

MAINE STATE LEGISLATURE

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E I G H T Y - E I G H T H L E G I S L A T U R E

Legislative Document

No. 801

H. P. 1669

House of Representatives, March 2, 1937.

Received pursuant to Joint Order, referred to Committee on Judiciary.
Sent up for concurrence and 500 copies ordered printed.

HARVEY R. PEASE, Clerk.

Presented by Mr. Fellows of Augusta.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
THIRTY-SEVEN

AN ACT Relating to Consolidation of Corporations.

Be it enacted by the People of the State of Maine, as follows :

R. S., c. 56, § 63, amended. Section 63 of chapter 56 of the revised statutes is hereby amended by striking out all of said section and substituting in place thereof the following :

'Sec. 63. Corporation not to sell franchises or entire property without consent of stockholders. No corporation shall sell, lease, consolidate or in any manner part with its franchises, or its entire property, or any of its property, corporate rights or privileges essential to the conduct of its corporate business and purposes, otherwise than in the ordinary and usual course of its business, except with the consent of its stockholders at an annual or special meeting, the call for which shall give notice of the proposed sale, lease or consolidation. All such sales, leases and consolidations shall be subject to the provisions of this and the 11 following sections, and to the prior lien of stockholders as therein defined. Except as to franchises, this and the 11 following sections shall not be held to apply to mortgages of corporate property.

To effect a consolidation (which term as heretofore, here, and hereafter used in this section shall be construed to include merger) under the pro-

visions of the foregoing paragraph and subject to the provisions of this and the 11 following sections, any 2 or more corporations organized or to be organized under the provisions of this chapter or existing under the laws of this state, or any corporation or corporations organized or to be organized under the provisions of this chapter or existing under the laws of this state and any corporation or corporations organized under the laws of any other state, may consolidate into a single corporation which may be either one of said corporations or a new corporation to be formed by means of such consolidation, by entering into an agreement duly authorized by a majority of the directors of the respective corporations and signed by the duly authorized officers, and under the respective seals of said corporations, prescribing the terms and conditions of the consolidation, the mode of carrying the same into effect, whether or not the consolidated corporation shall be one of the constituent corporations or a new corporation created by such consolidation, and stating in such altered form as the circumstances of the case may require such other facts as are necessary to be set out in the certificate of organization of corporations organized under this chapter and as are pertinent in the case of a consolidation, the manner of converting the capital stock of each of such consolidating corporations into the stock or obligations of such consolidated corporation together with such other provisions and details as shall be deemed necessary to perfect the consolidation. Said agreement shall be acknowledged by one of the executing officers of each of the consolidating corporations before an officer authorized by the laws of this state to take acknowledgments of deeds, to be the respective act, deed and agreement of each of said corporations.

Subject to provisions of by-laws with reference to closing stock books prior to stockholders' meetings, said consolidation agreement shall be submitted to the stockholders of record of each corporation at a meeting thereof called separately for the purpose of taking the same into consideration, and at said meeting a vote in person or by proxy shall be taken for the adoption or rejection of said agreement, and if the votes of stockholders of each corporation representing a majority of the voting power, on a proposal to consolidate said corporation with another, shall be for the adoption of said agreement, then that fact shall be certified on said agreement by the clerk or secretary of each corporation and the agreement so signed, acknowledged, adopted and certified, after it has been examined, by the attorney-general, and been by him certified to be properly drawn and signed and to be conformable to the constitution and laws of this state, shall be recorded in the registry of deeds in the county where the said consolidated corporation is located, and within 60 days after the day of the

meeting at which said consolidation agreement is adopted by the stockholders, a copy thereof certified by such register shall be filed in the office of the secretary of state, who shall enter the date of filing thereon, and on the original agreement certified as aforesaid, to be kept by the consolidated corporation, and shall record said copy. From the time of filing the copy of such agreement in the office of the secretary of state, said agreement shall be taken and deemed to be the agreement and act of consolidation of the said corporations and said original consolidation agreement or a certified copy thereof shall be evidence of the existence of such consolidated corporation and of the observance and performance of all acts and conditions necessary to have been observed and performed precedent to such consolidation.

