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SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1991

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ENROLLED

HOUSE BILL No. 2793

(By Mr. Del Rutledge and Williams)

— ● —

Passed March 8, 1991

In Effect July 1, 1991 ~~Passage~~

ENROLLED
H. B. 2793

(By DELEGATES RUTLEDGE AND WILLIAMS)

[Passed March 8, 1991; in effect July 1, 1991.]

AN ACT to amend and reenact sections five, fourteen, fifteen and thirty-three, article four, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section twelve, article eight and section four, article eight-a of said chapter, all relating to banking institutions, increasing certain fees for investigation of bank incorporation; eliminating certificates of unimpaired capital and replacing certificates with annual reports; deposits in trust; limitation on liability of institutions making payments from certain accounts; and reducing investigation fees for mergers and share acquisition.

Be it enacted by the Legislature of West Virginia:

That sections five, fourteen and fifteen and thirty-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; and that section twelve, article eight and section four, article eight-a of said chapter be amended and reenacted, all to read as follows:

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

**§31A-4-5. Requirements and procedure for incorporation
of state banks.**

1 A state bank may be organized by five or more
2 incorporators, a majority of whom shall be residents of

3 the state of West Virginia. Such banking institution
4 shall have as a part of its corporate name or title one
5 or more of the following words indicative of the business
6 which it is authorized to conduct, namely, "bank,"
7 "banking company," "banking association," "trust
8 company," "banking and trust company" or "bank and
9 trust company."

10 The incorporators shall file with the board an
11 agreement of incorporation, in duplicate, following
12 generally the form prescribed by the secretary of state
13 for chartering corporations under provisions of article
14 one, chapter thirty-one of this code. The information set
15 forth in the agreement shall include the following:

16 (1) The name of the proposed bank;

17 (2) The community and county in which the bank is
18 to be located, together with the post-office address of the
19 place of business of the bank;

20 (3) Whether such bank proposes also to engage in the
21 trust business;

22 (4) The name, residence and occupation of each
23 incorporator, and the amount of capital stock subscribed
24 and paid for by each;

25 (5) The names of the persons who are to serve as
26 officers and directors of the banking institution and the
27 official position proposed to be held by each; and

28 (6) The total authorized capital stock of the institution.

29 The agreement of incorporation shall be signed and
30 acknowledged by each of the incorporators and, when
31 filed with the board, shall be accompanied by the
32 statutory corporation charter fees, and an examination
33 and investigation fee of five thousand dollars payable to
34 the board. However, if the agreement is for the
35 incorporation of a bank to be organized solely for the
36 purpose of facilitating the acquisition of another bank,
37 the examination and investigation fee is five hundred
38 dollars payable to the board. When transmitting the
39 agreement to the board, the incorporators shall design-
40 ate by name and give the address of the attorney, agent

41 or other responsible party with whom the board may
42 communicate, on whom the board may call for further
43 information, and to whom the board may officially
44 report as to action on the agreement so filed with him.
45 The agreement shall constitute and may be considered
46 and treated by the board as an application for the
47 board's approval to incorporate and organize a banking
48 institution in this state.

§31A-4-14. Trust powers of banking institutions.

1 Every state banking institution, except industrial
2 banks created and organized pursuant to the provisions
3 of article seven, chapter thirty-one of this code, which
4 files the reports required in the following section and
5 which is not otherwise prohibited by the commissioner
6 or federal bank regulators from doing so, shall have and
7 exercise the following powers:

8 (a) All the powers, rights and privileges of any state
9 banking institution;

10 (b) To act as trustee, assignee, special commissioner,
11 general or special receiver, guardian, executor, admin-
12 istrator, committee, agent, curator, or in any other
13 fiduciary capacity, and to take, assume, accept and
14 execute trusts of every description not inconsistent with
15 the constitution and laws of the United States of
16 America or of this state; and to receive, hold, manage
17 and apply any sinking fund on the terms and for the
18 purposes specified in the instrument creating such fund;

19 (c) To act as registrar, transfer agent or dividend or
20 coupon paying agent for any corporation;

21 (d) To make, hold and dispose of investments and
22 establish common trust funds, and account therefor,
23 pursuant to the provisions of chapter forty-four of this
24 code;

25 (e) To purchase and sell and take charge of and
26 receive the rents, issues and profits of any real estate
27 for other persons or corporations;

28 (f) To act as trustee or agent in any collateral trust
29 and in order to secure the payment of any obligations

