

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1971



ENROLLED

HOUSE BILL No. 1094

(By Mr. Steptoe and Mr. Petlev)



PASSED March 13, 1971

In Effect ninety days from Passage



1094

FILED IN THE OFFICE
OF THE CLERK OF THE HOUSE
OF REPRESENTATIVES
THIS DATE 4-2-71

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House Bill No. 1094

(By MR. STEPTOE and MR. POTTER)

[Passed March 13, 1971; in effect ninety days from passage.]

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

Be it enacted by the Legislature of West Virginia:

That sections sixty-three and sixty-three-a, 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
3 of this state, for the purpose of carrying on any kind
4 of business, may consolidate or merge into a single
5 corporation which may be any one of such constituent
6 corporations or a new corporation to be formed by means
7 of such consolidation or merger as shall be specified in
8 the agreement hereinafter required. The directors, or a
9 majority of them, of such corporations as desire to con-
10 solidate or merge, may enter into an agreement signed
11 by them and under the corporate seals of the respective
12 corporations, which agreement shall state: (1) the terms
13 and conditions of the consolidation or merger; (2) the
14 mode of carrying the same into effect; (3) such other
15 provisions or facts required or permitted by this article
16 to be stated in an agreement of incorporation as can be
17 stated in the case of a consolidation or merger, stated
18 in such altered form as the circumstances of the case
19 require; (4) the manner of converting the shares of each
20 of the constituent corporations into shares or other
21 securities of the corporation surviving or resulting from
22 the consolidation or merger and, if any shares of any

23 of the constituent corporations are not to be converted
24 solely into shares or other securities of the surviving or
25 resulting corporation, the amount of cash or securities
26 of any other corporation, or other property, which the
27 holders of such shares are to receive in exchange for
28 such shares or upon their conversion and the surrender
29 of the certificates evidencing such shares, which cash
30 and securities of any other corporation, or other property,
31 may be in addition to or in lieu of the shares or other
32 securities of the surviving or resulting corporation; and
33 (5) such other details or provisions as are deemed de-
34 sirable, including, without limiting the generality of the
35 foregoing, a provision for the payment of cash in lieu
36 of the issuance of fractional shares of the surviving or
37 resulting corporation or of any other corporation the
38 securities of which are to be received in the consolidation
39 or merger.

40 Such agreement shall be submitted to the stockholders
41 of each constituent corporation, at a meeting thereof,
42 called separately for the purpose of taking the same into
43 consideration; of the time, place and object of which

44 meeting due notice shall be given by publication as a
45 Class II legal advertisement in compliance with the pro-
46 visions of article three, chapter fifty-nine of this code,
47 and the publication area for such publication shall be the
48 county wherein each such corporation either has its
49 principal office or conducts its business. A copy of such
50 notice shall also be mailed to the last known post-office
51 address of each stockholder of each such corporation, at
52 least twenty days prior to the date of such meeting: *Pro-*
53 *vided*, That in the consolidation or merger of banking
54 institutions as defined in this chapter, in the case of
55 emergency, and upon the order of the commissioner of
56 banking, the meeting may be held upon at least twelve
57 hours' notice sent by mail or telegraph to the last known
58 post-office address of each stockholder, and without pub-
59 lication.

60 At any such stockholders' meeting of any corporation
61 said agreement shall be considered and a vote by ballot, in
62 person or by proxy, taken for the adoption or rejection
63 of the same, each share entitling the holder thereof to
64 one vote; and if the votes of stockholders of each such

65 corporation representing two thirds of the total number
66 of shares of its capital stock then issued and outstand-
67 ing shall be for the adoption of such agreement, then
68 that fact shall be certified on such agreement by the
69 secretary of each such corporation under the seal there-
70 of; and the agreement so adopted and certified shall be
71 signed by the president and secretary of each of such
72 corporations under the corporate seals thereof and ac-
73 knowledged by the president of each of such corpora-
74 tions before any officer authorized by the laws of this
75 state to take acknowledgments of deeds to be the respec-
76 tive act, deed and agreement of each of such corporations,
77 and the agreement so certified and acknowledged shall
78 be filed in the office of the secretary of state, and shall
79 thence be taken and deemed to be the agreement and
80 act of consolidation of merger of the said corporations;
81 and a copy of such agreement and act of consolidation
82 or merger, duly certified by the secretary of state un-
83 der the seal of his office, shall also be recorded in the
84 offices of the clerks of the county courts of the counties
85 of this state in which the respective corporations so con-

86 solidating or merging shall have their original certificates
87 of incorporation recorded, if any, or if any of the corpo-
88 rations shall have been specially created by a public act
89 of the Legislature, then such agreement shall be recorded
90 in the county where such corporation shall have had
91 its principal place of business, if any, and such record,
92 or a certified copy thereof, shall be evidence of the agree-
93 ment and act of consolidation or merger of such corpo-
94 rations, and of the observance and performance of all
95 acts and conditions necessary to have been observed and
96 performed precedent to such consolidation or merger.

