WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1976

ENROLLED
Committee Substitute for
SENATE BILL NO. 153

(By Mr. Palmer; by request)

PASSED April 13, 1976
In Effect ninety days from Passage

FILED IN THE OFFICE OF
SECRETARY OF STATE OF
WEST VIRGINIA
THIS DATE 3/31/76
AN ACT to repeal sections twenty-five and ninety-seven, article one, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to enact in lieu thereof a new section twenty-five; and to amend and reenact sections six, twenty, twenty-three, twenty-seven, thirty, seventy-three, one hundred nine and one hundred forty of said article one, relating to corporations; business and nonprofit corporations; definitions; quorums of shareholders, members and directors; director conflicts of interest; contents of article of incorporation; organizational meetings; action without meeting; article of amendment; and removal of directors.

Be it enacted by the Legislature of West Virginia:

That sections twenty-five and ninety-seven, article one, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed and a new section twenty-five be enacted in lieu thereof; and that sections six, twenty, twenty-three, twenty-seven, thirty, seventy-three, one hundred nine and one hundred forty of said article one be amended and reenacted to read as follows:

ARTICLE 1. BUSINESS AND NONPROFIT CORPORATIONS.

§31-1-6. Definitions.

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

3 (a) "Articles of incorporation" means the original or restated articles of incorporation or articles of con-
solidation 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 one and part two 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 one and part two 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.

(l) "Member" means one having membership in a nonprofit corporation in accordance with the provisions of its articles of incorporation or bylaws.

(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.

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

"Surplus" means the excess of the net assets
of a business corporation over its stated capital.

"Treasury shares" means shares of a business
corporation which have been issued and have been sub-
sequently acquired by and belong to such corporation,
and have not, either by reason of the acquisition or there-
after, been canceled or restored to the status of authorized
but unissued shares. Treasury shares shall be deemed
to be issued shares, but not outstanding shares.

§31-1-20. Quorum of shareholders or members.

In the case of a business corporation, unless otherwise
provided in the articles of incorporation, a majority of the
shares entitled to vote, represented in person or by proxy,
shall constitute a quorum at a meeting of shareholders,
but in no event shall a quorum consist of less than one
third of the shares entitled to vote at the meeting.

In the case of a nonprofit corporation, the bylaws may
provide the number or percentage of members entitled
to vote represented in person or by proxy, which shall
constitute a quorum at a meeting of members and in the
absence of any such provision, members holding one tenth
of the votes entitled to be cast on the matter to be voted
upon represented in person or by proxy shall constitute a
quorum. A majority of the votes entitled to be cast on a
matter to be voted upon by the members present or repre-
"ented by proxy at a meeting at which a quorum is present
shall be necessary for the adoption thereof unless
a greater proportion is required by this article, the articles
of incorporation or the bylaws.

If a quorum is present, the affirmative vote of the
majority of the shares represented or members present at
the meeting and entitled to vote on the subject matter
shall be the act of the shareholders or members, unless
the vote of a greater number or voting by classes is
required by this article or the articles of incorporation or
bylaws. Any number less than a quorum present may adjourn any stockholders or members meeting until a quorum is present.

§31-1-23. Quorum of directors.

A majority of the number of directors fixed by or in the manner provided in the bylaws, or in the absence of a bylaw fixing or providing for the number of directors, then of the number stated in the articles of incorporation, shall constitute a quorum for the transaction of business unless a greater number is required by the articles of incorporation or the bylaws. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by the articles of incorporation or the bylaws. Any number less than a quorum present may adjourn any directors meeting until a quorum is present.

§31-1-25. Director conflicts of interest.

(a) No contract or other transaction between a corporation and one or more of its directors or any other corporation, firm, association or entity in which one or more of its directors are directors or officers or are financially interested, shall be either void or voidable because of such relationship or interest or because such director or directors are present at the meeting of the board of directors or a committee thereof which authorizes, approves or ratifies such contract or transaction or because his or their votes are counted for such purpose, if:

(1) The fact of such relationship or interest is disclosed or known to the board of directors or committee which authorizes, approves or ratifies the contract or transaction by a vote or consent sufficient for the purpose without counting the votes or consents of such interested directors; or

(2) The fact of such relationship or interest is disclosed or known to the shareholders entitled to vote and they authorize, approve or ratify such contract or transaction by vote or written consent; or
(3) The contract or transaction is fair and reasonable to the corporation.

