

**WEST VIRGINIA
SECRETARY OF STATE**

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #3

Do Not Mark In This Box

FILED

JUL 31 1 47 PM '97

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Secretary of State TITLE NUMBER: 153

CITE AUTHORITY: W. Va. Code §31-1-67

AMENDMENT TO AN EXISTING RULE: YES ☐ NO ☒

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

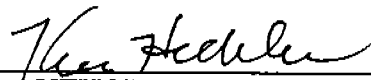
TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 5

TITLE OF RULE BEING PROPOSED: Matters Relating to Corporations and Other Business

Entity Filing

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



AUTHORIZED SIGNATURE

DATE: July 31, 1997

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Secretary of State

LEGISLATIVE RULE TITLE: Matters Relating to Corporations and Other Business
Entity Filing

1. Authorizing statute(s) citation WV Code §31-1-67
2.
 - a. Date filed in State Register with Notice of Hearing: June 30, 1997
 - b. What other notice, including advertising, did you give of the hearing?
None
 - c. Date of Hearing(s): July 31, 1997
 - d. Attach list of persons who appeared at hearing, comments received amendments, reasons for amendments. Attached: _____ No comments received: X
 - e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact) July 31, 1997
 - f. Name and phone number(s) of agency person(s) to contact for additional information:
Mary Ratliff, Secretary of State, 1900 Kanawha Blvd E, Bldg 1, Suite 157-K
Charleston, WV 25305
3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:
 - a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided: June 30, 1997
 - b. Date of hearing: July 31, 1997
 - c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor? July 31, 1997
 - d. Attach findings and determinations and reasons: Attached: none

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.

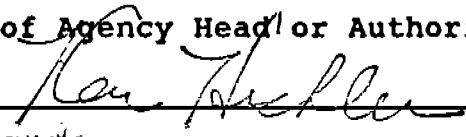
0

C. Economic Impact on Citizens/Public at Large.

0

Date: 6/30/97

Signature of Agency Head or Authorized Representative


By Wm. Harrington.
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.

FILED

JUL 31 1 47 PM '97

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

TITLE 153
LEGISLATIVE RULES
SECRETARY OF STATE

SERIES 5

Matters Relating to Corporations and Other Business Entity Filing

FILED

JUN 30 3 27 PM '97

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.

Senate Bill No. 335

153-5

1 (By Senator(s) Ross, Anderson, Bowman,
2 Macnaughtan, Boley and Buckalew)

3 [Introduced January 30, 1998; referred to the
4 Committee on Government Organization; and then
5 to the Committee on the Judiciary.]
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10 A BILL to amend and reenact section two, article nine,
11 chapter sixty-four of the code of West Virginia, one
12 thousand nine hundred thirty-one, as amended, relating
13 to authorizing the secretary of state to promulgate a
14 legislative rule relating to matters relating to
15 corporations and other business entity filings.

16 *Be it enacted by the Legislature of West Virginia:*

17 That section two, article nine, chapter sixty-four of
18 the code of West Virginia, one thousand nine hundred
19 thirty-one, as amended, be amended and reenacted, to read
20 as follows:

21 ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND
22 BOARDS TO PROMULGATE LEGISLATIVE RULES.

23 §64-9-2. Secretary of state.

1 (a) The legislative rule filed in the state register
2 on the twenty-sixth day of August, one thousand nine
3 hundred ninety-six, authorized under the authority of
4 section thirteen, article two, chapter three of this code,
5 relating to the secretary of state (agencies designated to
6 provide voter registration services, 153 CSR 28), is
7 authorized.

8 (b) The legislative rule filed in the state register
9 on the twenty-eighth day of August, one thousand nine
10 hundred ninety-six, authorized under the authority of
11 section six, article one-a, chapter three of this code,
12 modified by the secretary of state to meet the objections
13 of the legislative rule-making review committee and refiled
14 in the state register on the twenty-fifth day of October,
15 one thousand nine hundred ninety-six, relating to the
16 secretary of state (procedures for recount of election
17 returns, 153 CSR 20), is authorized.

18 (c) The legislative rule filed in the state register
19 on the thirtieth day of August, one thousand nine hundred
20 ninety-six, authorized under the authority of section ten,
21 article two, chapter forty-seven of this code, modified by
22 the secretary of state to meet the objections of the
23 legislative rule-making review committee and refiled in the

1 state register on the twenty-fourth day of October, one
2 thousand nine hundred ninety-six, relating to the secretary
3 of state (trademarks and service marks, 153 CSR 29), is
4 authorized.

5 (d) The legislative rule filed in the state register
6 on the thirty-first day of July, one thousand nine hundred
7 ninety-seven, authorized under the authority of section
8 sixty-seven, article one, chapter thirty-one, of this code,
9 modified by the secretary of state to meet the objections
10 of the legislative rule-making review committee and refiled
11 in the state register on the fifth day of January, one
12 thousand nine hundred ninety-eight, relating to the
13 secretary of state (matters relating to corporations and
14 other business entity filing, 153 CSR 5), is authorized.

15

16 NOTE: The purpose of this bill is to authorize the
17 Secretary of State to promulgate a legislative rule
18 relating to Matters Relating to Corporations and Other
19 Business Entity Filings.

20

21 Strike-throughs indicate language that would be
22 stricken from the present law, and underscoring indicates
23 new language that would be added.

hb1h

HB 153-5

1 Bill-SOS,

H. B. 4194

2

(By Delegates Hunt, Linch, Compton, Jenkins,
Faircloth and Riggs)

3

4

[Introduced January 30, 1998; referred to the
Committee on Finance then the Judiciary.]

5

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21 **ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND**

22 **BOARDS TO PROMULGATE LEGISLATIVE RULES.**

23 **§64-9-2. Secretary of state.**

4194

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9 on the twenty-eighth day of August, one thousand nine
10 hundred ninety-six, authorized under the authority of
11 section six, article one-a, chapter three of this code,
12 modified by the secretary of state to meet the objections
13 of the legislative rule-making review committee and refiled
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15 one thousand nine hundred ninety-six, relating to the
16 secretary of state (procedures for recount of election
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19 on the thirtieth day of August, one thousand nine hundred
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21 article two, chapter forty-seven of this code, modified by
22 the secretary of state to meet the objections of the
23 legislative rule-making review committee and refiled in the

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2 thousand nine hundred ninety-six, relating to the secretary
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