WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1969

ENROLLED

House Bill No. 539

Passed: Feb 25, 1969

In Effect: Thirty days from Passage

Filed in the Office
John D. Rockefeller, IV
Secretary of State
This Date
ENROLLED
COMMITTEE SUBSTITUTE
FOR
House Bill No. 539

(Originating in the Committee on the Judiciary)

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

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
GENERALy.

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

Any two or more corporations organized under the
provisions of this chapter, or existing under the laws of
this state, for the purpose of carrying on any kind of busi-
ness, may consolidate or merge into a single corporation
which may be any one of such constituent corporations
or a new corporation to be formed by means of such
consolidation or merger as shall be specified in the agree-
ment hereinafter required. The directors, or a majority
of them, of such corporations as desire to consolidate or
merge, may enter into an agreement signed by them and
under the corporate seals of the respective corporations,
prescribing the terms and conditions of consolidation or
merger, the mode of carrying the same into effect, and
stating such other facts required or permitted by the pro-
visions of this article to be set out in an agreement of
incorporation, as can be stated in the case of a consolida-
tion or merger, stated in such altered form as the circum-
stances of the case require, as well as the manner of
converting the shares of each of the constituent corpo-
rations into shares of the consolidated or merged corpo-
ration, with such other details and provisions as are
deemed necessary.

Such agreement shall be submitted to the stockholders
of each constituent corporation, at a meeting thereof,
called separately for the purpose of taking the same into
consideration; of the time, place and object of which
meeting due notice shall be given by publication as a
Class II legal advertisement in compliance with the pro-
visions of article three, chapter fifty-nine of this code,
and the publication area for such publication shall be
the county wherein each such corporation either has its
principal office or conducts its business. A copy of such
notice shall also be mailed to the last known postoffice
address of each stockholder of each such corporation, at
least twenty days prior to the date of such meeting:

_Provided, however, That in the consolidation or merger
of banking institutions as defined in this chapter, in the
case of emergency, and upon the order of the commis-
sioner of banking, the meeting may be held upon at least
twelve hours' notice sent by mail or telegraph to the
last known post-office address of each stockholder, and
without publication.

At any such stockholders' meeting of any corporation
said agreement shall be considered and a vote by ballot,
in person or by proxy, taken for the adoption or rejection
of the same, each share entitling the holder thereof to
one vote; and if the votes of stockholders of each such
corporation representing two thirds of the total number
of shares of its capital stock then issued and outstanding
shall be for the adoption of such agreement, then that
fact shall be certified on such agreement by the secretary
of each such corporation under the seal thereof; and the
agreement so adopted and certified shall be signed by the
president and secretary of each of such corporations un-
der the corporate seals thereof and acknowledged by the
president of each of such corporations before any officer
authorized by the laws of this state to take acknowledg-
ments of deeds to be the respective act, deed and agree-
ment of each of such corporations, and the agreement
so certified and acknowledged shall be filed in the office
of the secretary of state, and shall thence be taken and
deemed to be the agreement and act of consolidation
or merger of the said corporations; and a copy of such agreement and act of consolidation or merger, duly cer-
tified by the secretary of state under the seal of his office,
shall also be recorded in the offices of the clerks of the county courts of the counties of this state in which the respective corporations so consolidating or merging shall have their original certificates of incorporation recorded, if any, or if any of the corporations shall have been specially created by a public act of the Legislature, then such agreement shall be recorded in the county where such corporation shall have had its principal place of business, if any, and such record, or a certified copy thereof, shall be evidence of the agreement and act of consolidation or merger of such corporations, and of the observance and performance of all acts and conditions necessary to have been observed and performed precedent to such consolidation or merger.
On such date as shall be specified in such agreement, or if no effective date is specified in such agreement, on the date such certified copy of said agreement is issued
by the secretary of state, for all purposes of the laws
of this state, the separate existence of all the constituent
corporations, parties to said agreement, or of all such
constituent corporations except the one into which the
other or others of such constituent corporations have
been merged, or consolidated, as the case may be,
shall cease and the constituent corporations shall be-
come a new corporation, or be merged into one of such
corporations, as the case may be, in accordance with the
provisions of said agreement possessing all the rights,
privileges, powers, franchises and trust and fiduciary
duties, powers and obligations, as well of a public as of
a private nature, and being subject to all the restrictions,
disabilities and duties of each of such corporations so
consolidated or merged, and all and singular the
rights, privileges, powers, franchises, and trust and
fiduciary rights, powers, duties and obligations, of each
of said corporations; and all property, real, personal and
mixed, and all debts due to any of said constituent corpo-
ations on whatever account, as well for stock sub-
scriptions as all other things in action or belonging to
each of such corporations shall be vested in the corporation resulting from or surviving such consolidation or merger; and all property, rights, privileges, powers, and franchises, and all and every other interest shall be thereafter as effectually the property of the resulting or surviving corporation as they were of the several and respective constituent corporations; and the title to any real estate, whether vested by deed or otherwise, under the laws of this state, vested in any of such constituent corporations, shall not revert or be in any way impaired by reason of this chapter: Provided, however, That all rights of creditors and all liens upon any property of any of said constituent corporations shall be preserved unimpaired, and all debts, liabilities and duties of the respective constituent corporations shall thenceforth attach to said resulting or surviving corporation, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it.

