WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1975

ENROLLED

HOUSE BILL No. 1338

Originating in the House Committee on the Judiciary

PASSED March 5, 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.

Except as may be otherwise provided by the provisions of this article, this article shall become and be operative as of the effective date hereof, and the provisions thereof shall apply to and govern all corporations then existing or thereafter formed, and all corporate acts thereafter done: Provided, That nothing contained in this article shall be construed to affect the existence of any then existing corporation or to impair the validity of any corporate act done and performed in accordance with the preexisting law. In the event of any inconsistency between any of the provisions of this article and the rights conferred by any special act of the Legislature of the state of Virginia before the formation of the state of West Virginia, or the Legislature of the state of West Virginia subsequent to such date, the provisions of such special act shall prevail to the extent of such inconsistency.

The provisions of this article shall apply to commerce with foreign nations and among the several states only insofar as the same may be permitted under the provisions of the constitution and treaties of the United States.

PART II—CORPORATIONS GENERALLY.

§31-1-6. Definitions.

As used in this article, unless the context otherwise requires a different meaning, the term:

(a) "Articles of incorporation" means the original or restated articles of incorporation or articles of consolidation and all amendments thereto including articles of merger.

(b) "Authorized shares" means the shares of all classes which a business corporation is authorized to issue.
(c) "Business corporation" means a corporation organized for profit.

(d) "Bylaws" means the code or codes of rules adopted for the regulation or management of the affairs of the corporation, irrespective of the name or names by which such rules are designated.

(e) "Capital surplus" means the entire surplus of a business corporation other than its earned surplus.

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

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

(h) "Earned surplus" means the portion of the surplus of a business corporation equal to the balance of its net profits, income, gains and losses from the date of incorporation, or from the latest date when a deficit was eliminated by an application of its capital surplus or stated capital or otherwise, after deducting subsequent distributions to shareholders and transfers to stated capital and capital surplus to the extent such distributions and transfers are made out of earned surplus. Earned surplus shall include also any portions of surplus allocated to earned surplus in mergers, consolidations or acquisitions of all or substantially all of the outstanding shares or of the property and assets of another corporation, domestic or foreign.

(i) "Employee" includes officers but not directors. A director may accept duties which make him also an employee.

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

(k) "Insolvent" means inability of a corporation to pay its debts as they become due in the usual course of its business.
(1) "Member" means one having membership in a nonprofit corporation in accordance with the provisions of its articles of incorporation or bylaws and shall include shareholders where such corporation issues shares.

(m) "Net assets" means the amount by which the total assets of a corporation exceed the total debt of the corporation.

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

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

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

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

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

(s) "Surplus" means the excess of the net assets of a business corporation over its stated capital.
(t) "Treasury shares" means shares of a business corporation which have been issued and have been subsequently acquired by and belong to such corporation, and have not, either by reason of the acquisition or thereafter, been cancelled or restored to the status of authorized but unissued shares. Treasury shares shall be deemed to be issued shares, but not outstanding shares.


Every corporation shall have the power:

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

(b) To sue and be sued, complain and defend, in its corporate name.

(c) To have a corporate seal which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced.

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

(e) To sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets.

(f) To lend money and use its credit to assist its employees.

(g) To purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other domestic or foreign corporations, associations, partner-
29 ships, joint ventures or individuals, or direct or indirect obligations of the United States or of any other government, state, territory, governmental district or municipality or of any instrumentality thereof.

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

38 (i) To lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested.

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

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

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

51 (m) To make donations for the public welfare or for charitable, scientific or educational purposes.

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

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

61 (p) To be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust or other enterprise.
(q) To cease its corporate activities and surrender its corporate franchise in accordance with the provisions of this article.

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

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

(a) A corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or proceeding, whether civil, criminal, administrative or investigatory (other than an action by or in the right of the corporation) by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines, taxes and penalties and interest thereon, and amounts paid in settlement actually and reasonably incurred by him in connection with such action or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interest of the corporation, and, with respect to any criminal action or proceeding, that such person did have reasonable cause to believe that his conduct was unlawful.

