in this state for
4 those purposes set forth in its application, subject, however,
5 to the right of this state to suspend or to revoke such authority
6 as provided in this article.

**§31-1-56. Appointment of person to whom notice or process may
be sent by the secretary of state; change of principal
office or name and address of person to receive
notice or process.**

1 (a) A corporation may at any time appoint a person other
2 than the corporation to whom notice or process served upon
3 the secretary of state or service of which is accepted by
4 the secretary of state may be sent, as required by section
5 fifteen of this article, by filing with the secretary of state
6 a statement setting forth:

7 (1) The name of the corporation and the state of its
8 incorporation.

9 (2) The present address of its principal office.

10 (3) Express appointment of and the name and address
11 of the person to whom notice or process shall be sent by the
12 secretary of state under section fifteen of this article.

13 (4) Express authority to the secretary of state to send
14 to such person at the address given, all notices and process
15 served upon the secretary of state or service of which is
16 accepted by the secretary of state.

17 (5) That such appointment was duly authorized by the
18 board of directors of the corporation.

19 Such statement shall be signed by the president or a
20 vice president or secretary or an assistant secretary, of the
21 corporation, verified by the signer and delivered to the
22 secretary of state, and upon receipt thereof shall be filed
23 by the secretary of state in his office.

24 (b) A corporation may at any time change the address of
25 its principal office; or the name and address, or the address,
26 of the person to whom shall be sent notice or process served
27 upon, or service of which is accepted by, the secretary of
28 state. Such change shall become effective as the name and
29 address or address last furnished to the secretary of state
30 for the purposes of section fifteen of this article only when
31 such corporation has filed in the office of the secretary of state
32 a statement setting forth:

33 (1) The name of the corporation.

34 (2) The state under whose laws it was incorporated.

35 (3) If the address of the principal office is changed, then
36 the address of the former or present principal office and
37 the address to which it is changed or to be changed.

38 (4) If the name and address or address only of the person
39 to whom notice or process is to be sent is to be changed,
40 then the name and address of such person to be used from
41 and after the filing of the statement required by this section.

42 (5) That such change was duly authorized by the board
43 of directors.

44 Such statement shall be signed by the president, vice
45 president, secretary or assistant secretary of the corporation
46 and verified by him.

**§31-1-56a. Annual report of domestic and foreign corporations;
filing.**

1 (a) Each domestic corporation, and each foreign cor-
2 poration authorized to conduct affairs or do or transact business
3 within this state, shall file with the secretary of state and
4 with the tax commissioner, within the time prescribed by this
5 article, an annual report setting forth:

6 (1) The name of the corporation and the state or country
7 under the laws of which it is incorporated.

8 (2) The address of its principal office; and, if one has
9 been appointed, the name and address of the person to whom
10 shall be sent notice and process served upon or service of
11 which is accepted by the secretary of state, as provided by
12 sections fifteen and fifty-six of this article.

13 (3) A brief statement of the character of the affairs which
14 the corporation is actually conducting, or the business it is
15 doing or transacting, in this state.

16 (4) The names and respective addresses of the directors
17 and officers of the corporation.

18 (5) In the case of a foreign corporation, the date of
19 incorporation and the following additional information: (i) the
20 date of the certificate of the secretary of state authorizing it
21 to do business in this state, the name of its officer, if any,
22 charged with the duty of making returns of its property for
23 taxation; (ii) the number of shares of its authorized capital
24 stock having a par value and the par value of each share, and
25 the number of its issued and outstanding shares and the par
26 value of each share; (iii) the number of shares of its authorized
27 capital stock having no par value, the number of shares of such
28 stock authorized to be issued and the considerations fixed for
29 the issue of each share of the same by its articles of incor-
30 poration or board of directors, and the number of shares thereof
31 issued and outstanding; (iv) the value of the property owned
32 and used by such corporation within this state, where situate,
33 of what it consists, and the number of acres of land it holds in

34 this state, and the value of its property owned and used without
35 this state; and (v) the proportion of its capital stock which is
36 represented by property owned and used in the state of West
37 Virginia.

38 (b) Such annual report shall be made on forms pre-
39 scribed and furnished by the secretary of state, and the in-
40 formation therein contained shall be given as of the date of the
41 execution of the report. It shall be executed and verified by
42 the corporation by its president, a vice president, secretary or
43 treasurer, or an assistant secretary or treasurer, or, if the
44 corporation is in the hands of a receiver or trustee, it shall
45 be executed on behalf of the corporation by such receiver or
46 trustee.

