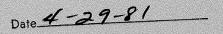
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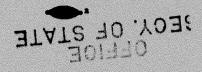
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WEST VIRGINIA LEGISLATURE **REGULAR SESSION, 1981**

ENROLLED Committee Substitute for SENATE BILL NO. 414

(By Mr.: Nelson

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COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 414

(MR. NELSON, original sponsor)

[Passed April 11, 1981; in effect ninety days from passage.]

AN ACT to amend and reenact sections two and three, article three, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to giving the West Virginia board of banking and financial institutions certain emergency banking powers and allowing said board, in certain instances where it finds that the financial condition of a bank is such as to constitute an imminent peril to its depositors, savings account holders, customers or creditors, without notice, examination, investigation or hearing, to enter an order approving or disapproving certain applications to incorporate and organize a state banking institution and without notice or hearing to enter an order approving or disapproving the request of any state bank to purchase or merge and consolidate with another state banking institution or with a national banking association to form a resulting state bank; definitions; permitting operation of banking business from separate premises under the same name, in certain circumstances, upon a finding of imminent peril; restrictions.

Be it enacted by the Legislature of West Virginia:

That sections two and three, article three, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows: Enr. Com. Sub. for S. B. No. 414] 2

ARTICLE 3. BOARD OF BANKING AND FINANCIAL INSTITUTIONS.

§31A-3-2. General powers and duties.

(a) In addition to other powers conferred by this chapter,
 the board shall have the power to:

3 (1) Regulate its own procedure and practice;

4 (2) Promulgate reasonable rules and regulations to 5 implement any provision of this article, such rules and 6 regulations to be promulgated in accordance with the 7 provisions of article three, chapter twenty-nine-a of this code;

8 (3) Advise the commissioner in all matters within his9 jurisdiction;

(4) Study the organization, programs and services of
financial institutions and the laws relating thereto in this state
and in other jurisdictions, and to report and recommend to
the governor and the Legislature all such changes and
amendments in laws, policies and procedures relating thereto
as may be by it deemed proper; and

16 (5) Grant permission and authority to a financial17 institution:

(A) To participate in a public agency hereafter created
under the laws of this state or of the United States, the
purpose of which is to afford advantages or safeguards to
financial institutions or to depositors therein, and to comply
with all lawful requirements and conditions imposed upon
such participants;

24 (B) To engage in any financial institution activity, services, procedures and practices in which financial 25institutions of the same type subject to the jurisdiction of the 26 federal government may hereafter be authorized by federal 27laws, rules or regulations to engage, notwithstanding any 28 contrary provision of this code: Provided, That no such 29 permission or authority shall be granted to any banking 30 institution to install or maintain any branch bank or engage in 31 business at any place other than its principal office in this 32 state in contravention of the provisions of section twelve, 33 article eight of this chapter; 34

35 (C) To pay interest on demand deposits of the United
36 States or any agency thereof, if the payment of such interest
37 shall be permitted under any applicable federal law, rule or
38 regulation.

39 Any permission and authority granted by the board 40 pursuant to this subdivision (5) shall cease and terminate upon the adjournment of the next regular session of the
Legislature, unless the Legislature shall at such session enact
legislation authorizing the financial institution participation,
activity, services and procedures or payment of interest with
respect to which such permission and authority was granted,
in which event such permission and authority shall continue
in effect until the effective date of such legislation.

(b) The board shall further have the power, by enteringappropriate orders, to:

(1) Restrict the withdrawal of deposits from any financial
institution when in the judgment of the board extraordinary
circumstances make such restrictions necessary for the
protection of creditors of and depositors in the affected
institution;

55 (2) Compel the holder of shares in any corporate financial institution to refrain from voting said shares on any matter 56 when in the judgment of the board such order is necessary to 57 protect the institution against reckless, incompetent or 58 careless management, to safeguard funds of depositors in the 59 60 institution, or to prevent willful violation of any applicable law or of any rule and regulation or order issued thereunder. 61 In such a case the shares of such a holder shall not be counted 62 in determining the existence of a quorum or a percentage of 63 the outstanding shares necessary to take any corporate 64 65 action;

