

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1990



ENROLLED

Com. Sub. for
HOUSE BILL No. 4803

(By ~~the~~ *Delegate Phillip*)



Passed *March 10,* 1990

In Effect *90 Days from* Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 4803
(By DELEGATE PHILLIPS)

[Passed March 10, 1990; in effect ninety days from passage.]

AN ACT to amend and reenact section three, article four, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one and seven, article eight-a of said chapter; and to amend and reenact section two, article one, chapter forty-seven-a of said code, all relating to banking institutions and services generally; acquisition of bank shares, state banks or holding companies by foreign banks; lending and credit rate board yearly fee; and incorporation of newly organized banks; and capitalization requirements of newly organized banks.

Be it enacted by the Legislature of West Virginia:

That section three, article four, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections one and seven, article eight-a of said chapter be amended and reenacted; and that section two, article one, chapter forty-seven-a of said code be amended and reenacted, all to read as follows:

CHAPTER 31A. BANKS AND BANKING.

**ARTICLE 4. BANKING INSTITUTIONS AND SERVICES
GENERALLY.**

§31A-4-3. Minimum capital stock; one class of stock; par value; capitalization of surplus.

1 (a) No banking institution may hereafter be incorpo-
2 rated unless it shall have bona fide subscribed capital
3 stock and capital surplus equal to at least one million
4 dollars. The West Virginia board of banking and
5 financial institutions shall require capital in excess of
6 one million dollars if, in its judgment, economic
7 conditions or the operating environment of the proposed
8 banking institution, make such a requirement
9 necessary.

10 (b) Notwithstanding any provision of (a) above, the
11 commissioner or the West Virginia board of banking
12 and financial institutions may approve the incorporation
13 of a bank newly organized solely for the purpose of
14 facilitating the acquisition of another bank if the
15 proposed newly organized bank has a bona fide sub-
16 scribed capital stock and capital surplus of at least sixty
17 thousand dollars.

18 (c) Banking institutions shall issue but one class of
19 stock and the shares shall have a nominal or par value
20 of not less than one dollar nor more than one hundred
21 dollars each, and as to each banking institution each
22 share shall be equal in all respects with any other share.

23 (d) Any banking institution may change the par value
24 of its shares, when and to the extent that any such action
25 may be authorized in writing by the commissioner.

ARTICLE 8A. ACQUISITION OF BANK SHARES.

§31A-8A-1. Legislative findings and purpose.

1 After a review of the structure of banking organiza-
2 tions in the state of West Virginia and after full
3 consideration of the complex issues involved, the
4 Legislature hereby finds and determines that:

5 (a) Well managed and financially sound banking
6 institutions are essential to the financial well-being of
7 the citizens, and the promotion of the future economic
8 and industrial growth and development of this state;

9 (b) The formation of bank holding companies will
10 strengthen and supplement traditional banking services
11 and facilitate the development of the type of banking
12 institutions that are necessary for the economic and
13 industrial growth and development of this state;

14 (c) It is in the best interests of this state and its
15 citizens for the board to have the power and authority
16 to disapprove the acquisition of a bank by a bank
17 holding company when the board determines that such
18 acquisition would result in a monopoly, substantially
19 lessen competition, or be contrary to the best interests
20 of the shareholders or customers of the bank involved;
21 and

22 (d) The deposits of the citizens of this state are a
23 substantial and valuable resource which should serve
24 the economic and industrial growth and development
25 needs, and the consumer needs of the citizens of this
26 state; and since the board could not effectively make a
27 determination that the control of deposits of the citizens
28 of this state by bank holding companies, the principal
29 places of business of which are located outside this state,
30 would be used for the above enumerated local needs of
31 this state's citizenry, a bank holding company with its
32 principal place of business located outside this state
33 shall be prohibited from acquiring, directly or indi-
34 rectly, five percent or more of the interest in, or assets
35 of, any bank or bank holding company located in this
36 state, unless acquired pursuant to section seven of this
37 article.

**§31A-8A-7. Acquisition of state bank or holding company
by foreign bank; reciprocity; authority of
the commissioner and of the board.**

1 (a) Except as authorized in this section, no banking
2 institution incorporated under the laws of any other
3 state or having its principal place of business in any
4 other state may receive deposits or transact any banking
5 business of any kind in this state other than the lending
6 of money.