47 (c) Such annual report of a domestic or foreign corporation
48 shall be delivered to the secretary of state and the tax com-
49 missioner in duplicate, between the first day of January and
50 the thirty-first day of March of each year, except that the first
51 annual report of a domestic or foreign corporation shall be
52 filed between the first day of January and the thirty-first day of
53 March of the year next succeeding the calendar year in which
54 its certificate of incorporation or its certificate of authority,
55 as the case may be, was issued by the secretary of state. Proof
56 to the satisfaction of the secretary of state that prior to the
57 thirty-first day of March such reports were deposited in the
58 United States mail in sealed envelopes, properly addressed to
59 the secretary of state and the tax commissioner, with postage
60 prepaid, shall be deemed compliance with this requirement. If
61 the secretary of state finds that such report conforms to the re-
62 quirements of this article, he shall file the same. If he finds that
63 it does not so conform, he shall promptly return the same to
64 the corporation for any necessary corrections, which correc-
65 tions shall be made and the corrected report be returned by the
66 corporation to the secretary of state and tax commissioner
67 within thirty days, and upon receipt of such corrected report
68 the secretary of state shall file the same.

**§31-1-56b. Penalties imposed for failure to file annual report;
notice; hearings conducted by secretary of state;
appeal.**

1 Each corporation, domestic or foreign, which fails or

2 refuses to file its annual report or corrected annual report,
3 if such corrected report is requested, for three successive
4 years, as required by the provisions of section fifty-six-a
5 of this article, shall be notified by registered or certified
6 mail, return receipt requested, of its failure to file such
7 annual reports. Such notice shall be mailed to the corpora-
8 tion as provided in section fifteen of this article.

9 Such notice shall also advise the corporation that its
10 failure to file all of the annual reports within thirty days of
11 receipt of the notice shall subject such corporation to an
12 order of dissolution or an order revoking its certificate of
13 authority, as the case may be. Such order shall also advise
14 the corporation of its right to a hearing and shall set forth
15 the date and time of the hearing, which hearing shall be held
16 in the office of the secretary of state by the secretary of
17 state or his designee. At such hearing, the corporation shall
18 be afforded an opportunity to explain its reasons for failure
19 to file the required reports.

20 If the corporation fails to file the required reports within
21 such thirty day period or fails to appear at the hearing,
22 as set by the secretary of state, or fails to explain to the
23 satisfaction of the secretary of state its reasons for not
24 filing the reports, then the secretary of state shall issue an
25 order dissolving the corporation or shall issue an order
26 revoking its certificate of authority as the case may be.

27 Any person or corporation aggrieved by the action of the
28 secretary of state with respect to dissolving the corporation
29 or revoking its certificate of authority under this section
30 shall have the same right of appeal as set forth in subsection
31 (b) of section sixty-eight of this article.

**§31-1-60. Procedure for withdrawal of foreign corporation;
publication required; application for certificate of
withdrawal; contents; filing; issuance of certificate;
recording.**

1 (a) A foreign corporation authorized to conduct affairs
2 or do or transact business in this state may withdraw from
3 this state upon procuring from the secretary of state a
4 certificate of withdrawal. In order to procure such certificate

5 of withdrawal, such foreign corporation shall publish a
6 notice of its intention to withdraw from the state, such notice
7 to be published as a Class II legal advertisement in compliance
8 with the provisions of article three, chapter fifty-nine of this
9 code, and the publication area for such publication shall be
10 the county in which its principal office in this state is situated,
11 or if there be no such office in this state, then any county in
12 this state where it conducts its affairs or transacts its business.

13 (b) After publication of the notice required by the pro-
14 visions of subsection (a) of this section, such foreign corpora-
15 tion shall make application to the secretary of state for a
16 certificate of withdrawal, which application shall set forth:

17 (1) The name of the corporation and the state or country
18 under the laws of which it is incorporated.

19 (2) That the corporation has ceased conducting affairs or
20 has ceased doing or transacting business in this state.

21 (3) That the corporation surrenders its authority to conduct
22 affairs or do or transact business in this state.

23 (4) A post-office address to which the secretary of state
24 may mail a copy of any process against the corporation that
25 may be served on him.