66 (3) Approve or disapprove applications to incorporate and
67 organize state banking institutions in accordance with the
68 provisions of sections six and seven, article four of this
69 chapter;

(4) Revoke the certificate of authority, permit, certificate 70 or license of any state banking institution to engage in 71 business in this state if such institution shall fail or refuse to 72comply with any order of the commissioner entered pursuant 73to the provisions of paragraphs (A) or (B), subdivision (14), 74 subsection (c), section four, article two of this chapter, or at 75 the board's election to direct the commissioner to apply to 76 any court having jurisdiction for a prohibitory or mandatory 77 injunction or other appropriate remedy to compel obedience 78 to such order; 79

80 (5) Suspend or remove a director, officer or employee of
81 any financial institution who is or becomes ineligible to hold
82 such position under any provision of law or rule and

regulation or order, or who willfully disregards or fails to
comply with any order of the board or commissioner made
and entered in accordance with the provisions of this chapter
or who is dishonest or grossly incompetent in the conduct of
financial institution business.

(6) Approve or disapprove the application of any state 88 89 bank to purchase the business and assets and assume the liabilities of, or merge or consolidate with, another state 90 banking institution in accordance with the provisions of 91 section five, article seven of this chapter: Provided, That 92 nothing contained in this subdivision shall be construed as 93 94 permitting any banking institution to install or maintain any branch bank or to take any other action or engage in any other 95 practice prohibited by section twelve, article eight of this 96 chapter, except as permitted by subdivision (8) of this 97 98 subsection (b);

99 (7) Approve or disapprove the application of any state 100 bank to purchase the business and assets and assume the 101 liabilities of a national banking association, or merge or 102 consolidate with a national banking association to form a 103 resulting state bank in accordance with the provisions of 104 section five, article seven of this chapter: Provided, That 105 nothing contained in this subdivision shall be construed as 106 permitting any banking institution to install or maintain any 107 branch bank or to take any other action or engage in any other 108 practice prohibited by section twelve, article eight of this 109 chapter, except as permitted by subdivision (8) of this 110 subsection (b); and

111 (8) Notwithstanding any provision contained in section twelve, article eight of this chapter or elsewhere in this code 112 113 to the contrary, incident to the approval of an application pursuant to subdivision (6) or subdivision (7) of this 114 115 subsection (b), permit the bank the application of which is so 116 approved to operate its banking business under its name 117 from the premises of the bank the business and assets of which have been purchased and the liabilities of which have 118 119 been assumed by such applicant bank or with which such 120 applicant bank has merged or consolidated: Provided, That 121such permission may be granted only if the board has made the findings required by subsection (f), section three of this 122 123 article and such applicant bank has no common directors or officers nor common ownership of stock exceeding ten 124

125 percent of total outstanding voting stock with the bank126 whose business and assets are being purchased and liabilities127 assumed or with whom such applicant bank is being merged.

(9) No provision of this section shall be construed to alter,
reduce or modify the rights of shareholders, or obligations of
a banking institution in regard to its shareholders, as set forth
in section one hundred seventeen, article one, chapter
thirty-one of this code and section five, article seven of this
chapter and other applicable provisions of this code.

§31A-3-3. Hearings and orders; entry of order without notice and hearing; definitions.

(a) Subject to the provisions of subsections (e), (f) and (g)
 2 of this section, notice and hearing shall be provided in
 3 advance of the entry of any order by the board.

(1) Such notice shall be given to the financial institution or 4 person with respect to whom the hearing is to be conducted 5 in accordance with the provisions of section two, article 6 7 seven, of chapter twenty-nine-a of this code, and such hearing and the administrative procedures in connection therewith 8 shall be governed by all of the provisions of article five, 9 chapter twenty-nine-a of this code, and shall be held at a time 10 and place set by the board, but shall not be held less than ten 11 12 nor more than thirty days after such notice is given. A hearing may be continued by the board on its own motion or for good 13 14 cause shown.