(b) A corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or proceeding by or in the right of the corporation to procure judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation
as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, except that no indemnification shall be made in respect of any claim, issue or matter, including, but not limited to, taxes or any interest or penalties thereon, as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to the corporation unless and only to the extent that the court in which such action or proceeding was brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

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

(d) Any indemnification under subsections (a) or (b) (unless ordered by a court) shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in subsections (a) or (b). Such determination shall be made (1) by the board of directors by a majority vote of a quorum consisting of directors who were not parties to such action or proceeding, or (2) if such a quorum is not obtainable, or even if obtainable a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (3) by the shareholders or members.

(e) Expenses (including attorneys' fees) incurred in defending a civil or criminal action or proceeding may be
paid by the corporation in advance of the final disposition
of such action or proceeding as authorized in the manner
provided in subsection (d) upon receipt of an undertaking
by or on behalf of the director, officer, employee or agent
to repay such amount unless it shall ultimately be determined
that he is entitled to be indemnified by the corporation as
authorized in this section.

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

(g) A corporation shall have power to purchase and
maintain insurance on behalf of any person who is or was
a director, officer, employee or agent of the corporation, or
is or was serving at the request of the corporation as a
director, officer, employee or agent of another corporation,
partnership, joint partnership, joint venture, trust or other
enterprise against any liability asserted against him and
incurred by him in any such capacity or arising out of his
status as such, whether or not the corporation would have
the power to indemnify him against such liability under the
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
in fact for and on behalf of every corporation created by
virtue of the laws of this state and every foreign corporation
authorized to conduct affairs or do or transact business
herein pursuant to the provisions of this article, with authority
to accept service of notice and process on behalf of every
such corporation and upon whom service of notice and
process may be made in this state for and upon every such
corporation. No act of such corporation appointing the
secretary of state such attorney in fact shall be necessary.
Immediately after being served with or accepting any such
process or notice, of which process or notice two copies for
each defendant shall be furnished the secretary of state with
the original notice or process, together with a fee of two
dollars, the secretary of state shall file in his office a copy
of such process or notice, with a note thereon endorsed of
the time of service, or acceptance, as the case may be,
and transmit one copy of such process or notice by registered
or certified mail, return receipt requested, to the person
to whom notice and process shall be sent, whose name and
address were last furnished to the state officer at the time
authorized by statute to accept service of notice and process
and upon whom notice and process may be served; and if no
such person has been named, to the principal office of the
corporation at the address last furnished to the state officer
at the time authorized by statute to accept service of process
and upon whom process may be served, as required by law.
No process or notice shall be served on the secretary of state or
accepted by him less than ten days before the return day
thereof. Such corporation shall pay the annual fee prescribed
by article twelve, chapter eleven of this code for the services
of the secretary of state as its attorney in fact.

Any foreign corporation which shall conduct affairs or
do or transact business in this state without having been
authorized so to do pursuant to the provisions of this
article shall be conclusively presumed to have appointed
the secretary of state as its attorney in fact with authority
to accept service of notice and process on behalf of such
corporation and upon whom service of notice and process
may be made in this state for and upon every such corpora-
tion in any action or proceeding described in the next
following paragraph of this section. No act of such corporation
appointing the secretary of state as such attorney in fact shall
be necessary. Immediately after being served with or accept-
ing any such process or notice, of which process or notice
two copies for each defendant shall be furnished the secretary
of state with the original notice or process, together with
a fee of two dollars, the secretary of state shall file in his
office a copy of such process or notice, with a note thereon
endorsed of the time of service or acceptance, as the case
may be, and transmit one copy of such process or notice
by registered or certified mail, return receipt requested, to
such corporation at the address of its principal office, which
address shall be stated in such process or notice. Such
service or acceptance of such process or notice shall be
sufficient if such return receipt shall be signed by an agent
or employee of such corporation, or the registered or certified
mail so sent by the secretary of state is refused by the
addressee and the registered or certified mail is returned to
the secretary of state, or to his office, showing thereon the
stamp of the United States postal service that delivery thereof
has been refused, and such return receipt or registered or
certified mail is appended to the original process or notice
and filed therewith in the clerk's office of the court from
which such process or notice was issued. No process or
notice shall be served on the secretary of state or accepted
by him less than ten days before the return date thereof.
The court may order such continuances as may be reasonable
to afford each defendant opportunity to defend the action
or proceedings.