26 (5) Such additional information as may be necessary or
27 appropriate in order to enable the secretary of state and tax
28 commissioner to determine and assess any unpaid fees and
29 annual corporate license tax payable by such foreign cor-
30 poration as may be prescribed by law.

31 (c) In the case of a business corporation, in addition to
32 those matters required to be set forth under the provisions
33 of subsection (b) of this section, such application shall set
34 forth:

35 (1) A statement of the aggregate number of shares which
36 the corporation has authority to issue, itemized by classes,
37 par value of shares, shares without par value, and series, if
38 any, within a class, as of the date of such application.

39 (2) A statement of the aggregate number of issued shares,
40 itemized by classes, par value of shares, shares without par

41 value, and series, if any, within a class, as of the date of
42 such application.

43 (3) A statement, expressed in dollars, of the amount of
44 stated capital of the corporation, as of the date of such
45 application.

46 (d) The application for a certificate of withdrawal shall
47 be made on forms prescribed and furnished by the secretary
48 of state and shall be executed by the corporation by its
49 president or a vice president and by its secretary or an
50 assistant secretary, and verified by one of the officers
51 signing the application, or, if the corporation is in the hands
52 of a receiver or trustee, shall be executed on behalf of the
53 corporation by such receiver or trustee and verified by him.
54 Such application shall be accompanied by a copy of the
55 notice required to be published under the provisions of sub-
56 section (a) of this section and the publisher's certificate of
57 such publication.

58 (e) Duplicate originals of such application for a certificate
59 of withdrawal shall be delivered to the secretary of state. If
60 the secretary of state finds that such application conforms to
61 law, he shall, when all fees have been paid, as prescribed
62 by law, (i) endorse on each of such duplicate originals the
63 word "Filed," and the month, day and year of the filing
64 thereof; (ii) file one of such duplicate originals in his office;
65 and (iii) subject to the provisions of section sixty-one of this
66 article, issue a certificate of withdrawal to which he shall
67 affix the other duplicate original.

68 (f) The certificate of withdrawal, together with the duplicate
69 original of the application for withdrawal affixed thereto by
70 the secretary of state, shall be returned to the corporation
71 or its representative. The corporation or its representative
72 shall record the certificate of withdrawal in the office of the
73 clerk of the county commission in which the corporation's certi-
74 ficate of authority is recorded, and the clerk shall note on the
75 margin of the record book in which such certificate of author-
76 ity is engrossed the fact of the withdrawal of the corporation.

§31-1-62. Conditions for revocation of certificate of authority.

1 (a) Subject to the provisions of section sixty-eight of this

2 article, the certificate of authority of a foreign corporation to
3 conduct affairs or do or transact business in this state may be
4 revoked by the secretary of state upon the conditions prescrib-
5 ed in this section when:

6 (1) The corporation has failed or refused to file in the of-
7 fice of the secretary of state its annual report or corrected an-
8 nual report as required by section fifty-six-a of this article, or

9 (2) The corporation has failed to file in the office of the
10 secretary of state any amendment to its articles of incorpora-
11 tion as required by the provisions of section fifty-seven of this
12 article, or

13 (3) The corporation has failed to file in the office of the
14 secretary of state any articles of merger, as required by the
15 provisions of section fifty-eight of this article, or

16 (4) A misrepresentation has been made of any material
17 matter in any application, report, affidavit or other document
18 submitted by such corporation pursuant to the provisions of
19 this article.

20 (b) No certificate of authority of a foreign corporation
21 shall be revoked by the secretary of state unless:

22 (1) He shall have given the corporation not less than sixty
23 days' notice thereof by registered or certified mail, return re-
24 ceipt requested, addressed to its principal office, and

25 (2) The corporation shall fail, prior to revocation, to file
26 its annual statement or shall fail to file any amendment to its
27 articles of incorporation or shall fail to file any articles of mer-
28 ger or shall fail to correct any such misrepresentation.

§31-1-63. Issuance of order of revocation; period of appeal.

1 (a) Upon revoking any certificate of authority, the secretary
2 of state shall issue an order of revocation in duplicate, one of
3 which shall be filed in his office and the other shall be mailed
4 by registered or certified mail, return receipt requested, to the
5 corporation at its principal office and a copy of the notice re-
6 quired by the provisions of subsection (b) of section sixty-two
7 of this article shall be attached thereto.