(b) Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board of directors or a committee thereof which authorizes, approves or ratifies such contract or transaction.

(c) On any question involving the authorization, approval or ratification of any such contract or transaction, the names of those voting each way shall be entered on the record of their proceedings.

§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, which may be stated to be, or to include, the transaction of any or all lawful business for which corporations may be incorporated under this article.

(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 number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as such directors.

(6) 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
(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 state-
ment 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 acknowled-
ed by the incorporators before a notary public and
transmitted with the proper fees to, and shall be filed
with, the secretary of state.
§31-1-30. Organizational meeting; notice, waiver of notice.
After the issuance of the certificate of incorporation
an organizational meeting of the board of directors named
in the articles of incorporation shall be held, either within
or without this state, at the call of the incorporator or of a
majority of the incorporators, for the purpose of adopting
bylaws, electing officers and the transaction of such other
business as may come before the meeting. The in-
corporator or incorporators calling the meeting shall
give at least three days' notice thereof by mail to each
director so named, which notice shall state the time
and place of the meeting, unless such notice is waived in
accordance with the provisions of this article.
§31-1-73. Action by shareholders, members or directors with-
out a meeting.
(a) Whenever the vote of shareholders or members at
a meeting thereof is required or permitted to be taken in
connection with any corporate action, the meeting and
vote of such shareholders or members may be dispensed
with if all of the shareholders or members who would
have been entitled to vote upon the action, if such meeting
were held, shall agree in writing to such corporate action
being taken, and such agreement shall have like effect
and validity as though the action were duly taken by the
unanimous action of all shareholders or members entitled
to vote at a meeting of such shareholders or members
duly called and legally held.
(b) Unless otherwise provided in the articles of in-
corporation or the bylaws, whenever the vote of directors
at a meeting thereof is required or permitted to be taken
in connection with any corporate action, the meeting and
vote of such directors may be dispensed with if all the
directors shall agree in writing to such corporate action
being taken, and such agreement shall have like effect
and validity as though the action were duly taken by the
unanimous action of all directors at a meeting of such
directors duly called and legally held.

(c) In the event that the action which is agreed to, as
provided for in subsection (a) or (b) of this section, is
such as would have required the filing of any articles,
document or certificate with the secretary of state under
any provision of this article, if such action had been voted
upon by the shareholders or members or by the directors
at a meeting, the articles, document or certificate so filed
shall state that written agreement has been executed in
lieu of stating that the shareholders, members or directors
voted upon the corporate action in question and such
articles, document or certificate shall have the same force
and effect under all provisions of law as if the action had
been taken by the unanimous vote of all shareholders or
members entitled to vote, or of all the directors, at a
meeting duly called and legally held.

§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 designa-
tion 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, reclassification or cancellation of issued shares, and if the manner in which the same shall be effected is not set forth in the amendment, 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 name and address of the person who, or the firm which, prepared such amendment.

§31-1-140. Removal of directors.

A director may be removed from office pursuant to any procedure therefor provided in the articles of incorporation or bylaws; or, if no procedure therefor is provided in the articles of incorporation or bylaws, directors may be removed at a meeting of members called expressly for that purpose in the manner provided in this section. Any director or the entire board of directors may be removed, with or without cause, by a vote of a majority of the members then entitled to vote at an election of directors. If less than the entire board is to be removed, no one of the directors may be removed if the votes cast against his removal would be sufficient to elect him.

Whenever the members of any class are entitled to elect one or more directors by the provisions of the articles of incorporation, the provisions of this section shall apply, in respect to the removal of a director or directors so elected, to the vote of the members of that class and not to the vote of all the members entitled to vote.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within approved this the 29th day of March, 1976

Governor
PRESENTED TO THE GOVERNOR

Date 3/24/76
Time 3:45 p.m.