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OFFICE OF
SECRETARY OF STATE
STATE OF WEST VIRGINIA

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1976

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ENROLLED

Committee Substitute for
SENATE BILL NO. 192

(By Mr. *Palmer* *State original sponsor*)

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PASSED March 13, 1976

In Effect ninety days from Passage

FILED IN THE OFFICE OF
SECRETARY OF STATE OF
WEST VIRGINIA

THIS DATE 3/31/76

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 193

(MR. PALUMBO and MR. STEPTOE, *original sponsors*)

[Passed March 13, 1978; in effect ninety days from passage.]

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article one, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed and a new section twenty-five be enacted in lieu thereof; and that sections six, twenty, twenty-three, twenty-seven, thirty, seventy-three, one hundred nine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
- 2 requires a different meaning, the term:
- 3 (a) "Articles of incorporation" means the original
- 4 or restated articles of incorporation or articles of con-

5 solidation and all amendments thereto including articles
6 of merger.

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

10 (c) "Business corporation" means a corporation or-
11 ganized for profit.

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

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

18 (f) As used in part one and part two of this article,
19 "corporation" or "domestic corporation" means a busi-
20 ness corporation or a nonprofit corporation, subject to
21 the provisions of this article, except a foreign corpora-
22 tion.

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

27 (h) "Earned surplus" means the portion of the sur-
28 plus of a business corporation equal to the balance of
29 its net profits, income, gains and losses from the date
30 of incorporation, or from the latest date when a deficit
31 was eliminated by an application of its capital surplus
32 or stated capital or otherwise, after deducting subse-
33 quent distributions to shareholders and transfers to
34 stated capital and capital surplus to the extent such
35 distributions and transfers are made out of earned sur-
36 plus. Earned surplus shall include also any portions
37 of surplus allocated to earned surplus in mergers, con-
38 solidations or acquisitions of all or substantially all
39 of the outstanding shares or of the property and assets
40 of another corporation, domestic or foreign.

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

44 (j) As used in part one and part two of this article,

45 "foreign corporation" means a business corporation or
46 nonprofit corporation organized under laws other than
47 the laws of this state for a purpose or purposes for
48 which a corporation may be organized under this ar-
49 ticle.

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

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

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

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

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

65 (p) "Shares" means the units into which the pro-
66 prietary interests in a corporation are divided.

67 (q) "Stated capital" means, at any particular time,
68 the sum of (1) the par value of all shares of a business
69 corporation having a par value that have been issued,
70 (2) the amount of the consideration received by a busi-
71 ness corporation for all shares of such corporation with-
72 out par value that have been issued, except such part of
73 the consideration therefor as may have been allocated
74 to capital surplus in a manner permitted by law, and
75 (3) such amounts not included in clauses (1) and (2)
76 of this subdivision as have been transferred to stated
77 capital of such corporation, whether upon the issue of
78 shares as a share dividend or otherwise, minus all re-
79 ductions from such sums as have been effected in a
80 manner permitted by law. Irrespective of the manner of
81 designation thereof by the laws under which a foreign
82 corporation is organized, the stated capital of a foreign
83 corporation shall be determined on the same basis and
84 in the same manner as the stated capital of a domestic

85 corporation, for the purpose of computing fees, franchise
86 taxes and other charges prescribed by law.

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

89 (s) "Surplus" means the excess of the net assets
90 of a business corporation over its stated capital.

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

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

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

7 In the case of a nonprofit corporation, the bylaws may
8 provide the number or percentage of members entitled
9 to vote represented in person or by proxy, which shall
10 constitute a quorum at a meeting of members and in the
11 absence of any such provision, members holding one tenth
12 of the votes entitled to be cast on the matter to be voted
13 upon represented in person or by proxy shall constitute a
14 quorum. A majority of the votes entitled to be cast on a
15 matter to be voted upon by the members present or repre-
16 sented by proxy at a meeting at which a quorum is pres-
17 ent shall be necessary for the adoption thereof unless
18 a greater proportion is required by this article, the articles
19 of incorporation or the bylaws.