30 of any person, firm, private corporation, public corpo-
31 ration, public body or public agency to receive and hold
32 in trust any items of personal property (including
33 without limitation notes, bonds, debentures, obligations
34 and certificates for shares of stock) with the right in
35 case of default to sell and dispose of such personal
36 property and to collect, settle and adjust any obligations
37 for the payment of money, and at any sale of such
38 personal property held by it, to purchase the same for
39 the benefit of all or any of the holders of the obligations,
40 to secure the payment of which such items of personal
41 property were pledged and delivered to the trustee or
42 agent. Any such sale may be made without any proceed-
43 ings in any court, and at such times and upon such
44 terms as may be specified in the instrument or instru-
45 ments creating the trust, or, in the absence of any
46 specification of terms, at such time and upon such terms
47 as the trustee shall deem reasonable; and

48 (g) To do and perform any act or thing requisite or
49 necessary in, or incidental to, the exercise of the general
50 powers herein set forth.

51 All national banks having their principal offices in
52 this state which have been, or hereafter may be,
53 authorized under the laws of the United States to act
54 as trustee and in other fiduciary capacities in the state
55 of West Virginia shall have all the rights, powers,
56 privileges and immunities conferred hereunder, pro-
57 vided they comply with the requirements hereof.

**§31A-4-15. Certificate showing unimpaired capital to be
filed before exercising trust powers; penal-
ties; notice of failure to comply.**

1 No banking institution shall exercise any of the trust
2 powers mentioned in the preceding section until it shall
3 have filed with the commissioner of banking an annual
4 report of trust assets each calendar year as filed with
5 federal regulators. If any such banking institution shall
6 exercise, or attempt to exercise, any such powers or
7 rights without having complied with the requirements
8 of this section as to the filing of such report, it shall be
9 guilty of a misdemeanor, and, upon conviction thereof,

10 shall be fined not more than five hundred dollars; and
11 in every such case, whether or not there shall have been
12 a prosecution or conviction of the company so offending,
13 the commissioner of banking, being satisfied of the facts,
14 may publish a notice of the fact that it has failed to
15 comply with the requirements of this section and is
16 therefore not entitled to exercise the trust powers and
17 rights mentioned in the preceding section. In the event
18 a notice is published as aforesaid, it shall be published
19 as a Class II legal advertisement in compliance with the
20 provisions of article three, chapter fifty-nine of this code,
21 and the publication area for such publication shall be
22 the county in which such institution is located.

**§31A-4-33. Deposits in trust; deposits in more than one
name; limitation on liability of institutions
making payments from certain accounts.**

1 If any deposit in any banking institution be made by
2 any person describing himself in making such deposit
3 as trustee for another, and no other or further notice of
4 the existence and terms of a legal and valid trust than
5 such description shall be given in writing to the banking
6 institution, in the event of the death of the person so
7 described as trustee, such deposit, or any part thereof,
8 together with the interest thereon, may be paid to the
9 person for whom the deposit was thus stated to have
10 been made.

11 When a deposit is made by any person in the name
12 of such depositor and another or others and in form to
13 be paid to any one of such depositors, or the survivor
14 or survivors of them, such deposit, and any additions
15 thereto, made by any of such persons, upon the making
16 thereof, shall become the property of such persons as
17 joint tenants; and the same, together with all interest
18 thereon, shall be held for the exclusive use of the persons
19 so named, and may be paid to any one of them during
20 the lifetime of them, or to the survivor or survivors after
21 the death of any of them; and such payment and the
22 receipt or the acquittance of the one to whom such
23 payment is made shall be a valid and sufficient release
24 and discharge for all payments made on account of such
25 deposit, prior to the receipt by the banking institution

26 of notice in writing, signed by any one of such joint
27 tenants not to pay such deposit in accordance with the
28 terms thereof. Prior to the receipt of such notice no
29 banking institution shall be liable for the payment of
30 such sums.

**ARTICLE 8. HEARINGS; ADMINISTRATIVE PROCEDURES;
JUDICIAL REVIEW; UNLAWFUL ACTS;
PENALTIES.**

**§31A-8-12. Procedure for authorization of branch banks;
penalties for violation of section.**

1 (a) No banking institution shall engage in business at
2 any place other than at its principal office in this state,
3 at a branch bank in this state permitted by this section
4 as a customer bank communication terminal permitted
5 by section twelve-b of this article or at any loan
6 organization office permitted by section twelve-c of this
7 article: *Provided*, That acceptance of a deposit at the
8 offices of any subsidiary, as defined in section two,
9 article eight-a of this chapter, for credit to the custo-
10 mer's account at any other subsidiary of the same bank
11 holding company is permissible and does not constitute
12 branch banking.

