

WEST VIRGINIA LEGISLATURE  
REGULAR SESSION, 1969



ENROLLED

*Com. Sub. for*

HOUSE BILL No. 539

(By Mr. *Originator on the Committee*  
*on the Judiciary*)



PASSED Feb 28, 1969 1969

In Effect Thirty days from Passage



FILED IN THE OFFICE  
JOHN D. ROCKEFELLER, IV  
SECRETARY OF STATE  
THIS DATE

#539

**ENROLLED**  
COMMITTEE SUBSTITUTE  
FOR  
**House Bill No. 539**

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(Originating in the Committee on the Judiciary)

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[Passed February 28, 1969; in effect ninety days from passage.]

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AN ACT to amend and reenact sections sixty-three, sixty-three-a and sixty-three-a-one, article one, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the consolidation and merger of corporations.

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

That section sixty-three, sixty-three-a and sixty-three-a-one, article one, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 1. PROVISIONS RELATING TO CORPORATIONS  
GENERALLY.**

**§31-1-63. Consolidation or merger of domestic corporations.**

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

20 rations into shares of the consolidated or merged corpo-  
21 ration, with such other details and provisions as are  
22 deemed necessary.

23 Such agreement shall be submitted to the stockholders  
24 of each constituent corporation, at a meeting thereof,  
25 called separately for the purpose of taking the same into  
26 consideration; of the time, place and object of which  
27 meeting due notice shall be given by publication as a  
28 Class II legal advertisement in compliance with the pro-  
29 visions of article three, chapter fifty-nine of this code,  
30 and the publication area for such publication shall be  
31 the county wherein each such corporation either has its  
32 principal office or conducts its business. A copy of such  
33 notice shall also be mailed to the last known postoffice  
34 address of each stockholder of each such corporation, at  
35 least twenty days prior to the date of such meeting:  
36 *Provided, however,* That in the consolidation or merger  
37 of banking institutions as defined in this chapter, in the  
38 case of emergency, and upon the order of the commis-  
39 sioner of banking, the meeting may be held upon at least  
40 twelve hours' notice sent by mail or telegraph to the

41 last known post-office address of each stockholder, and  
42 without publication.

43 At any such stockholders' meeting of any corporation  
44 said agreement shall be considered and a vote by ballot,  
45 in person or by proxy, taken for the adoption or rejection  
46 of the same, each share entitling the holder thereof to  
47 one vote; and if the votes of stockholders of each such  
48 corporation representing two thirds of the total number  
49 of shares of its capital stock then issued and outstanding  
50 shall be for the adoption of such agreement, then that  
51 fact shall be certified on such agreement by the secretary  
52 of each such corporation under the seal thereof; and the  
53 agreement so adopted and certified shall be signed by the  
54 president and secretary of each of such corporations un-  
55 der the corporate seals thereof and acknowledged by the  
56 president of each of such corporations before any officer  
57 authorized by the laws of this state to take acknowledg-  
58 ments of deeds to be the respective act, deed and agree-  
59 ment of each of such corporations, and the agreement  
60 so certified and acknowledged shall be filed in the office  
61 of the secretary of state, and shall thence be taken and

62 deemed to be the agreement and act of consolidation  
63 or merger of the said corporations; and a copy of such  
64 agreement and act of consolidation or merger, duly cer-  
65 tified by the secretary of state under the seal of his office,  
66 shall also be recorded in the offices of the clerks of the  
67 county courts of the counties of this state in which the  
68 respective corporations so consolidating or merging shall  
69 have their original certificates of incorporation recorded,  
70 if any, or if any of the corporations shall have been  
71 specially created by a public act of the Legislature, then  
72 such agreement shall be recorded in the county where  
73 such corporation shall have had its principal place of  
74 business, if any, and such record, or a certified copy  
75 thereof, shall be evidence of the agreement and act of  
76 consolidation or merger of such corporations, and of the  
77 observance and performance of all acts and conditions  
78 necessary to have been observed and performed precedent  
79 to such consolidation or merger.