7 (b) Upon enactment, a bank holding company with its
8 principal place of business in another state may

9 establish electronic data processing facilities and credit
10 card processing facilities in West Virginia.

11 (c) After the thirty-first day of December, one
12 thousand nine hundred eighty-seven, a bank holding
13 company with its principal place of business in another
14 state may acquire a West Virginia bank or West
15 Virginia bank holding company if the board determines
16 in its discretion that the laws of such other state, as in
17 effect at the time the application referred to in
18 subsection (d) of this section, permits a West Virginia
19 bank holding company to acquire a bank or bank
20 holding company having its principal place of business
21 in such other state on terms that are, on the whole,
22 substantially no more restrictive than those established
23 under this section and if the West Virginia bank has,
24 or all West Virginia subsidiaries of the West Virginia
25 bank holding company to be acquired have, been in
26 operation for two years or more. The board may approve
27 the acquisition of all or substantially all of the shares
28 of a bank newly organized solely for the purpose of
29 facilitating the acquisition of a bank that has been in
30 existence and continuously operating for at least two
31 years. If the law of such other state restricts entry by
32 West Virginia bank holding companies to that state,
33 then the board may similarly limit the authority
34 granted by this section for bank holding companies with
35 their principal places of business located in that state.

36 In no case may this section be construed to permit the
37 merger, combination or consolidation of a West Virginia
38 bank with or into a bank the principal place of business
39 of which is not in this state.

40 (d) Any bank holding company proposing to acquire
41 a West Virginia bank or West Virginia bank holding
42 company pursuant to this section shall comply with, and
43 be governed by, the procedures and requirements
44 contained in section four of this article.

45 (e) No application for approval of an acquisition
46 pursuant to the authority granted by this section may
47 be approved by the board if the board determines that
48 such approval would cause the applicant bank holding

49 company to control aggregate total deposits in this state
50 exceeding twenty percent of the total deposits held by
51 all financial institutions located in this state as reported
52 in the most recently available reports of condition or
53 similar reports filed with state or federal authorities.

54 (f) Unless the shareholders of the West Virginia bank
55 or West Virginia bank holding company to be acquired
56 have approved an amendment to its articles of incorpo-
57 ration or code of regulations or comparable document
58 that provides that this subsection shall not apply to such
59 West Virginia bank or West Virginia bank holding
60 company, any acquisition to be made pursuant to the
61 authority granted by this section which will result in the
62 acquiring nonresident bank holding company directly or
63 indirectly owning or controlling the West Virginia bank
64 or West Virginia bank holding company must be
65 authorized by the affirmative vote of the holders of not
66 less than two thirds of the voting power of the West
67 Virginia bank or West Virginia bank holding company
68 to be acquired.

69 (g) Any bank holding company acquiring a bank or
70 bank holding company pursuant to the authority
71 granted by this section shall file with the commissioner
72 copies of the public portions of all regular and periodic
73 reports such bank holding company is required to file
74 with federal regulators and under section 13 or 15(d) of
75 the "Securities Exchange Act of 1934," 48 STAT. 894,
76 15 U.S.C. 78m or 78o(d), as amended. These reports
77 shall be filed with the commissioner within fifteen days
78 following the date they are filed in final form with the
79 applicable regulator.

80 (h) As used in this section:

81 (1) "Acquire" or "acquisition" means any of the
82 following transactions or actions:

83 (A) A merger, consolidation or combination of, or
84 with, a West Virginia bank holding company;

85 (B) The acquisition of the direct or indirect ownership
86 or control of voting shares of a West Virginia bank
87 holding company or a West Virginia bank if, after such

88 acquisition, the acquiring bank holding company will
89 directly or indirectly own or control more than five
90 percent of any class of voting shares of the West
91 Virginia bank or West Virginia bank holding company
92 unless the board determines, in its discretion, that the
93 nature of the acquisition is such that it should not be
94 subject to the limitations of this section;

95 (C) The direct or indirect acquisition of all or
96 substantially all of the assets of a West Virginia bank
97 or West Virginia bank holding company by a bank
98 holding company; or

99 (D) The taking of any other action by a bank holding
100 company that results in the direct or indirect control of
101 a West Virginia bank or West Virginia bank holding
102 company.

103 (2) "Bank holding company" means any company
104 which is a bank holding company as defined in this
105 article, or which will become such an approved bank
106 holding company prior to or upon completion of the
107 acquisition to be made pursuant to the authority granted
108 by this section.

