

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #4

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JAN 5 3 43 PM '98

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: SECRETARY OF STATE TITLE NUMBER: 153

CITE AUTHORITY WV CODE §31-1-67

AMENDMENT TO AN EXISTING RULE: YES ___ NO X

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

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.

Ken Hechler

\$2.80

TITLE 153
LEGISLATIVE RULES
SECRETARY OF STATE

FILED

JAN 5 3 34 PM '90

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 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. --

1.5. Repeal and Replace. --

§153-5-2. Definitions.

2.1. "Name" means 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 partnership, 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."

2.2. "Available name" means a business name which the Secretary of State may lawfully accept in connection with a proper filing for a business organization, name reservation or name registration and which is not in use and/or protected by another business entity.

2.3. "Deceptively similar" means, in relation to the name of a corporation or other business, a similarity which would allow a person to believe or perceive the corporations or business names are so similar as to mislead or deceive.

2.4. "Distinguishable" means, 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. Any person or business filing an application for name reservation or name registration, or an application for registration with the Secretary of State to do business in the state shall use an available name.

3.1.1. A domestic corporation shall comply with the provisions of W. Va. Code §31-1-11 and 12, and a foreign corporation shall comply with the provisions of W. Va. Code §31-1-12, 13 and 51.

3.1.2. A domestic limited partnership or limited liability partnership shall comply with the provisions of W. Va. Code §§47-9-2 and 3, and a foreign limited partnership or limited liability partnership shall comply with the provisions of W. Va. Code §§47-9-49 and 51.

3.1.3. A domestic limited liability company shall comply with the provisions of W. Va. Code §§31B-1-105, 106 and 107, and a foreign limited liability company shall comply with the provisions of W. Va. Code §31B-10-1005.

3.1.4. A corporation, limited partnership, voluntary association or business trust shall comply with the provisions of W. Va. Code §47-8-4.

3.2. When a name is not permitted to be “deceptively similar” to the name of an existing company, the Secretary of State shall require:

3.2.1. 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 similar location as an existing company; or

3.2.2. 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 and different location from an existing company.

3.2.3. At least a two-word difference if an unusual term used in the name sounds so similar to a well-known business name as to mislead or deceive.

3.3. When a name is required to be “distinguishable” from the name of an existing company, the Secretary of State shall require:

3.3.1. 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

3.3.2. 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.

3.4. Any person attempting to file with the Secretary of State an organization document for a corporation using a name which is not an available name may obtain a letter of consent to use the name from an authorized person of an existing corporation having a similar name: Provided, That no two active companies may use exactly the same name.

3.4.1. A letter of consent shall:

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

3.4.1.2. Be signed by the president, secretary or other officer of the company whose names are on file with the Secretary of State and listed as part of the corporate or other business record.

3.5. Unless otherwise specifically provided by law, a person or corporation who reserves a business name for 120 days as provided by W. Va. Code may renew for one additional period of 120 days. No further reservations of that name may be made by the same or related person or corporation within one calendar year following the expiration of the renewed reservation.

§153-5-4. Good Standing Certificates

4.1. The Secretary of State may issue a certificate of good standing according to the provisions of W. Va. Code 31-1-69 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 is 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 or Dissolved by a Court.

5.1. Following the dissolution by order of a court or 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 and fees, a corporation may reinstate its corporate status by:

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

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.

5.3. When the a corporation has been dissolved or the authority of a corporation to do business in the state has been revoked and the corporation has not been reinstated, the Secretary of State shall not release the name for use by another business entity without the consent of an officer of the revoked corporation for two years following the date of the dissolution or revocation.

5.3.1. If the corporation fails to reinstate its license within two years, the secretary of state may subsequently authorize

the registration or use of that name by any other corporation or business.

5.2.2. If the corporation which has been dissolved by a court or whose authority to do business has been revoked attempts to reinstate after two years and the name has subsequently been registered, reserved or used by another business, the reinstating corporation shall be required 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 the 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 business entity shall file 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 business entity is not required to file copies of bylaws, membership agreements or other associated documents.



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WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

State Capitol - Room MB-49
Charleston, West Virginia 25305
(304) 347-4840

Senator: Mike Ross, Co-Chairman
Delegate: Mark Hunt, Co-Chairman
Counsel: Debra A. Graham

Joseph A. Altizer, Associate Counsel
Rita Pauley, Associate Counsel
Audrey R. Ross, Admin. Assistant

November 5, 1997

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Ms. Mary Ratliff
Secretary of State
Capitol Complex
Building I - Suite 157K
Charleston, WV 25305

FROM: Legislative Rule-Making Review Committee

~~PROPOSED RULE: Matters Relating to Corporations and Other Business Entity Filing (153CSR5)~~

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
 - (a) as originally filed _____
 - (b) as modified by the agency X
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached. _____
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____
5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached. _____

Pursuant to Code 29A-3-11(c), this notice has been filed in the State Register and with the agency proposing the rule.