

**WEST VIRGINIA**  
**SECRETARY OF STATE**  
**KEN HECHLER**  
**ADMINISTRATIVE LAW DIVISION**

Form #6

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**FILED**

**APR 3 4 03 PM '98**

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED  
BY THE WEST VIRGINIA LEGISLATURE.**

AGENCY: SECRETARY OF STATE TITLE NUMBER: 153

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

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) SB 329

SECTION 64-9-2(b), PASSED ON MARCH 14, 1998

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON  
THE FOLLOWING DATE: APRIL 3, 1998

*Ken Hechler*

\$2.80

CHRONOLOGICAL INDEX  
SECRETARY OF STATE  
153-2

Notice of Comment Period	June 30, 1997
Comment Period Ending	July 31, 1997
Agency Approval	July 31, 1997
LRMRC-Modified	September 18, 1997
Modified-Filed	November 3, 1997
Senate Bill 329 Passed	March 14, 1998
Governor Signed Bill	April 2, 1998
Final Filed Rule	April 3, 1998

**TITLE 153  
LEGISLATIVE RULES  
SECRETARY OF STATE**

**SERIES 5**

**Matters Relating to Corporations and Other Business Entity Filing**

**§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.