80 On such date as shall be specified in such agreement,  
81 or if no effective date is specified in such agreement, on  
82 the date such certified copy of said agreement is issued

83 by the secretary of state, for all purposes of the laws  
84 of this state, the separate existence of all the constituent  
85 corporations, parties to said agreement, or of all such  
86 constituent corporations except the one into which the  
87 other or others of such constituent corporations have  
88 been merged, or consolidated, as the case may be,  
89 shall cease and the constituent corporations shall be-  
90 come a new corporation, or be merged into one of such  
91 corporations, as the case may be, in accordance with the  
92 provisions of said agreement possessing all the rights,  
93 privileges, powers, franchises and trust and fiduciary  
94 duties, powers and obligations, as well of a public as of  
95 a private nature, and being subject to all the restrictions,  
96 disabilities and duties of each of such corporations so  
97 consolidated or merged, and all and singular the  
98 rights, privileges, powers, franchises, and trust and  
99 fiduciary rights, powers, duties and obligations, of each  
100 of said corporations; and all property, real, personal and  
101 mixed, and all debts due to any of said constituent corpo-  
102 rations on whatever account, as well for stock sub-  
103 scriptions as all other things in action or belonging to

104 each of such corporations shall be vested in the corpora-  
105 tion resulting from or surviving such consolidation or  
106 merger; and all property, rights, privileges, powers, and  
107 franchises, and all and every other interest shall be  
108 thereafter as effectually the property of the resulting  
109 or surviving corporation as they were of the several  
110 and respective constituent corporations; and the title  
111 to any real estate, whether vested by deed or otherwise,  
112 under the laws of this state, vested in any of such con-  
113 stituent corporations, shall not revert or be in any way  
114 impaired by reason of this chapter: *Provided, however,*  
115 That all rights of creditors and all liens upon any prop-  
116 erty of any of said constituent corporations shall be  
117 preserved unimpaired, and all debts, liabilities and duties  
118 of the respective constituent corporations shall thence-  
119 forth attach to said resulting or surviving corporation,  
120 and may be enforced against it to the same extent as if  
121 said debts, liabilities and duties had been incurred or  
122 contracted by it.

**§31-1-63a. Consolidation or merger of domestic with foreign corporations.**

1 Any one or more corporations organized under the

2 provisions of this chapter, or existing under the laws of  
3 this state, may consolidate or merge with one or more  
4 other corporations organized under the laws of any  
5 other state or states of the United States of America, if  
6 the laws under which said other corporation or corpo-  
7 rations are formed shall permit such consolidation or  
8 merger. The constituent corporations may merge into  
9 a single corporation, which may be any one of said con-  
10 stituent corporations, or they may consolidate to form  
11 a new corporation, which may be a corporation of the  
12 state of incorporation of any one of said constituent  
13 corporations as shall be specified in the agreement here-  
14 inafter required. All the constituent corporations shall  
15 enter into an agreement in writing which shall pre-  
16 scribe the terms and conditions of the consolidation or  
17 merger, the mode of carrying the same into effect, the  
18 manner of converting the shares of each of said con-  
19 stituent corporations into shares or other securities of  
20 the corporation resulting from or surviving such con-  
21 solidation or merger if such corporations have shares,  
22 and such other details and provisions as shall be deemed

23 necessary or proper. There shall also be set forth in  
24 said agreement such other facts as shall then be required  
25 to be set forth in certificates of incorporation by the laws  
26 of the state, which are stated in said agreement to be the  
27 laws that shall govern said resulting or surviving corpo-  
28 ration and that can be stated in the case of a consolidation  
29 or merger. Said agreement shall be authorized, adopted,  
30 approved, signed and acknowledged by each of said  
31 constituent corporations in accordance with the laws  
32 under which it is formed and, in the case of a West  
33 Virginia corporation, in the manner provided in section  
34 sixty-three of this article. The agreement so authorized,  
35 adopted, approved, signed and acknowledged shall be  
36 filed in the office of the secretary of state and a copy  
37 thereof, certified by the secretary of state, shall be  
38 recorded as provided in section sixty-three of this article  
39 with respect to the consolidation or merger of corpora-  
40 tions of this state; and said agreement shall become  
41 effective on such date as shall be specified in such agree-  
42 ment, or if no effective date is specified in such agree-  
43 ment, on the date such certified copy of said agreement

44 is issued by the secretary of state, and shall thenceforth  
45 be taken and deemed to be the agreement and act of  
46 consolidation or merger of said constituent corporations  
47 for all purposes of the laws of this state.