20 If a quorum is present, the affirmative vote of the
21 majority of the shares represented or members present at
22 the meeting and entitled to vote on the subject matter
23 shall be the act of the shareholders or members, unless
24 the vote of a greater number or voting by classes is
25 required by this article or the articles of incorporation or

26 bylaws. Any number less than a quorum present **may**
27 adjourn any stockholders or members meeting **until a**
28 quorum is present.

§31-1-23. Quorum of directors.

1 A majority of the number of directors fixed by or in
2 the manner provided in the bylaws, or in the absence of a
3 bylaw fixing or providing for the number of directors,
4 then of the number stated in the articles of incorporation,
5 shall constitute a quorum for the transaction of business
6 unless a greater number is required by the articles of
7 incorporation or the bylaws. The act of the majority of
8 the directors present at a meeting at which a quorum is
9 present shall be the act of the board of directors, unless
10 the act of a greater number is required by the articles of
11 incorporation or the bylaws. Any number less than a
12 quorum present may adjourn any directors meeting **until**
13 a quorum is present.

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

1 (a) No contract or other transaction between a corpora-
2 tion and one or more of its directors or any other corpora-
3 tion, firm, association or entity in which one or more of its
4 directors are directors or officers or are financially in-
5 terested, shall be either void or voidable because of such
6 relationship or interest or because such director or direc-
7 tors are present at the meeting of the board of directors
8 or a committee thereof which authorizes, approves or
9 ratifies such contract or transaction or because his or
10 their votes are counted for such purpose, if:

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

17 (2) The fact of such relationship or interest is disclosed
18 or known to the shareholders entitled to vote and they
19 authorize, approve or ratify such contract or transaction
20 by vote or written consent; or

21 (3) The contract or transaction is fair and reasonable to
22 the corporation.

23 (b) Common or interested directors may be counted in
24 determining the presence of a quorum at a meeting of the
25 board of directors or a committee thereof which autho-
26 rizes, approves or ratifies such contract or transaction.

27 (c) On any question involving the authorization, ap-
28 proval or ratification of any such contract or transaction,
29 the names of those voting each way shall be entered on
30 the record of their proceedings.

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

1 (a) The articles of incorporation shall set forth:

2 (1) The name of the corporation.

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

4 (3) The purpose or purposes for which the corpora-
5 tion is organized, which may be stated to be, or to include,
6 the transaction of any or all lawful business for which
7 corporations may be incorporated under this article.

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

13 (5) The number of directors constituting the initial
14 board of directors and the names and addresses of the
15 persons who are to serve as such directors.

16 (6) The name and address of each incorporator.

17 (b) In the case of a business corporation, in addition
18 to those matters required to be set forth by the provisions
19 of subsection (a) of this section, the articles of incorpora-
20 tion shall set forth:

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

27 the par value of the shares of each such class or that
28 such shares are to be without par value.

29 (2) If the shares are to be divided into classes, the
30 designation of each class and a statement of the prefer-
31 ences, limitations and relative rights in respect of the
32 shares of each class.

33 (3) If the corporation is to issue the shares of any
34 preferred or special class in series, the designation of
35 each series and a statement of the variations in the rela-
36 tive rights and preferences as between series insofar as
37 the same are to be fixed in the articles of incorporation,
38 and a statement of any authority to be vested in the board
39 of directors to establish series and fix and determine the
40 variations in the relative rights and preferences as be-
41 tween series.

42 (4) Any provision limiting or denying to shareholders
43 the preemptive right to acquire additional unissued or
44 treasury shares of the corporation.

45 (5) Any provision, not inconsistent with law, which
46 the incorporators elect to set forth in the articles of in-
47 corporation for the regulation of the internal affairs of
48 the corporation, including any provision restricting the
49 transfer of shares and any provision which under this
50 article is required or permitted to be set forth in the
51 bylaws.

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

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

63 (e) Whenever a provision of the articles of incorpora-
64 tion is inconsistent with a bylaw, the provision of the
65 articles of incorporation shall be controlling.

