

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1937



ENROLLED

SENATE BILL No. 116

(By Mr. _____)



PASSED March 12th 1937

In Effect from Passage

ENROLLED

SENATE COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 116

(●originating in the Committee on Banks and Corporations.)

[Passed March 12, 1937; in effect from passage.]

AN ACT to amend chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, by amending and reenacting section sixty-three, article one, thereof, and by adding two new sections to article one thereof to be known as section sixty-three-a and section sixty-three-b, relating to consolidation and merger of corporations.

Be it enacted by the Legislature of West Virginia:

That section sixty-three, article one, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, be amended and reenacted, and that said article one of said chapter

thirty-one be amended by the addition of two new sections to be known as section sixty-three-a, and section sixty-three-b, all to read as follows:

Section 63. Any two or more corporations organized
2 under the provisions of this chapter, or existing under the
3 laws of this state, for the purpose of carrying on any kind
4 of business, may consolidate or merge into a single corpora-
5 tion which may be any one of such constituent corporations
6 or a new corporation to be formed by means of such con-
7 solidation or merger as shall be specified in the agreement
8 hereinafter required. The directors, or a majority of them,
9 of such corporations as desire to consolidate or merge, may
10 enter into an agreement signed by them and under the
11 corporate seals of the respective corporations, prescribing the
12 terms and conditions of consolidation or merger, the **mode**
13 of carrying the same into effect, and stating such other facts
14 required or permitted by the provisions of this article to be
15 set out in an agreement of incorporation, as can be stated in the
16 case of a consolidation or merger, stated in such altered form
17 as the circumstances of the case require, as well as the **manner**
18 of converting the shares of each of the constituent corpora-

19 tions into shares of the consolidated or merged corporation,
20 with such other details and provisions as are deemed necessary.

21 Such agreement shall be submitted to the stockholders of
22 each constituent corporation, at a meeting thereof, called sep-
23 arately for the purpose of taking the same into consideration;
24 of the time, place and object of which meeting due notice shall
25 be given by publication at least once a week for four succes-
26 sive weeks in one or more newspapers published in the county
27 wherein each such corporation either has its principal office
28 or conducts its business, and a copy of such notice shall be
29 mailed to the last known postoffice address of each stockhold-
30 er of each such corporation, at least twenty days prior to the
31 date of such meeting: *Provided, however,* That in the consoli-
32 dation or merger of banking institutions as defined in this
33 chapter, in the case of emergency, and upon the order of the
34 commissioner of banking, the meeting may be held upon at
35 least twelve hours' notice sent by mail or telegraph to the last
36 known postoffice address of each stockholder, and without
37 publication.

38 At any such stockholders meeting of any corporation said
39 agreement shall be considered and a vote by ballot, in person

40 or by proxy, taken for the adoption or rejection of the same,
41 each share entitling the holder thereof to one vote; and if the
42 votes of stockholders of each such corporation representing
43 two-thirds of the total number of shares of its capital stock then
44 issued and outstanding shall be for the adoption of such agree-
45 ment, then that fact shall be certified on such agreement by the
46 secretary of each such corporation, under the seal thereof;
47 and the agreement so adopted and certified shall be signed by
48 the president and secretary of each of such corporations under
49 the corporate seals thereof and acknowledged by the president
50 of each of such corporations before any officer authorized by
51 the laws of this state to take acknowledgments of deeds to be
52 the respective act, deed and agreement of each of such corpo-
53 rations, and the agreement so certified and acknowledged shall
54 be filed in the office of the secretary of state, and shall thence
55 be taken and deemed to be the agreement and act of consolida-
56 tion or merger of the said corporations; and a copy of such
57 agreement and act of consolidation or merger, duly certified
58 by the secretary of state under the seal of his office, shall also
59 be recorded in the offices of the clerks of the county courts of
60 the counties of this state in which the respective corporations

61 so consolidating or merging shall have their original certi-
62 ficates of incorporation recorded, if any, or if any of the cor-
63 porations shall have been specially created by a public act of
64 the legislature, then such agreement shall be recorded in the
65 county where such corporation shall have had its principal
66 place of business, if any, and such record, or a certified
67 copy thereof, shall be evidence of the agreement and act
68 of consolidation or merger of such corporations, and of the
69 observance and performance of all acts and conditions
70 necessary to have been observed and performed precedent
71 to such consolidation or merger.