The notice herein provided for shall be given to all stockholders of record of all the consolidating corporations, whether or not entitled to vote, but subject to any by-law provisions with reference to closing stock books prior to stockholders' meetings. If the holder of record of any share not entitled to vote in any constituent corporation selling, leasing, consolidating, or otherwise disposing of its property as aforesaid, shall at or prior to the taking of the vote, dissent therefrom in writing, and shall at such time, or within one month from the date of such vote, file his written dissent therefrom with the president, clerk or treasurer of such corporation, then such non-voting shares of such stockholder shall be subject to and be entitled to all of the rights granted by the 11 following sections in like manner as if they had been voting shares.

Any one or more corporations as set forth in the preceding paragraph organized under the laws of this state may consolidate with one or more other corporations organized under the laws of any other state permitting such consolidation. The constituent corporations may consolidate (which includes 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 in writing which shall prescribe 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 constituent corporations into shares of the corporation resulting from or surviving such consolidation or merger 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 corporation 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 Maine corporation, in the manner hereinbefore provided. The agreement so authorized, adopted, signed and acknowledged, shall be approved by the attorney general of this state and filed in the office of the secretary of state and said agreement 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.

If the corporation resulting or surviving such consolidation or merger is to be governed by the laws of any state other than the laws of this state, it shall agree that it may be served with process in this state in any proceeding for enforcement of any obligation of any constituent corporation of this state, including any amount determined pursuant to the provisions of sections 64 to 74, inclusive, of this chapter, and shall irrevocably appoint the secretary of state as its agent to accept service of process in an action for the enforcement of payment of any such obligation or any amount determined under the provisions of sections 64 to 74, inclusive, as aforesaid and shall specify the address to which a copy of such process shall be mailed by the secretary of state. Service of such process shall be made by personally delivering to and leaving with the secretary of state duplicate copies of such process, with a fee of \$2. The secretary of state shall forthwith send by registered mail one of such copies to such resulting or surviving corporation at its address so specified, unless such resulting or surviving corporation shall thereafter have designated in writing to the secretary of state a different address for such purpose, in which case it shall be mailed to the last address so designated.

When said agreement is so signed, acknowledged, adopted, recorded and filed in accordance with the laws of this state, the separate existence of all of the constituent corporations, or all of such constituent corporations except the one into which such constituent corporations shall have been consolidated shall cease, and the constituent corporations, whether consolidated into a new corporation or merged into one of such constituent corporations, as the case may be, shall become the consolidated corporation possessing all the rights, privileges, powers, franchises and immunities as well of a public as of a private nature, and being subject to all the liabilities, restrictions and duties of each of such corporations so consolidated and all and singular the rights, privileges, powers, franchises and immunities 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, and all other things in action of or belonging to each of said corporations, shall be vested in the consolidated corporation; and all property, rights, privileges, powers, franchises and immunities, and all and every other interest shall be thereafter as effectually the property of the consolidated corporation as they were of the several and respective constituent corporations, and the title to any real estate, whether 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 thereof; provided, that all rights of creditors and all liens upon the property of any of said constituent corporations shall be preserved unimpaired, limited to the property affected by such liens at the time of the consolidation, and all debts, liabilities and duties of the respective constituent corporations shall thenceforth attach to said consolidated 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.

If the location of the consolidated corporation is not the same as that of the constituent corporation, or if said consolidated or resulting corporation is a foreign corporation, then the clerk of the consolidated corporation shall within 60 days after such consolidation has become effective, file a certificate of the consolidation, setting forth the names and locations of the consolidated and constituent corporations, in the registry of deeds of each county, other than that of the consolidated corporation, where the constituent corporations may be located.

The provisions of sections 64 to 74, inclusive, of this chapter shall be construed as applicable to domestic corporations only.

The provisions of this section with reference to consolidation shall neither restrict nor enlarge the provisions of section 1 of chapter 68 and section 44 of chapter 62 as now amended.'