For the purpose of this section, a foreign corporation
not authorized to conduct affairs or do or transact business
in this state pursuant to the provisions of this article shall
nevertheless be deemed to be conducting affairs or doing or
transacting business herein (a) if such corporation makes a
contract to be performed, in whole or in part, by any party
thereto, in this state, (b) if such corporation commits a tort
in whole or in part in this state, or (c) if such corporation
manufactures, sells, offers for sale or supplies any product
in a defective condition and such product causes injury to
any person or property within this state notwithstanding the
fact that such corporation had no agents, servants or employees
or contacts within this state at the time of said injury.
The making of such contract, the committing of such tort
or the manufacture or sale, offer of sale or supply of such
defective product as hereinabove described shall be deemed
to be the agreement of such corporation that any notice or process served upon, or accepted by, the secretary of state pursuant to the next preceding paragraph of this section in any action or proceeding against such corporation arising from, or growing out of, such contract, tort, or manufacture or sale, offer of sale or supply of such defective product shall be of the same legal force and validity as process duly served on such corporation in this state.

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

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

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

(a) The articles of incorporation shall set forth:

(1) The name of the corporation.

(2) The period of duration, which may be perpetual.

(3) The purpose or purposes for which the corporation is organized.

(4) The address of its principal office, and the name and address of the person to whom shall be sent notice or process served upon, or service of which is accepted by, the secretary of state, if such person has been appointed by the corporation.

(5) The name and address of each incorporator.
(b) In the case of a business corporation, in addition to those matters required to be set forth by the provisions of subsection (a) of this section, the articles of incorporation shall set forth:

1. The aggregate number of shares which the corporation shall have authority to issue; if such shares are to consist of one class only, the par value of each of such shares, or a statement that all of such shares are without par value; or, if such shares are to be divided into classes, the number of shares of each class, and a statement of the par value of the shares of each such class or that such shares are to be without par value.

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

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

4. Any provision limiting or denying to shareholders the preemptive right to acquire additional unissued or treasury shares of the corporation.

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

(c) In the case of a nonprofit corporation, in addition to those matters required to be set forth by the provisions of subsection (a) of this section, the articles of incorporation shall set forth any provisions, not inconsistent with
law, which the incorporators elect to set forth in such articles of incorporation for the regulation of the internal affairs of the corporation, including any provisions for distribution of assets on dissolution or final liquidation.

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

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

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

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

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

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

The certificate of incorporation, together with the duplicate original of the articles of incorporation affixed thereto by the secretary of state, shall be returned to the incorporators or their representative.

(b) If the corporation has its principal office in this state,
it shall cause such certificate, or a duly certified copy thereof to be recorded in the office of the clerk of the county commission of the county in which such principal office is located; if its principal office is not within this state but it conducts affairs or does or transacts business herein, then in the county or one of the counties in which it conducts its affairs or does or transacts its principal business. If its principal office is without the state and it does not conduct affairs or do or transact business within the state, such charter need not be recorded in a county clerk’s office. A failure to comply with the foregoing recordation provision within six months from the date of such certificate shall subject the corporation to a fine of not more than one thousand dollars.

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

(a) Upon approval by the shareholders or members in accordance with the provisions of section one hundred seventeen or section one hundred fifty of this article, whichever is applicable, the articles of merger or articles of consolidation shall be executed in duplicate by each corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers of each corporation signing such articles.

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

The certificate of merger or certificate of consolidation, together with the duplicate original of the articles of merger or articles of consolidation affixed thereto by the secretary of state, shall be returned to the surviving or new corporation, as the case may be, or its representative.

