ENROLLED

HOUSE BILL No. 1094

(By Mr. Steptoe and Mr. Potter)

PASSED March 13, 1971

In Effect Ninety days from Passage
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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
provisions of this chapter, or existing under the laws
of this state, for the purpose of carrying on any kind
of business, 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 agreement hereinafter required. The directors, or a
majority of them, of such corporations as desire to con-
solidate or merge, may enter into an agreement signed
by them and under the corporate seals of the respective
corporations, which agreement shall state: (1) the terms
and conditions of the consolidation or merger; (2) the
mode of carrying the same into effect; (3) such other
provisions or facts required or permitted by this article
to be stated in an agreement of incorporation as can be
stated in the case of a consolidation or merger, stated
in such altered form as the circumstances of the case
require; (4) the manner of converting the shares of each
of the constituent corporations into shares or other
securities of the corporation surviving or resulting from
the consolidation or merger and, if any shares of any
of the constituent corporations are not to be converted solely into shares or other securities of the surviving or resulting corporation, the amount of cash or securities of any other corporation, or other property, which the holders of such shares are to receive in exchange for such shares or upon their conversion and the surrender of the certificates evidencing such shares, which cash and securities of any other corporation, or other property, may be in addition to or in lieu of the shares or other securities of the surviving or resulting corporation; and (5) such other details or provisions as are deemed desirable, including, without limiting the generality of the foregoing, a provision for the payment of cash in lieu of the issuance of fractional shares of the surviving or resulting corporation or of any other corporation the securities of which are to be received in the consolidation or merger.

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 provisions 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 post-office address of each stockholder of each such corporation, at least twenty days prior to the date of such meeting: Provided, 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 commissioner 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 under 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 acknowledgments of deeds to be the respective act, deed and agreement 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 of merger of the said corporations; and a copy of such agreement and act of consolidation or merger, duly certified 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 con-
solidating 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 become a new
7 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 corporations on whatever account, as well for stock subscriptions 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, 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 corporations are formed shall permit such consolidation or merger. The constituent corporations may merge into a single
corporation, which may be any one of said constituent 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 hereinafter required. All the constituent corporations shall enter into an agreement of consolidation or merger, which agreement shall state: (1) The terms and conditions of the consolidation or merger; (2) the mode of carrying the same into effect; (3) the manner of converting the shares of each of the constituent corporations into shares or other securities of the corporation surviving or resulting from the consolidation or merger and, if any shares of any of the constituent corporations are not to be converted solely into shares or other securities of the surviving or resulting corporation, the amount of cash or securities of any other corporation, or other property, which the holders of such shares are to receive in exchange for such shares or upon their conversion and the surrender of the certificates evidencing such shares, which cash or securities of any other corporation, or other prop-
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30 property, 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
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 effec-
tive 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, and shall thenceforth be taken
and deemed to be the agreement and act of consolidation
or merger of said constituent corporations for all pur-
poses 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,
of this article, as last amended, before it holds property or
transacts business in this state, and thereafter shall com-
ply with the laws of this state with respect to foreign
corporations holding property or transacting business
in this state.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signatures]

Originated in the House.

Takes effect ninety days from passage.

[Signatures]

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

[Signature]
PRESENTED TO THE
GOVERNOR

Date 3/19/71
Time 11:00 a.m.