8 (b) Such corporation shall have thirty days from the date
9 of receipt of such order of revocation to appeal the action of
10 the secretary of state in accordance with the provisions of
11 section sixty-eight of this article, and if such appeal be not
12 taken within such thirty-day period, then the order of the
13 secretary of state revoking the certificate of authority of such
14 corporation shall be final and the authority of the corporation
15 to conduct affairs or do or transact business in this state shall
16 cease.

17 (c) When said order of revocation becomes finally effective,
18 whether upon no appeal being taken or being sustained
19 upon appeal, it shall be recorded in the office of the clerk of the
20 county commission of the county in which such corporation's
21 original certificate of authority was recorded, and such clerk
22 shall record the same without charge or fee, and shall note on
23 the margin of the record book in which such certificate of
24 authority is engrossed the fact of the revocation of the certificate
25 of authority of the corporation.

PART III—BUSINESS CORPORATIONS.

§31-1-90. Shareholders' preemptive rights.

1 The articles of incorporation may contain such provisions
2 as may be desired limiting or denying to the shareholders of
3 a corporation the preemptive right to acquire unissued or
4 treasury shares theretofore or thereafter authorized of any or
5 all classes or securities convertible into such shares or carrying
6 a right to subscribe to or acquire such shares.

§31-1-104. Officers; removal of officers.

1 (a) The officers of a corporation shall consist of a president,
2 a secretary, and a treasurer, each of whom shall
3 be elected by the board of directors at such time and in
4 such manner as may be prescribed by the bylaws. Such
5 other officers and assistant officers and agents as may be
6 deemed necessary may be elected or appointed by the
7 board of directors or chosen in such other manner as may
8 be prescribed by the bylaws. Any two or more offices may
9 be held by the same person, except the offices of president and
10 secretary.

11 All officers and agents of the corporation, as between them-
12 selves and the corporation, shall have such authority and per-
13 form such duties in the management of the corporation as may
14 be provided in the bylaws, or as may be determined by reso-
15 lution of the board of directors not inconsistent with the by-
16 laws.

17 (b) Any officer or agent may be removed by the board of
18 directors whenever in its judgment the best interests of the
19 corporation will be served thereby, but such removal shall be
20 without prejudice to the contract rights, if any, of the person
21 so removed. Election or appointment of an officer or agent
22 shall not of itself create contract rights.

§31-1-108. Class voting on amendments.

1 The holders of the outstanding shares of a class shall be
2 entitled to vote as a class upon a proposed amendment, whether
3 or not entitled to vote thereon by the provisions of the articles
4 of incorporation, if the amendment would:

5 (a) Increase or decrease the aggregate number of authorized
6 shares of such class.

7 (b) Increase or decrease the par value of the shares of such
8 class.

9 (c) Effect an exchange, reclassification or cancellation of
10 all or part of the shares of such class.

11 (d) Effect an exchange, or create a right of exchange, of
12 all or any part of the shares of another class into the shares of
13 such class.

14 (e) Change the designations, preferences, limitations or
15 relative rights of the shares of such class.

16 (f) Change the shares of such class, whether with or without
17 par value, into the same or a different number of shares,
18 either with or without par value, of the same class or another
19 class or classes.

20 (g) Create a new class of shares having rights and prefer-
21 ences prior and superior to the shares of such class, or in-
22 crease the rights and preferences or the number of authorized

23 shares, of any class having rights and preferences prior or
24 superior to the shares of such class.

25 (h) In the case of a preferred or special class of shares,
26 divide the shares of such class into series and fix and deter-
27 mine the designation of such series and the variations in the
28 relative rights and preferences between the shares of such ser-
29 ies, or authorize the board of directors to do so.

30 (i) Limit or deny the existing preemptive rights of the shares
31 of such class.

32 (j) Cancel or otherwise affect dividends on the shares of
33 such class which have accrued but have not been declared.

§31-1-109. Articles of amendment.

1 The articles of amendment shall be executed in dupli-
2 cate by the corporation by its president or a vice presi-
3 dent and by its secretary or an assistant secretary and verified
4 by one of the officers signing such articles, and shall set forth:

5 (a) The name of the corporation.

6 (b) The amendments so adopted.