(c) The certificate of merger or certificate of consolidation,
or certified copy thereof, shall be recorded in the office of the appropriate county clerk in the same manner as original certificates of incorporation are required to be recorded, in accordance with the provisions of subsection (b) of section twenty-eight of this article and received in evidence to the same extent as an original certificate of incorporation or a certified 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 of a corporation, when the costs and expenses of such proceedings and all debts, obligations and liabilities of the corporation shall have been paid and discharged and all of its remaining property and assets distributed to its shareholders, or in the case of a nonprofit corporation, in accordance with the provisions of sections one hundred fifty-five and one hundred fifty-six of this article, the court shall enter an order dissolving the corporation, whereupon the existence of the corporation shall cease. In case its property and assets are not sufficient to satisfy and discharge such costs, expenses, debts and obligations and all the property and assets have been applied so far as they will go to their payment, the court shall likewise enter an order dissolving the corporation, whereupon the existence of the corporation shall cease.

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


1 The dissolution of a corporation either (1) by the issuance of a certificate of dissolution by the secretary of state, or (2) by an order of court when the court has not liquidated the assets and business or affairs of the corporation as provided in
this article, or (3) by expiration of its period of duration, shall not take away or impair any remedy available to or against such corporation, its shareholders or members, directors and officers, for any right or claim existing, or any liability incurred, prior to such dissolution if action or other proceeding thereon is commenced within two years after the date of such dissolution. Any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The shareholders or members, directors and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right or claim. If such corporation was dissolved by the expiration of its period of duration, such corporation may amend its articles of incorporation at any time during such period of two years so as to extend its period of duration.

At any time after the date of such expiration or dissolution, the shareholders may elect a new board of directors; the director or directors remaining in office may fill any vacancies in the board of directors, and in any executive office, by election or appointment; and such directors or officers and their successors in office may cause actions or proceedings to be brought, conducted, prosecuted or defended, the real and personal property of the corporation to be conveyed or transferred under the common seal or otherwise, further assurances of previous conveyances to be made, and all lawful acts to be done, in the corporate name, in like manner and with like effect as before such dissolution or expiration; but so far only as shall be necessary or proper to do and perform every act and thing which should have been or should be done and performed by the corporation, and for collecting the debts and claims due to the corporation, converting its property and assets into money, prosecuting, defending and protecting its rights, enforcing all claims in its favor, and paying over and distributing its property and assets, or the proceeds thereof, to those entitled thereto.

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

(a) No foreign corporation shall have the right to conduct affairs or do or transact business in this state until it shall have
procured a certificate of authority so to do from the secretary of state. No foreign corporation shall be entitled to procure a certificate of authority under this article to conduct affairs or do or transact any business in this state which would not be permitted to be conducted, done or transacted by a corporation organized under this article. A foreign corporation shall not be denied a certificate of authority by reason of the fact that the laws of the state or county under which such corporation is organized governing its organization and internal affairs differ from the laws of this state, and nothing in this article contained shall be construed to authorize this state to regulate the organization or the internal affairs of such corporation.

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

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

(2) Holding meetings of its directors, shareholders or members or carrying on other activities concerning its internal affairs;

(3) Maintaining bank accounts;

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

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

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

(7) Granting funds or other gifts;

(8) Distributing information to its shareholders or members; or

(9) Conducting an isolated transaction completed within a
period of thirty days and not in the course of a number of repeated transactions of like nature.

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

(1) Maintaining offices or agencies for the transfer, exchange and registration of its securities, or appointing and maintaining trustees or depositaries with relation to its securities;

(2) Effecting sales through independent contractors; or

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

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

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

(2) The ownership, modification, renewal, extension, transfer or foreclosure of such loans, or the acceptance of substitute or additional obligors thereon;

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

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

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

(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;

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

(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;

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

(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-
99 poration; contents; churches or religious denomina-
100 tions in corporate capacity prohibited.

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

(2) If the name of the corporation does not contain
106 the word "corporation," "company," "incorporated" or
107 "limited," or does not contain an abbreviation of one of
108 such words, then the name of the corporation with the word
or abbreviation which it elects to add thereto for use in this state.