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

Any one or more corporations organized under the
provisions of this chapter, or existing under the laws of
this state, may consolidate or merge with one or more
other corporations organized under the laws of any
other state or states of the United States of America, if
the laws under which said other corporation or corpo-
rations are formed shall permit such consolidation or
merger. The constituent corporations may merge into
a single corporation, which may be any one of said con-
stituent corporations, or they may consolidate to form
a new corporation, which may be a corporation of the
state of incorporation of any one of said constituent
corporations as shall be specified in the agreement here-
inafter required. All the constituent corporations shall
enter into an agreement in writing which shall pre-
scribe the terms and conditions of the consolidation or
merger, the mode of carrying the same into effect, the
manner of converting the shares of each of said con-
stituent corporations into shares or other securities of
the corporation resulting from or surviving such con-
solidation or merger if such corporations have shares,
and such other details and provisions as shall be deemed
necessary or proper. There shall also be set forth in
said agreement such other facts as shall then be required
to be set forth in certificates of incorporation by the laws
of the state, which are stated in said agreement to be the
laws that shall govern said resulting or surviving corpo-
ration and that can be stated in the case of a consolidation
or merger. Said agreement shall be authorized, adopted,
approved, signed and acknowledged by each of said
constituent corporations in accordance with the laws
under which it is formed and, in the case of a West
Virginia corporation, in the manner provided in section
sixty-three of this article. The agreement so authorized,
adopted, approved, signed and acknowledged shall be
filed in the office of the secretary of state and a copy
thereof, certified by the secretary of state, shall be
recorded as provided in section sixty-three of this article
with respect to the consolidation or merger of corpora-
tions of this state; and said agreement shall become
effective on such date as shall be specified in such agree-
ment, or if no effective date is specified in such agree-
ment, on the date such certified copy of said agreement
is issued by the secretary of state, and shall thenceforth be taken and deemed to be the agreement and act of consolidation or merger of said constituent corporations for all purposes of the laws of this state.

Wherever the laws of another state than West Virginia are selected as the laws which shall govern the merged or consolidated corporation, such surviving corporation shall comply with the provisions of section seventy-nine, article one, of chapter thirty-one, as last amended, before it holds property or transacts business in this state, and thereafter shall comply with the laws of this state with respect to foreign corporations holding 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 provided in section sixty-three of this article, any corporation now or hereafter organized under the provisions of this chapter or existing under the laws of this state, for the purpose of carrying on any kind of business, owning all the stock of any other corporation now or hereafter organized under the provisions of this chapter
or existing under the laws of this state, or now or here-
after organized under the laws of any other state of the
United States of America, if the laws under which said
other corporation is formed shall permit a merger as
herein provided, may file in the office of the secretary of
state a certificate of such ownership in its name and
under its corporate seal, signed by its president or a
vice-president, and its secretary or treasurer or assistant
secretary or assistant treasurer, and setting forth a copy
of the resolution of its board of directors to merge such
other corporation, and to assume all of its obligations,
and the date of the adoption thereof; and a certified copy
of said certificate shall be recorded in the office of the
clerk of the county court of the county in which the
principal place of business of the parent corporation is
located, and if the other corporation is also a West Vir-
ginia corporation and its principal place of business is
located in a different county, another certified copy of
said certificate shall be recorded in the office of the
clerk of the county court of such other county. On such
date as shall be specified in such resolution, or if no
effective date is specified in such resolution, on the date
such certified copy of said certificate is issued by the
secretary of state, all of the estate, property, rights,
privileges and franchises of such other corporation shall
vest in and be held and enjoyed by such parent corpo-
ration as fully and entirely and without change or diminu-
tion as the same were before held and enjoyed by such
other corporation, and be managed and controlled by
such parent corporation, and except as hereinafter in
this section provided, in its name, but subject to all lia-
bilities and obligations of such other corporation and
the rights of all creditors thereof. The parent corpora-
tion shall not thereby acquire power to engage in any
business, or to exercise any right, privilege or franchise,
of a kind which it could not lawfully engage in or
exercise under the provisions of the law by or pursuant
to which such parent corporation is organized. The
parent corporation shall be deemed to have assumed all
the liabilities and obligations of the merged corporation,
and shall be liable in the same manner as if it had itself
incurred such liability and obligations. Any plan of
consolidation or merger which requires or contemplates any changes other than those herein specifically authorized with respect to the parent corporation, shall be accomplished under the provisions of section sixty-three of this article.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

William Temple
Chairman Senate Committee

Clayton C. Davidson
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

Howard Lee
Clerk of the Senate

O. A. Blankenship
Clerk of the House of Delegates

L. E. Brown
President of the Senate

Joe F. Burkhart
Speaker House of Delegates

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

Arch A. Harriger
Governor
PRESENTED TO THE GOVERNOR

Date 3/6/69
Time 11:05 A.M.

Mar 13 53 AM '69

OFFICE OF SECRETARY OF STATE
STATE OF NEW MEXICO