7 (c) The date of the adoption of the amendment by the
8 shareholders, or by the board of directors where no shares
9 have been issued.

10 (d) The number of shares outstanding, and the number
11 of shares entitled to vote thereon, and if the shares of any
12 class are entitled to vote thereon as a class, the designation
13 and number of outstanding shares entitled to vote thereon of
14 each such class.

15 (e) The number of shares voted for and against such
16 amendment, respectively, and, if the shares of any class are
17 entitled to vote thereon as a class, the number of shares
18 of each such class voted for and against such amendment,
19 respectively, or if no shares have been issued, a statement to
20 that effect.

21 (f) If such amendment provides for an exchange, reclassifi-
22 cation or cancellation of issued shares, and if the manner in
23 which the same shall be effected is not set forth in the amend-

24 ment, then a statement of the manner in which the same shall be
25 effected.

26 (g) If such amendment effects a change in the amount
27 of stated capital, then a statement of the manner in which
28 the same is effected and a statement, expressed in dollars, of
29 the amount of stated capital as changed by such amendment.

30 (h) The amendment shall contain a statement of the name
31 and address of the person who, or the firm which, prepared
32 such amendment.

**§31-1-131. Revocation of voluntary dissolution proceedings by act
of corporation.**

1 By the act of the corporation, a corporation may, at any
2 time prior to the issuance of a certificate of dissolution by
3 the secretary of state, revoke voluntary dissolution proceedings
4 theretofore taken, in the following manner:

5 (a) The board of directors shall adopt a resolution recom-
6 mending that the voluntary dissolution proceedings be re-
7 voked, and directing that the question of such revocation be
8 submitted to a vote at a special meeting of shareholders.

9 (b) Written notice, stating that the purpose or one of
10 the purposes of such meeting is to consider the advisability
11 of revoking the voluntary dissolution proceedings, shall be
12 given to each shareholder of record entitled to vote at such
13 meeting within the time and in the manner provided in this
14 article for the giving of notice of special meetings of share-
15 holders.

16 (c) At such meeting a vote of the shareholders entitled
17 to vote thereat shall be taken on a resolution to revoke the
18 voluntary dissolution proceedings, which shall require for
19 its adoption the affirmative vote of a majority of the shares
20 entitled to vote thereon.

21 (d) Upon the adoption of such resolution, a statement of
22 revocation of voluntary dissolution proceedings shall be ex-
23 ecuted in duplicate by the corporation by its president or a vice
24 president and by its secretary or an assistant secretary, and
25 verified by one of the officers signing such statement, which
26 statement shall set forth:

- 27 (1) The name of the corporation.
- 28 (2) The names and respective addresses of its officers.
- 29 (3) The names and respective addresses of its directors.
- 30 (4) A copy of the resolution adopted by the shareholders
- 31 revoking the voluntary dissolution proceedings.
- 32 (5) The number of shares outstanding.
- 33 (6) The number of shares voted for and against the resolu-
- 34 tion, respectively.

PART IV—NONPROFIT CORPORATIONS.

§31-1-144. Membership certificates permitted; dividends prohibited.

1 Corporations may have or issue to its members certificates of
2 membership evidencing proportionate ownership of the cor-
3 porate assets, but having no vote as such, the power to vote
4 being reserved to the members. All shares of stock in non-
5 profit corporations now issued and outstanding shall be
6 treated for all purposes as membership certificates. No
7 dividend shall be paid and no part of the income or profit
8 of a corporation shall be distributed to its members, directors
9 or officers. A corporation may pay compensation in a rea-
10 sonable amount to its members, directors, or officers for
11 services rendered, may confer benefits upon its members in
12 conformity with its purposes, and upon dissolution or final
13 liquidation may make distributions to its members as permitted
14 by this article, and no such payment, benefit or distribution
15 shall be deemed to be a dividend or a distribution of income
16 or profit.

§31-1-148. Articles of amendment.

- 1 The articles of amendment shall be executed in duplicate
2 by the corporation by its president or a vice president and by
3 its secretary or an assistant secretary and shall set forth:
- 4 (a) The name of the corporation.
 - 5 (b) The amendment so adopted.
 - 6 (c) If there are members entitled to vote thereon, (1)
 - 7 a statement setting forth the date of the meeting of members
 - 8 at which the amendment was adopted, that a quorum was

9 present at such meeting, and that such amendment received
10 a majority of the votes which members present at such meeting
11 or represented by proxy were entitled to cast, or (2) a state-
12 ment that such amendment was adopted by a consent in writing
13 signed by all members entitled to vote with respect thereto.