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

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

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

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

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

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

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

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

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

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

(3) A statement, expressed in dollars, of the amount of stated capital of the corporation, as defined in this article.
(4) An estimate, expressed in dollars, of the value of all property to be owned by the corporation, for the following year, wherever located, and an estimate of the value of the property of the corporation to be located within this state during such year, and an estimate, expressed in dollars, of the gross amount of business which will be done or transacted by the corporation during such year, and an estimate of the gross amount thereof which will be done or transacted by the corporation at or from places of business in this state during such year.

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

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

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

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

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

(1) The name of the corporation and the state of its incorporation.
(2) The present address of its principal office.

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

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

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

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

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

(1) The name of the corporation.

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

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

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

(5) That such change was duly authorized by the board of directors.
Such statement shall be signed by the president, vice president, secretary or assistant secretary of the corporation and verified by him.

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

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

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

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

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

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

(5) In the case of a foreign corporation, the date of incorporation and the following additional information: (i) the date of the certificate of the secretary of state authorizing it to do business in this state, the name of its officer, if any, charged with the duty of making returns of its property for taxation; (ii) the number of shares of its authorized capital stock having a par value and the par value of each share, and the number of its issued and outstanding shares and the par value of each share; (iii) the number of shares of its authorized capital stock having no par value, the number of shares of such stock authorized to be issued and the considerations fixed for the issue of each share of the same by its articles of incorpor-
this state, and the value of its property owned and used without
this state; and (v) the proportion of its capital stock which is
represented by property owned and used in the state of West
Virginia.

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

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

Each corporation, domestic or foreign, which fails or
refuses to file its annual report or corrected annual report, if such corrected report is requested, for three successive years, as required by the provisions of section fifty-six-a of this article, shall be notified by registered or certified mail, return receipt requested, of its failure to file such annual reports. Such notice shall be mailed to the corporation as provided in section fifteen of this article.

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

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

Any person or corporation aggrieved by the action of the secretary of state with respect to dissolving the corporation or revoking its certificate of authority under this section shall have the same right of appeal as set forth in subsection (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; recordation.

(a) A foreign corporation authorized to conduct affairs or do or transact business in this state may withdraw from this state upon procuring from the secretary of state a certificate of withdrawal. In order to procure such certificate
of withdrawal, such foreign corporation shall publish a notice of its intention to withdraw from the state, such notice to be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which its principal office in this state is situated, or if there be no such office in this state, then any county in this state where it conducts its affairs or transacts its business.

(b) After publication of the notice required by the provisions of subsection (a) of this section, such foreign corporation shall make application to the secretary of state for a certificate of withdrawal, which application shall set forth:

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

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

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

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

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

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

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

   (2) A statement of the aggregate number of issued shares, itemized by classes, par value of shares, shares without par
value, and series, if any, within a class, as of the date of such application.

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

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

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

(f) The certificate of withdrawal, together with the duplicate original of the application for withdrawal affixed thereto by the secretary of state, shall be returned to the corporation or its representative. The corporation or its representative shall record the certificate of withdrawal in the office of the clerk of the county commission in which the corporation’s certificate of authority is recorded, and the clerk shall note on the margin of the record book in which such certificate of authority is engrossed the fact of the withdrawal of the corporation.


(a) Subject to the provisions of section sixty-eight of this
article, the certificate of authority of a foreign corporation to conduct affairs or do or transact business in this state may be revoked by the secretary of state upon the conditions prescribed in this section when:

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

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

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

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

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

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

(2) The corporation shall fail, prior to revocation, to file its annual statement or shall fail to file any amendment to its articles of incorporation or shall fail to file any articles of merger or shall fail to correct any such misrepresentation.

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

(a) Upon revoking any certificate of authority, the secretary of state shall issue an order of revocation in duplicate, one of which shall be filed in his office and the other shall be mailed by registered or certified mail, return receipt requested, to the corporation at its principal office and a copy of the notice required by the provisions of subsection (b) of section sixty-two of this article shall be attached thereto.
§31-1-90. Shareholders' preemptive rights.