66 (f) The articles of incorporation shall contain a state-

67 ment of the name and address of the person who, or the
68 firm which, prepared such articles of incorporation.

69 (g) The articles of incorporation shall be acknowl-
70 edged by the incorporators before a notary public and
71 transmitted with the proper fees to, and shall be filed
72 with, the secretary of state.

§31-1-30. Organizational meeting; notice, waiver of notice.

1 After the issuance of the certificate of incorporation
2 an organizational meeting of the board of directors named
3 in the articles of incorporation shall be held, either within
4 or without this state, at the call of the incorporator or of a
5 majority of the incorporators, for the purpose of adopting
6 bylaws, electing officers and the transaction of such other
7 business as may come before the meeting. The in-
8 corporator or incorporators calling the meeting shall
9 give at least three days' notice thereof by mail to each
10 director so named, which notice shall state the time
11 and place of the meeting, unless such notice is waived in
12 accordance with the provisions of this article.

§31-1-73. Action by shareholders, members or directors without a meeting.

1 (a) Whenever the vote of shareholders or members at
2 a meeting thereof is required or permitted to be taken in
3 connection with any corporate action, the meeting and
4 vote of such shareholders or members may be dispensed
5 with if all of the shareholders or members who would
6 have been entitled to vote upon the action, if such meeting
7 were held, shall agree in writing to such corporate action
8 being taken, and such agreement shall have like effect
9 and validity as though the action were duly taken by the
10 unanimous action of all shareholders or members entitled
11 to vote at a meeting of such shareholders or members
12 duly called and legally held.

13 (b) Unless otherwise provided in the articles of in-
14 corporation or the bylaws, whenever the vote of directors
15 at a meeting thereof is required or permitted to be taken
16 in connection with any corporate action, the meeting and
17 vote of such directors may be dispensed with if all the
18 directors shall agree in writing to such corporate action

19 being taken, and such agreement shall have like effect
20 and validity as though the action were duly taken by the
21 unanimous action of all directors at a meeting of such
22 directors duly called and legally held.

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

§31-1-109. Articles of amendment.

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

6 (a) The name of the corporation.

7 (b) The amendments so adopted.

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

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

16 (e) The number of shares voted for and against such
17 amendment, respectively, and, if the shares of any class
18 are entitled to vote thereon as a class, the number of
19 shares of each such class voted for and against such

20 amendment, respectively, or if no shares have been issued,
21 a statement to that effect.

22 (f) If such amendment provides for an exchange, re-
23 classification or cancellation of issued shares, and if the
24 manner in which the same shall be effected is not set
25 forth in the amendment, then a statement of the manner
26 in which the same shall be effected.

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

32 (h) The name and address of the person who, or the
33 firm which, prepared such amendment.

§31-1-140. Removal of directors.

1 A director may be removed from office pursuant to
2 any procedure therefor provided in the articles of incor-
3 poration or bylaws; or, if no procedure therefor is pro-
4 vided in the articles of incorporation or bylaws, directors
5 may be removed at a meeting of members called expressly
6 for that purpose in the manner provided in this section.
7 Any director or the entire board of directors may be re-
8 moved, with or without cause, by a vote of a majority of
9 the members then entitled to vote at an election of di-
10 rectors.

11 If less than the entire board is to be removed, no one
12 of the directors may be removed if the votes cast against
13 his removal would be sufficient to elect him.

14 Whenever the members of any class are entitled to elect
15 one or more directors by the provisions of the articles of
16 incorporation, the provisions of this section shall apply,
17 in respect to the removal of a director or directors so
18 elected, to the vote of the members of that class and not
19 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.

James L. Davis

Chairman Senate Committee

Clarence C. Christensen

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

J. C. Willan, Jr.

Clerk of the Senate

W. A. Blankenship

Clerk of the House of Delegates

H. J. Robertson

President of the Senate

Lewis F. H. Thomas

Speaker House of Delegates

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

And a. Phares, Jr.

Governor



PRESENTED TO THE
GOVERNOR

Date 3/24/76

Time 3:45 p.m.