(2) At any such hearing a party may represent himself orbe represented by an attorney at law admitted to practicebefore any circuit court of this state.

18 (b) After any such hearing and consideration of all of the testimony and evidence, the board shall make and enter an 19 order deciding the matters with respect to which such 20hearing was conducted, which order shall be accompanied by 2122findings of fact and conclusions of law as specified in section 23three, article five, chapter twenty-nine-a of this code, and a 24copy of such order and accompanying findings and 25conclusions shall be served upon all parties to such hearing, 26and their attorneys of record, if any.

(c) In the case of an application for the board's approval to
incorporate and organize a banking institution in this state, as
provided in subdivision (3), subsection (b), section two of this
article, the board shall, upon receipt of any such application,
provide notice to all banking institutions, which in the

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manner hereinafter provided, have requested notice of any 32 33 such action. The request by any such banking institution to 34 receive such notice shall be in writing and shall request the board to notify it of the receipt by the board of any 35 application to incorporate and organize a banking institution 36 in this state. A banking institution may, within ten days after 37 receipt of such notice, file a petition to intervene and shall, if 38 39 it so files such petition, thereupon become a party to any hearing relating thereto before the board. 40

(d) The board shall have the power and authority to issue
subpoenas and subpoenas duces tecum, administer oaths and
examine any person under oath in connection with any
subject relating to duties imposed upon or powers vested in
the board.

(e) Whenever the board shall find that extraordinary 46 47 circumstances exist which require immediate action, it may forthwith without notice or hearing enter an order taking any 48 49 action permitted by subdivisions (1), (2), (4) and (5) of subsection (b), section two of this article. Immediately upon 50 the entry of such order, certified copies thereon shall be 51 served upon all persons affected thereby and upon demand 5253 such persons shall be entitled to a hearing thereon at the 54 earliest practicable time.

55 (f) Whenever the board shall find that the financial 56 condition of a state banking institution or a national banking association constitutes an imminent peril to its depositors, 57 savings account holders, other customers or creditors, it may 58 59 forthwith without notice or hearing enter an order taking any action permitted by subdivisions (6) and (7) of subsection (b), 60 section two of this article. Immediately upon entry of such 61 order, certified copies thereof shall be served upon all 62 63 persons affected thereby and upon demand such persons shall be entitled to a hearing thereon at the earliest 64 65 practicable time.

(g) Whenever the board shall find that the financial 66 condition of a state banking institution or national banking 67 association constitutes an imminent peril to its depositors, 68 69 savings account holders, other customers or creditors, it may forthwith without compliance with the provisions of section 70 six or seven, article four of this chapter and without notice or 71hearing enter an order approving or disapproving an 7273application to incorporate a state banking institution which is

being formed to purchase the business and assets or assume 74 75 the liabilities of, or both, or merge or consolidate with, such state banking institution or national banking institution the 76 financial condition of which constitutes an imminent peril¹to 77its depositors, savings account holders, other customers or 78 creditors. Immediately upon the entry of such order, certified 79 80 copies thereof shall be served upon all persons affected thereby and upon demand such persons shall be entitled to a 81 hearing thereon at the earliest practicable time. 82

83 (h) Definitions.

84 (1) The term "imminent peril" means that, because the
85 banking institution is insolvent or about to be insolvent, or
86 there is a probability that the banking institution will not be
87 able to pay its debts when they become due.

(2) A banking institution is "about to be insolvent" when it
would be unable to meet the demands of its depositors or is
clearly unable, without impairment of capital, by sale of
assets or lawful borrowings or otherwise, to realize sufficient
liquid assets to pay such debts for which payment is likely, in
the immediate future, to be due and demanded in the
ordinary course of business.

(3) A banking institution is "insolvent" when it is unable
to pay its debts to its depositors and other creditors in the
ordinary and usual course of business.

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

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

Willi Clerk of the Senate Blankenster Clerk of the House of Delegates President of the Senate Speaker House of Delegates this the La The within MC ., 1981. day of.... rnor Go

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