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

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

(a) The officers of a corporation shall consist of a president, a secretary, and a treasurer, each of whom shall be elected by the board of directors at such time and in such manner as may be prescribed by the bylaws. Such other officers and assistant officers and agents as may be deemed necessary may be elected or appointed by the board of directors or chosen in such other manner as may be prescribed by the bylaws. Any two or more offices may be held by the same person, except the offices of president and secretary.
All officers and agents of the corporation, as between themselves and the corporation, shall have such authority and perform such duties in the management of the corporation as may be provided in the bylaws, or as may be determined by resolution of the board of directors not inconsistent with the bylaws.

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

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

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

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

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

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

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

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

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

(g) Create a new class of shares having rights and preferences prior and superior to the shares of such class, or increase the rights and preferences or the number of authorized
shares, of any class having rights and preferences prior or
superior to the shares of such class.

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

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

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

§31-1-109. Articles of amendment.

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

(a) The name of the corporation.

(b) The amendments so adopted.

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

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

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

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

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

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

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

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

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

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

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

(d) Upon the adoption of such resolution, a statement of
revocation of voluntary dissolution proceedings shall be ex-
cuted in duplicate by the corporation by its president or a vice
president and by its secretary or an assistant secretary, and
verified by one of the officers signing such statement, which
statement shall set forth:
(1) The name of the corporation.
(2) The names and respective addresses of its officers.
(3) The names and respective addresses of its directors.
(4) A copy of the resolution adopted by the shareholders revoking the voluntary dissolution proceedings.
(5) The number of shares outstanding.
(6) The number of shares voted for and against the resolution, respectively.

PART IV—NONPROFIT CORPORATIONS.

§31-1-144. Membership certificates permitted; dividends prohibited.
Corporations may have or issue to its members certificates of membership evidencing proportionate ownership of the corporate assets, but having no vote as such, the power to vote being reserved to the members. All shares of stock in non-profit corporations now issued and outstanding shall be treated for all purposes as membership certificates. No dividend shall be paid and no part of the income or profit of a corporation shall be distributed to its members, directors or officers. A corporation may pay compensation in a reasonable amount to its members, directors, or officers for services rendered, may confer benefits upon its members in conformity with its purposes, and upon dissolution or final liquidation may make distributions to its members as permitted by this article, and no such payment, benefit or distribution shall be deemed to be a dividend or a distribution of income or profit.

§31-1-148. Articles of amendment.
The articles of amendment shall be executed in duplicate by the corporation by its president or a vice president and by its secretary or an assistant secretary and shall set forth:
(a) The name of the corporation.
(b) The amendment so adopted.
(c) If there are members entitled to vote thereon, (1) a statement setting forth the date of the meeting of members at which the amendment was adopted, that a quorum was
present at such meeting, and that such amendment received
a majority of the votes which members present at such meeting
or represented by proxy were entitled to cast, or (2) a state-
ment that such amendment was adopted by a consent in writing
signed by all members entitled to vote with respect thereto.

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

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

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

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

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

CHAPTER 11. TAXATION

ARTICLE 12. LICENSE TAXES.

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

Any corporation feeling aggrieved at the assessment of its
license tax by the tax commissioner, under the provisions of this
article may appeal to the circuit court of the county in which
the principal office of such corporation is situated, or is
proposed to be situated, or if such principal office is
located or to be located outside this state, then such
appeal shall be to the circuit court of Kanawha county.
Such appeal shall be taken within thirty days from the
date of receipt of the notice of the assessment.

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

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

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

It shall be the duty of the tax commissioner to assess and
fix the license tax of each such foreign corporation according to
the proportion of its issued and outstanding capital stock
which is represented by its property owned and used in
this state, which license tax shall be at the rate prescribed
in section seventy-eight of this article, plus seventy-five per-
cent of such tax. In no event shall any such foreign
corporation pay an annual license tax of less than two hundred
fifty dollars, which shall be in addition to the fee of the sec-
retary of state as statutory attorney-in-fact. The tax commis-
ioner may in any case require such additional information as
he may deem necessary to enable him to assess and fix the
just amount of license tax of such corporation; and it shall be
his duty to notify every such corporation of the amount so
assessed by him and it shall be the duty of the corporation to
pay the same to the tax commissioner within thirty days there-
after, and if it fail to do so it shall be liable to the penalties prescribed in sections eighty-six and eighty-seven of this article.