72 When an agreement shall have been signed, acknowledged,
73 filed and recorded as herein required, for all purposes of
74 the laws of this state the separate existence of all the con-
75 stituent corporations, parties to said agreement, or of all
76 such constituent corporations except the one into which the
77 other or others of such constituent corporations have been
78 merged, or consolidated, as the case may be, shall cease
79 and the constituent corporations shall become a new corpo-
80 ration, or be merged into one of such corporations, as the
81 case may be, in accordance with the provisions of said

82 agreement, possessing all the rights, privileges, powers,
83 franchises and trust and fiduciary duties, powers and
84 obligations, as well of a public as of a private nature,
85 and being subject to all the restrictions, disabilities and duties
86 of each of such corporations so consolidated or merged, and
87 all and singular the rights, privileges, powers, franchises,
88 and trust and fiduciary rights, powers, duties and obliga-
89 tions, of each of said corporations; and all property, real,
90 personal and mixed, and all debts due to any of said con-
91 stituent corporations on whatever account, as well for stock
92 subscriptions as all other things in action or belonging to
93 each of such corporations shall be vested in the corporation
94 resulting from or surviving such consolidation or merger;
95 and all property, rights, privileges, powers, and franchises,
96 and all and every other interest shall be thereafter as
97 effectually the property of the resulting or surviving corpo-
98 ration as they were of the several and respective constituent
99 corporations; and the title to any real estate, whether vested
100 by deed or otherwise, under the laws of this state, vested
101 in any of such constituent corporations, shall not revert or
102 be in any way impaired by reason of this chapter: *Pro-*

103 *vided, however,* That all rights of creditors and all liens
104 upon any property of any of said constituent corporations
105 shall be preserved unimpaired, and all debts, liabilities and
106 duties of the respective constituent corporations shall thence-
107 forth attach to said resulting or surviving corporation, and
108 may be enforced against it to the same extent as if said
109 debts, liabilities and duties had been incurred or contracted
110 by it.

Sec. 63-a. Any corporation authorized by section sixty-
2 three of this article to merge or consolidate with another
3 corporation may merge or consolidate in the manner therein
4 provided with a corporation or corporations organized and
5 existing under the laws of this state, of another state or
6 states, or of the United States, and authorized to merge
7 or consolidate with such corporation so authorized by said
8 section to merge or consolidate. In the agreement of
9 merger or consolidation the laws of any state under which
10 one of the constituent corporations was organized may be
11 selected as the laws which shall govern the merged or con-
12 solidated corporation.

13 Wherever the laws of another state than West Virginia

14 are selected as the laws which shall govern the merged or
15 consolidated corporation, such surviving corporation shall
16 comply with the provisions of section seventy-nine, article
17 one, of chapter thirty-one of the code of West Virginia,
18 one thousand nine hundred thirty-one, before it holds prop-
19 erty or transacts business in this state, and shall comply
20 with the laws of this state with respect to foreign corpo-
21 rations holding property or transacting business in this
22 state.

Sec. 63-h. In any merger or consolidation of corporations
2 under the laws of the state of West Virginia, any constituent
3 corporation thereof owning or holding real estate in West Vir-
4 ginia shall further evidence the title thereto in the surviving
5 corporation by executing and acknowledging for record a con-
6 firmatory deed or deeds to the respective parcels of real estate,
7 which deed or deeds shall be recorded in the office of the clerks
8 of the county courts of the respective counties in which such
9 real estate is situate; and such deed or deeds shall recite as
10 the consideration therefor the said merger or consolidation
11 and shall be deemed confirmatory of the title of such real
12 estate in the surviving merged or consolidated corporation.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Carroll B. Galt

Chairman Senate Committee

Dee B. Drake

Chairman House Committee

Originated in the.....

Takes effect..... passage.

Chancellor

Clerk of the Senate

Mo. H. Hall

Clerk of the House of Delegates

Chas. E. Hays

President of the Senate

J. R. Thomas

Speaker House of Delegates

The within..... this the.....

day of....., 1937.

Governor

JARRETT PRINTING COMPANY, CHARLESTON, W. VA.



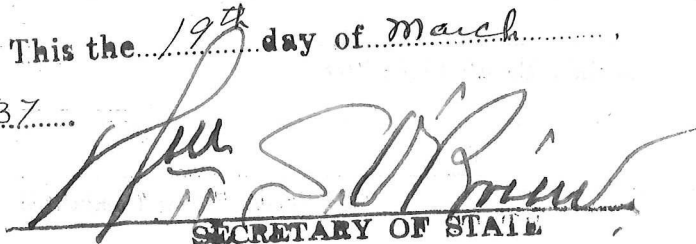
Filed in the office of the Secretary of State
of West Virginia. **MAR 19 1937**

Wm. S. O'BRIEN,
Secretary of State

I certify that the foregoing act, having been presented to the Governor for his approval, and not having been returned by him to the House of the Legislature in which it originated within the time prescribed by the constitution of the state, has become a law without his approval.

This the 19th day of March.....

1937.....


SECRETARY OF STATE