

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #2

Do Not Mark In this Box

FILED

JUN 30 3 26 PM '97

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: SECRETARY OF STATE TITLE NUMBER: 153

RULE TYPE: LEGISLATIVE; CITE AUTHORITY W.VA. CODE §31-1-67

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____ 5

TITLE OF RULE BEING PROPOSED: MATTERS RELATING TO CORPORATIONS AND
OTHER BUSINESS ENTITY FILING

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON JULY 31, 1997 AT 12:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

MARY RATLIFF

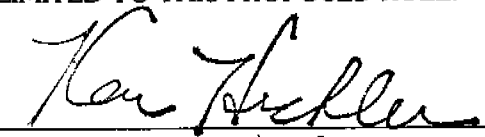
SECRETARY OF STATE

1900 KANAWHA BLVD. E.

BLDG. 1, ROOM 157-K

CHARLESTON, WV 25305

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.


by J. C. Costo, Deputy

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

\$3.40

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Title Number 153 Series #5

Type of Rule: Legislative Interpretive Procedural

Agency Secretary of State

Address 1900 Kanawha Blvd.
Charleston, WV 25305

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
PERSONAL SERVICES	0	0	0	0	0
CURRENT EXPENSE	0	0	0	0	0
REPAIRS & ALTERATIONS	0	0	0	0	0
EQUIPMENT	0	0	0	0	0
OTHER	0	0	0	0	0

2. Explanation of above estimates:

No fiscal impact

3. Objectives of these rules:

Establish rules to govern certain procedures related to the filing of corporations and other business entity filings.

Rule Title: 153

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

0

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

0

C. Economic Impact on Citizens/Public at Large.

0

Date: 6/30/97

Signature of Agency Head or Authorized Representative

Ken Tucker

By Wm. Herringto.
Chief of Staff

Summary of Rule
Title #153 Series 5

Secretary of State, Rule title #153, Series 5 establishes rules to govern certain procedures related to the filing of corporations and other business entity filings.

TITLE 153
LEGISLATIVE RULES
SECRETARY OF STATE

FILED

JUN 30 3 26 PM '97

SERIES 5
Matters Relating to Corporations and Other Business Entity Filing

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§153-5-1. General.

1.1. Scope. -- This legislative rule establishes rules to govern certain procedures related to the filing of corporation documents.

1.2. Authority. -- W. Va. Code §§31-1-67.

1.3. Filing Date. --

1.4. Effective Date. --

§153-5-2. Definitions.

2.1. For the purpose of this rule, "name" shall mean the exact name registered with the secretary of state for the purpose of doing business in the state as a domestic or foreign corporation, limited liability company, limited liability partnership, or other business.

2.1.1. For the purpose of examining names for availability, the word "name" shall not be taken to include the corporate or other ending, including such designations as "Inc.," "Corp.," "Ltd.," "LLC," "LP," or "LLP."

2.1. "Deceptively similar" shall mean, in relation to the name of a corporation or other business, a similarity which would allow a person to believe or perceive the corporation or business names are too similar which would mislead or deceive.

2.2. "Distinguishable" shall mean, in relation to the name of a corporation or other business, a difference between names which would allow a person to recognize or perceive the name of the corporation or other business as being noticeably different.

§153-5-3. Corporate and other business names; availability, consent, reservation of names.

3.1. The terms "deceptively similar" and "distinguishable," as used in relation to restrictions on name availability established by West Virginia Code for domestic and foreign corporations, limited liability companies, limited partnerships, limited liability partnerships and other business entities shall have the meanings established in this rule.

3.1.1. When the limitation is defined as deceptively similar, the secretary of state shall require:

3.1.1.1 At least a two-word difference between names when the words are common terms and the company is or might appear to be in a similar business; or

3.1.1.2. At least a one-word difference between names when the different word is a proper name or an unusual term, or when the company is clearly in a different type of business from the existing name.

3.1.2. When the limitation is defined as distinguishable, the secretary of state shall require:

3.1.2.1 At least a one-word difference between names when the words are common terms and the company is or might appear to be in a similar business; or

3.1.2.2. At least a word order difference between names when the different word is a

proper name or an unusual term, or when the company is clearly in a different type of business from the existing name.

3.2. Any person attempting to file an organization document for a company a reservation of a business name or a registration of a foreign corporation or other business name may obtain a letter of consent to use a similar name from an authorized person of an existing company having a name which would otherwise be prohibited: Provided, That no two active companies may use exactly the same name.

3.2.1. A letter of consent must:

3.2.1.1. Be prepared on the letterhead of the company granting the consent; and

3.2.1.2. Be signed by the president, secretary or other officer of the company which must be one of the officers whose names have filed with the secretary of state and listed as part of the corporate or other business record.

3.2.2. A letter of consent is authorized only if so provided by West Virginia Code.

3.3. Corporate or other business names reserved for 120 days as provided by West Virginia Code §31-1-12 or other sections of law which authorize name reservations by the secretary of state may be renewed for one additional period of 120 days by the same or a related party. No further reservations of that name may be made by the same or related parties within one calendar year following the expiration of the renewed reservation.

§153-5-4. Good Standing Certificates

4.1. A certificate of good standing may be issued only to a corporation which has filed the required corporate license returns and paid any required fees and state corporate license taxes.

4.2. A certificate of good standing should be considered only evidence that the corporation has filed the corporate license returns and has paid the required fees and state corporate license taxes, and is not evidence of the absence of other liabilities.

§153-5-5. Procedure for Reinstatement of Corporation or Other Business Administratively Revoked.

5.1. Following the revocation of the charter or certificate of authority of a corporation for failure to file a corporate license return or pay annual corporate license taxes, a corporation may reinstate its corporate status by:

5.1.1. Filing with the Department of Tax and Revenue any outstanding corporate license returns.

5.1.2. Paying any outstanding corporate license taxes and fees.

5.2. Upon notification by the Department of Tax and Revenue that the requirements for reinstatement have been met, the secretary of state shall return the corporation to active status.

5.2. The secretary of state shall not release the name of a revoked corporation for use by another business entity without consent for two years following the date of the revocation.

5.2.1. If the corporation fails to reinstate within two years, the secretary of state may authorize the registration or use of the name by any other corporation or business.

5.2.2. If the previously revoked corporation attempts to reinstate after two years and the name has subsequently been registered, reserved or used by another business, the secretary of state may require the reinstating

corporation to change its name to an available name by amendment.

§153-5-6. Filing in the office of the clerk of the county commission.

6.1. Whenever West Virginia Code requires the filing of a duplicate certificate of incorporation or other business organization filing with the clerk of the county commission, the "certificate" is interpreted to include an original or certified copy of the certificate issued by the secretary of state, together with a duplicate original or certified copy of the articles of incorporation or other business organization document.

6.2. The "certificate" is not intended to include copies of bylaws, membership agreements or other associated documents.