109 (3) "Electronic data processing facilities and credit
110 card processing facilities" means facilities established
111 only for the purpose of processing accounts and or
112 processing transactions relating to the issuance of credit
113 cards.

114 (4) "Principal place of business" means, as to a bank
115 holding company, the state or jurisdiction in which the
116 total deposits of all direct and indirect banking subsi-
117 diaries of the bank holding company and any other
118 company that has control of the bank holding company
119 are the largest, as shown in the most recent report of
120 condition or similar report filed by such banking
121 subsidiaries with state or federal authorities; and, as to
122 a bank, the state or jurisdiction in which its total
123 deposits and those of all its banking subsidiaries, if any,
124 are the largest, as shown in the most recent report of
125 condition or similar report filed by the bank and its
126 banking subsidiaries with state or federal authorities.

127 (5) "West Virginia bank" means a bank incorporated
128 under the laws of this state or a national banking
129 association the principal place of business of which is in
130 this state.

131 (6) "West Virginia bank holding company" means a
132 bank holding company which owns or controls one or
133 more West Virginia banks and has its principal place
134 of business in this state.

135 (i)(1) When the commissioner of banking considers it
136 necessary or appropriate, he may examine any bank
137 holding company that has acquired or has an application
138 pending to acquire a West Virginia bank or West
139 Virginia bank holding company pursuant to the author-
140 ity granted by subsection (c) of this section. The cost of
141 an examination if in excess of the initial fee, shall be
142 assessed against and paid by the bank holding company
143 examined. The commissioner may request the bank
144 holding company to be examined pursuant to this
145 subsection to advance the estimated cost of such
146 examination.

147 (2) The commissioner may enter into cooperative
148 agreements with other state and federal bank regula-
149 tory authorities to facilitate the examination of any bank
150 holding company that has acquired or has an application
151 pending to acquire a West Virginia bank or West
152 Virginia bank holding company pursuant to the author-
153 ity granted by subsection (c) of this section. The
154 commissioner may accept reports of examinations and
155 other records from such other authorities in lieu of
156 conducting his own examination of such bank holding
157 companies. The commissioner may take any action
158 jointly with other regulatory agencies having concurrent
159 jurisdiction over such bank holding companies or may
160 take action independently in order to carry out his
161 responsibilities under subsection (c) of this section.

162 (3) When the commissioner considers it necessary, he
163 may require any bank holding company that has
164 acquired a West Virginia bank or West Virginia bank
165 holding company pursuant to the authority granted by
166 subsection (c) of this section to submit such reports to

167 the commissioner as he determines to be necessary or
168 appropriate for the purpose of carrying out his respon-
169 sibilities.

**CHAPTER 47A. WEST VIRGINIA LENDING AND
CREDIT RATE BOARD.**

ARTICLE 1. LENDING AND CREDIT RATE BOARD.

§47A-1-2. Board staff, offices, funding.

1 Under the direction of the chairperson of the board,
2 the board shall be entitled to utilize the staff of the West
3 Virginia banking department and the offices of the
4 board shall be those of the West Virginia banking
5 department. In order to defray the cost of the board's
6 operations including the cost of its utilization of the staff
7 of the West Virginia banking department, the board
8 shall establish the West Virginia lending and credit rate
9 board revolving fund.

10 On or before the first day of July of each year, the
11 commissioner of banking may charge and collect from
12 each supervised financial organization and supervised
13 lender a yearly fee of fifty dollars and pay it into the
14 revolving fund established by the board. The fees paid
15 into this revolving fund shall be utilized to pay the costs
16 and expenses of the board and all incidental costs and
17 expenses necessary for its operations.

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

Frederick L. Perke
.....
Chairman Senate Committee

Bernard V. Kelly
.....
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Harriet E. Adams
.....
Clerk of the Senate

Donald S. Kopp
.....
Clerk of the House of Delegates

Walter Buntline
.....
President of the Senate

Robert Cole
.....
Speaker of the House of Delegates

The within is approved this the *26th*
day of *March*, 19*90*.

W. Gaston Caperton
.....
Governor

PRESENTED TO THE

GOVERNOR,

Date 3/22/90

Title 4:12 pm

RECEIVED

REC'D MAR 23 PM 3:51

STANTON UNIVERSITY
STANTON, CALIF.