14 (d) If there are no members, or no members entitled to
15 vote thereon, a statement of such fact, the date of the meeting
16 of the board of directors at which the amendment was adopted,
17 and a statement of the fact that such amendment received the
18 vote of a majority of the directors in office.

19 (e) The amendment shall contain a statement of the name
20 and address of the person who, or the firm which, prepared
21 such amendment.

**§31-1-149. Restated articles of incorporation; procedures for adop-
tion; contents.**

1 A domestic corporation may at any time restate its articles
2 of incorporation as theretofore amended, by a resolution adop-
3 ted by the board of directors.

4 Upon the adoption of such resolution, restated articles of
5 incorporation shall be executed in duplicate by the corporation
6 by its president or a vice president and by its secretary or as-
7 sistant secretary and verified by one of the officers signing such
8 articles and shall set forth all of the operative provisions of the
9 articles of incorporation as theretofore amended together with
10 a statement that the restated articles of incorporation correctly
11 set forth without change the corresponding provisions of the
12 articles of incorporation as theretofore amended and that the
13 restated articles of incorporation supersede the original articles
14 of incorporation and all amendments thereto.

CHAPTER 11. TAXATION

ARTICLE 12. LICENSE TAXES.

§11-12-77. Relief from assessment of corporate license tax.

1 Any corporation feeling aggrieved at the assessment of its
2 license tax by the tax commissioner, under the provisions of this
3 article may appeal to the circuit court of the county in which
4 the principal office of such corporation is situated, or is

5 proposed to be situated, or if such principal office is
6 located or to be located outside this state, then such
7 appeal shall be to the circuit court of Kanawha county.
8 Such appeal shall be taken within thirty days from the
9 date of receipt of the notice of the assessment.

10 The appeal shall be taken by the filing of a petition and
11 notice, which petition and notice shall be served upon the tax
12 commissioner as an original notice. When said petition and
13 notice is so served, it shall, with the return thereon, be filed
14 in the office of the clerk of the circuit court and docketed as
15 other cases with the taxpayer as plaintiff and the tax com-
16 missioner as defendant.

§11-12-80. Filing of annual reports by corporations; license tax on foreign corporations.

1 Every domestic corporation and foreign corporation which
2 has qualified to hold property or to do business in this state
3 shall file with the tax commissioner annually on or before the
4 thirty-first day of the third month of each year, two copies of
5 the annual report required by section fifty-six-a, article one,
6 chapter thirty-one of this code.

7 It shall be the duty of the tax commissioner to assess and
8 fix the license tax of each such foreign corporation according to
9 the proportion of its issued and outstanding capital stock
10 which is represented by its property owned and used in
11 this state, which license tax shall be at the rate prescribed
12 in section seventy-eight of this article, plus seventy-five per-
13 cent of such tax. In no event shall any such foreign
14 corporation pay an annual license tax of less than two hundred
15 fifty dollars, which shall be in addition to the fee of the sec-
16 retary of state as statutory attorney-in-fact. The tax commis-
17 sioner may in any case require such additional information as
18 he may deem necessary to enable him to assess and fix the
19 just amount of license tax of such corporation; and it shall be
20 his duty to notify every such corporation of the amount so
21 assessed by him and it shall be the duty of the corporation to
22 pay the same to the tax commissioner within thirty days there-

23 after, and if it fail to do so it shall be liable to the penalties
24 prescribed in sections eighty-six and eighty-seven of this article.

§11-12-81. Preliminary report by foreign corporations; assessments; collection of license taxes.