97 On such date as shall be specified in such agreement,
98 or if no effective date is specified in such agreement, on
99 the date such certified copy of said agreement is issued
100 by the secretary of state, for all purposes of the laws of
101 this state, the separate existence of all the constituent
102 corporations, parties to said agreement, or of all such con-
103 stituent corporations except the one into which the other
104 or others of such constituent corporations have been
105 merged, or consolidated, as the case may be, shall cease
106 and the constituent corporations shall become a new

107 corporation, or be merged into one of such corporations,
108 as the case may be, in accordance with the provisions
109 of said agreement, possessing all the rights, privileges,
110 powers, franchises and trust and fiduciary duties, powers
111 and obligations, as well of a public as of a private nature,
112 and being subject to all the restrictions, disabilities and
113 duties of each of such corporations so consolidated or
114 merged, and all and singular the rights, privileges,
115 powers, franchises, and trust and fiduciary rights, powers,
116 duties and obligations, of each of said corporations; and
117 all property, real, personal and mixed, and all debts
118 due to any of said constituent corporations on whatever
119 account, as well for stock subscriptions as all other things
120 in action or belonging to each of such corporations shall
121 be vested in the corporation resulting from or sur-
122 viving such consolidation or merger; and all property,
123 rights, privileges, powers and franchises, and all and
124 every other interest shall be thereafter as effectually
125 the property of the resulting or surviving corporation as
126 they were of the several and respective constituent
127 corporations; and the title to any real estate, whether

128 vested by deed or otherwise, under the laws of this
129 state, vested in any of such constituent corporations, shall
130 not revert or be in any way impaired by reason of this
131 chapter: *Provided*, That all rights of creditors and all
132 liens upon any property of any of said constituent corpo-
133 rations shall be preserved unimpaired, and all debts, lia-
134 bilities and duties of the respective constituent corpo-
135 rations shall thenceforth attach to said resulting or sur-
136 viving corporation, and may be enforced against it to
137 to the same extent as if said debts, liabilities and duties
138 had been incurred or 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 other
5 state or states of the United States of America, if the
6 laws under which said other corporation or corporations
7 are formed shall permit such consolidation or merger.
8 The constituent corporations may merge into a single

9 corporation, which may be any one of said constituent
10 corporations, or they may consolidate to form a new
11 corporation, which may be a corporation of the state of
12 incorporation of any one of said constituent corporations
13 as shall be specified in the agreement hereinafter re-
14 quired. All the constituent corporations shall enter into
15 an agreement of consolidation or merger, which agree-
16 ment shall state: (1) The terms and conditions of the
17 consolidation or merger; (2) the mode of carrying the
18 same into effect; (3) the manner of converting the shares
19 of each of the constituent corporations into shares or
20 other securities of the corporation surviving or resulting
21 from the consolidation or merger and, if any shares of
22 any of the constituent corporations are not to be con-
23 verted solely into shares or other securities of the sur-
24 viving or resulting corporation, the amount of cash or
25 securities of any other corporation, or other property,
26 which the holders of such shares are to receive in ex-
27 change for such shares or upon their conversion and the
28 surrender of the certificates evidencing such shares, which
29 cash or securities of any other corporation, or other prop-

30 erty, may be in addition to or in lieu of the shares or
31 other securities of the surviving or resulting corporation;
32 and (4) such other details or provisions as are deemed
33 desirable, including, without limiting the generality of
34 the foregoing, a provision for the payment of cash in lieu
35 of the issuance of fractional shares of the surviving or
36 resulting corporation or of any other corporation the
37 securities of which are to be received in the consolidation
38 or merger. There shall also be set forth in the agree-
39 ment such other matters or provisions as shall be required
40 to be set forth in certificates of incorporation by the
41 laws of the state which are stated in the agreement to
42 be the laws that shall govern the surviving or resulting
43 corporation and that can be stated in the case of a merger
44 or consolidation. Said agreement shall be authorized,
45 adopted, approved, signed and acknowledged by each of
46 said constituent corporations in accordance with the laws
47 under which it is formed and, in the case of a West
48 Virginia corporation, in the manner provided in section
49 sixty-three of this article. The agreement so authorized,
50 adopted, approved, signed and acknowledged shall be

51 filed in the office of the secretary of state and a copy
52 thereof, certified by the secretary of state, shall be
53 recorded as provided in section sixty-three of this article
54 with respect to the consolidation or merger of corpora-
55 tions of this state; and said agreement shall become effec-
56 tive on such date as shall be specified in such agreement,
57 or if no effective date is specified in such agreement, on
58 the date such certified copy of said agreement is issued
59 by the secretary of state, and shall thenceforth be taken
60 and deemed to be the agreement and act of consolidation
61 or merger of said constituent corporations for all pur-
62 poses of the laws of this state.

63 Wherever the laws of another state than West Virginia
64 are selected as the laws which shall govern the merged
65 or consolidated corporation, such surviving corporation
66 shall comply with the provisions of section seventy-nine,
67 of this article, as last amended, before it holds property or
68 transacts business in this state, and thereafter shall com-
69 ply with the laws of this state with respect to foreign
70 corporations holding property or transacting business
71 in this state.

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

Russell D. Beall
Chairman Senate Committee

Phyllis J. Rutledge
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

Howard T. Keyes
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

E. Hans McFount
President of the Senate

Lewis N. McManus
Speaker House of Delegates

The within approved this the 1st
day of April, 1971.

Arthur A. Shreve Jr.
Governor



PRESENTED TO THE
GOVERNOR

Date 3/19/71

Time 11:00a.m.

RECEIVED

APR 2 11 54 PM '71

OFFICE OF
SECRETARY OF STATE
STATE OF WEST VIRGINIA