48 Wherever the laws of another state than West Vir-  
49 ginia are selected as the laws which shall govern the  
50 merged or consolidated corporation, such surviving cor-  
51 poration shall comply with the provisions of section  
52 seventy-nine, article one, of chapter thirty-one, as last  
53 amended, before it holds property or transacts business  
54 in this state, and thereafter shall comply with the laws  
55 of this state with respect to foreign corporations holding  
56 property or transacting business in this state.

**§31-1-63al. Merger of domestic parent corporation and wholly  
owned subsidiary.**

1 In addition to the method of merger and consolidation  
2 provided in section sixty-three of this article, any cor-  
3 poration now or hereafter organized under the provisions  
4 of this chapter or existing under the laws of this state,  
5 for the purpose of carrying on any kind of business,  
6 owning all the stock of any other corporation now or  
7 hereafter organized under the provisions of this chapter

8 or existing under the laws of this state, or now or here-  
9 after organized under the laws of any other state of the  
10 United States of America, if the laws under which said  
11 other corporation is formed shall permit a merger as  
12 herein provided, may file in the office of the secretary of  
13 state a certificate of such ownership in its name and  
14 under its corporate seal, signed by its president or a  
15 vice-president, and its secretary or treasurer or assistant  
16 secretary or assistant treasurer, and setting forth a copy  
17 of the resolution of its board of directors to merge such  
18 other corporation, and to assume all of its obligations,  
19 and the date of the adoption thereof; and a certified copy  
20 of said certificate shall be recorded in the office of the  
21 clerk of the county court of the county in which the  
22 principal place of business of the parent corporation is  
23 located, and if the other corporation is also a West Vir-  
24 ginia corporation and its principal place of business is  
25 located in a different county, another certified copy of  
26 said certificate shall be recorded in the office of the  
27 clerk of the county court of such other county. On such  
28 date as shall be specified in such resolution, or if no

29 effective date is specified in such resolution, on the date  
30 such certified copy of said certificate is issued by the  
31 secretary of state, all of the estate, property, rights,  
32 privileges and franchises of such other corporation shall  
33 vest in and be held and enjoyed by such parent corpo-  
34 ration as fully and entirely and without change or diminu-  
35 tion as the same were before held and enjoyed by such  
36 other corporation, and be managed and controlled by  
37 such parent corporation, and except as hereinafter in  
38 this section provided, in its name, but subject to all lia-  
39 bilities and obligations of such other corporation and  
40 the rights of all creditors thereof. The parent corpora-  
41 tion shall not thereby acquire power to engage in any  
42 business, or to exercise any right, privilege or franchise,  
43 of a kind which it could not lawfully engage in or  
44 exercise under the provisions of the law by or pursuant  
45 to which such parent corporation is organized. The  
46 parent corporation shall be deemed to have assumed all  
47 the liabilities and obligations of the merged corporation,  
48 and shall be liable in the same manner as if it had itself  
49 incurred such liability and obligations. Any plan of

50 consolidation or merger which requires or contemplates  
51 any changes other than those herein specifically autho-  
52 rized with respect to the parent corporation, shall be  
53 accomplished under the provisions of section sixty-  
54 three of this article.

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

William Tompa  
Chairman Senate Committee

Clayton C. Davidson  
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

Howard Meyers  
Clerk of the Senate

A. Blankenship  
Clerk of the House of Delegates

Lyda Kacser  
President of the Senate

Joe F. Brown  
Speaker House of Delegates

The within approved this the 11th  
day of March, 1969.

Arch. A. Moore, Jr.  
Governor

PRESENTED TO THE  
GOVERNOR

Date 3/6/69

Time 11:05 A.M.

RECEIVED

MAR 13 10 53 AM '69

OFFICE OF  
SECRETARY OF STATE  
STATE OF WEST VIRGINIA