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

Every foreign corporation, at the time of its application for a certificate of authority under the provisions of article one of chapter thirty-one of this code, shall file with the secretary of state a report preliminary to the annual report required to be filed under the provisions of section eighty of this article, which preliminary report shall contain sufficient information upon which to base an assessment of its license tax for the then current year. It shall be the duty of the secretary of state to make assessment of its license tax for such year, and he may require such further information as he may deem necessary for that purpose. Before issuing such certificate the secretary of state shall collect the amount of license tax he finds to be proper for the license tax year ending with the thirtieth day of the last month of the license tax year. If the certificate be issued after the last day of the third month of the license tax year and before the first day of the ensuing license tax year, the secretary of state shall assess and collect such taxes at the rate of one tenth the amount of the annual license tax for each month or fractional part of a month to ensue before the first day of the ensuing license tax year. Thereafter on or before the first day of the license tax year next following the date of the certificate of authority and on or before every succeeding first day of the license tax year the tax commissioner shall collect such tax for a full year: Provided, That if the certificate be issued in either of the last two months of the license tax year, the secretary of state shall assess and collect the license tax for such month or months, as well as for a full year beginning with the first day of the ensuing license tax year. When the tax commissioner shall assess and collect the tax on any such foreign corporation, he may include in the tax for any year any amount that such corporation should have paid for any previous year and failed to pay. The collections hereunder shall be in addition to the annual fee of the secretary of state as statutory attorney-in-fact. All moneys collected by the secretary of state and the tax commissioner shall be paid into the state treasury in the manner prescribed by law.
§11-12-83. Notice to corporations taxable; statement on payment; tax as lien.

It shall be the duty of the tax commissioner, between the fifteenth day of the third month next preceding the first day of the license tax year and the fifteenth day of the second month next preceding the first day of the license tax year, in each year, to notify each corporation, liable to the tax imposed by this article, of the time of payment of such tax and the amount thereof, together with the statutory attorney fee, if any. Such notices may be sent through the mails, addressed to the corporation at its last known post-office address as shown by the records in the office of the secretary of state. If the tax commissioner shall make a mistake in the amount of such tax such corporation may file a sworn certificate of the president, vice president or secretary of the corporation, showing such mistake, or showing the actual amount of tax due; and, in that event, it shall be the duty of the tax commissioner to accept the amount due as shown by such certificate, unless contrary to provisions of this article. The payment of the tax and statutory attorney fee, payable under the provisions of this section, shall be accompanied by a report on forms provided by the tax commissioner for the purpose, and shall be submitted in duplicate. The tax commissioner shall forward a copy of such report to the secretary of state, together with a list of all corporations which have paid such tax. Such report shall contain, in addition to such information as the tax commissioner deems appropriate, the name and address of the corporation, the date of incorporation, the place of its principal office and the names and post-office addresses of its president, secretary and other officers. The amount of such tax shall be deemed a debt due the state, and shall be a lien as to an innocent purchaser for value, on the property and assets of the corporation prior to all other liens, except the lien of the taxes levied on its property for state, county and district purposes, from the time a notice of such lien, specifying the year and the amount for which the lien is claimed, is filed in the office of the clerk of the county commission of the county in which the property subject to such liens is situated. Such clerk shall, upon the filing in his office of any such notice, record such notice in a separate docket in his office to be known as “Corporation License Tax Lien Docket,” and
index the same in the name of the corporation against whom the lien is claimed. Upon payment of such lien debt there shall be executed by the tax commissioner and delivered to the clerk of the county commission in whose office notice of such lien is filed a release thereof, which said release shall be filed and recorded by such clerk in like manner as releases of judgment liens are filed and recorded. Such tax shall be a preferred debt in case of insolvency.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the House.

Takes effect July 1, 1975.

The within approved this the 26th day of ________________ ——, 1975.

Governor
PRESENTED TO THE GOVERNOR

Date 3/24/75
Time 12:00 noon