1 Every foreign corporation, at the time of its application for
2 a certificate of authority under the provisions of article one of
3 chapter thirty-one of this code, shall file with the secretary
4 of state a report preliminary to the annual report required to
5 be filed under the provisions of section eighty of this article,
6 which preliminary report shall contain sufficient information
7 upon which to base an assessment of its license tax for the then
8 current year. It shall be the duty of the secretary of state to
9 make assessment of its license tax for such year, and he may
10 require such further information as he may deem necessary
11 for that purpose. Before issuing such certificate the secretary
12 of state shall collect the amount of license tax he finds to be
13 proper for the license tax year ending with the thirtieth day of
14 the last month of the license tax year. If the certificate be is-
15 sued after the last day of the third month of the license tax
16 year and before the first day of the ensuing license tax year, the
17 secretary of state shall assess and collect such taxes at the
18 rate of one tenth the amount of the annual license tax for each
19 month or fractional part of a month to ensue before the first
20 day of the ensuing license tax year. Thereafter on or before the
21 first day of the license tax year next following the date of the
22 certificate of authority and on or before every succeeding first
23 day of the license tax year the tax commissioner shall collect
24 such tax for a full year: *Provided*, That if the certificate be
25 issued in either of the last two months of the license tax year,
26 the secretary of state shall assess and collect the license tax for
27 such month or months, as well as for a full year beginning with
28 the first day of the ensuing license tax year. When the tax
29 commissioner shall assess and collect the tax on any such for-
30 eign corporation, he may include in the tax for any year any
31 amount that such corporation should have paid for any pre-
32 vious year and failed to pay. The collections hereunder shall
33 be in addition to the annual fee of the secretary of state as stat-
34 utory attorney-in-fact. All moneys collected by the secretary of
35 state and the tax commissioner shall be paid into the state
36 treasury in the manner prescribed by law.

§11-12-83. Notice to corporations taxable; statement on payment; tax as lien.

1 It shall be the duty of the tax commissioner, between the
2 fifteenth day of the third month next preceding the first day
3 of the license tax year and the fifteenth day of the second
4 month next preceding the first day of the license tax year, in
5 each year, to notify each corporation, liable to the tax imposed
6 by this article, of the time of payment of such tax and the
7 amount thereof, together with the statutory attorney fee, if any.
8 Such notices may be sent through the mails, addressed to the
9 corporation at its last known post-office address as shown by
10 the records in the office of the secretary of state. If the tax
11 commissioner shall make a mistake in the amount of such
12 tax such corporation may file a sworn certificate of the presi-
13 dent, vice president or secretary of the corporation, showing
14 such mistake, or showing the actual amount of tax due; and,
15 in that event, it shall be the duty of the tax commissioner to
16 accept the amount due as shown by such certificate, unless con-
17 trary to provisions of this article. The payment of the tax and
18 statutory attorney fee, payable under the provisions of this sec-
19 tion, shall be accompanied by a report on forms provided by the
20 tax commissioner for the purpose, and shall be submitted in du-
21 plicate. The tax commissioner shall forward a copy of such re-
22 port to the secretary of state, together with a list of all corpora-
23 tions which have paid such tax. Such report shall contain, in
24 addition to such information as the tax commissioner deems ap-
25 propriate, the name and address of the corporation, the date of
26 incorporation, the place of its principal office and the names
27 and post-office addresses of its president, secretary and other
28 officers. The amount of such tax shall be deemed a debt due the
29 state, and shall be a lien as to an innocent purchaser for value,
30 on the property and assets of the corporation prior to all other
31 liens, except the lien of the taxes levied on its property for state,
32 county and district purposes, from the time a notice of such
33 lien, specifying the year and the amount for which the lien is
34 claimed, is filed in the office of the clerk of the county commis-
35 sion of the county in which the property subject to such liens is
36 situated. Such clerk shall, upon the filing in his office of any
37 such notice, record such notice in a separate docket in his office
38 to be known as "Corporation License Tax Lien Docket," and

39 index the same in the name of the corporation against whom
40 the lien is claimed. Upon payment of such lien debt there shall
41 be executed by the tax commissioner and delivered to the clerk
42 of the county commission in whose office notice of such lien is
43 filed a release thereof, which said release shall be filed and
44 recorded by such clerk in like manner as releases of judgment
45 liens are filed and recorded. Such tax shall be a preferred
46 debt in case of insolvency.

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

James L. Davis
Chairman Senate Committee

Lawrence L. Christensen
Chairman House Committee

Originated in the House.

Takes effect July 1, 1975.

J. C. Ollan Jr.
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

W. T. Bartholomew Jr.
President of the Senate

Levin H. Th. Monroe
Speaker House of Delegates

The within approved this the 26th
March
day of _____, 1975.

Anna P. Hassel Jr.
Governor

PRESENTED TO THE
GOVERNOR

Date 3/24/75

Time 12:00 noon