13 Any banking institution which on January one, one
14 thousand nine hundred eighty-four, was authorized to
15 operate an off-premises walk-in or drive-in facility,
16 pursuant to the law then in effect, may, as of the seventh
17 day of June, one thousand nine hundred eighty-four,
18 operate such facility as a branch bank and it shall not
19 be necessary, for the continued operation of such branch
20 bank, to obtain additional approvals, notwithstanding
21 the provisions of subsection (d) of this section and
22 subdivision (6), subsection (b), section two, article three
23 of this chapter.

24 (b) Except for a bank holding company, it shall be
25 unlawful for any individual, partnership, society,
26 association, firm, institution, trust, syndicate, public or
27 private corporation, or any other legal entity, or
28 combination of entities acting in concert, to directly or
29 indirectly own, control or hold with power to vote,
30 twenty-five percent or more of the voting shares of each

31 of two or more banks, or to control in any manner the
32 election of a majority of the directors of two or more
33 banks.

34 (c) A banking institution may establish branch banks
35 either by:

36 (1) The construction, lease or acquisition of branch
37 bank facilities as follows:

38 (A) After the seventh of June, one thousand nine
39 hundred eighty-four, within the county in which that
40 banking institution's principal office is located or within
41 the county in which that banking institution had prior
42 to January first, one thousand nine hundred eighty-four,
43 established a branch bank, pursuant to subdivision (2)
44 of this subsection; and

45 (B) After the thirty-first of December, one thousand
46 nine hundred eighty-six, within any county in this state;
47 or

48 (2) The purchase of the business and assets and
49 assumption of the liabilities of, or merger or consolida-
50 tion with, another banking institution.

51 (d) Notwithstanding any other provision of this
52 chapter to the contrary, subject to and in furtherance
53 of the board's authority under the provisions of subdivi-
54 sion (6), subsection (b), section two, article three of this
55 chapter, and subsection (g) of this section, the board may
56 approve or disapprove the application of any state
57 banking institution to establish a branch bank.

58 (e) The principal office of a banking institution as of
59 the seventh day of June, one thousand nine hundred
60 eighty-four, shall continue to be the principal office of
61 such banking institution for purposes of establishing
62 branch banks under this section, notwithstanding any
63 subsequent change in the location of such banking
64 institution's principal office.

65 (f) Any banking institution which is authorized to
66 establish branch banks pursuant to this section may
67 provide the same banking services and exercise the
68 same powers at each such branch bank as may be

69 provided and exercised at its principal banking house.

70 (g) The board shall, upon receipt of any application
71 to establish a branch bank, provide notice of such
72 application to all banking institutions. A banking
73 institution may, within ten days after receipt of such
74 notice, file a petition to intervene and shall, if it so files
75 such petition, thereupon become a party to any hearing
76 relating thereto before the board.

77 (h) The commissioner shall prescribe the form of the
78 application for a branch bank and shall collect an
79 examination and investigation fee of one thousand
80 dollars for each filed application for a branch bank that
81 is to be established by the construction, lease or
82 acquisition of a branch bank facility, and two thousand
83 five hundred dollars for a branch bank that is to be
84 established by the purchase of the business and assets
85 and assumption of the liabilities of, or merger or
86 consolidation with another banking institution.
87 Notwithstanding the above, if the merger or consolida-
88 tion is between an existing banking institution and a
89 bank newly incorporated solely for the purpose of
90 facilitating the acquisition of the existing banking
91 institution, the commissioner shall collect an examina-
92 tion and investigation fee of five hundred dollars. The
93 board shall complete the examination and investigation
94 within ninety days from the date on which such
95 application and fee are received, unless the board
96 request in writing additional information and disclo-
97 sures concerning the proposed branch bank from the
98 applicant banking institution, in which event such
99 ninety-day period shall be extended for an additional
100 period of thirty days plus the number of days between
101 the date of such request and the date such additional
102 information and disclosures are received.

103 (i) Upon completion of the examination and investiga-
104 tion with respect to such application, the board shall, if
105 a hearing be required pursuant to subsection (j) of this
106 section, forthwith give notice and hold a hearing
107 pursuant to the following provisions:

108 (1) Notice of such hearing shall be given to the

109 banking institution with respect to which the hearing is
110 to be conducted in accordance with the provisions of
111 section two, article seven, chapter twenty-nine-a of this
112 code, and such hearing and the administrative proce-
113 dures in connection therewith shall be governed by all
114 of the provisions of article five, chapter twenty-nine-a of
115 this code, and shall be held at a time and place set by
116 the board but shall not be less than ten nor more than
117 thirty days after such notice is given.

118 (2) At any such hearing a party may represent himself
119 or be represented by an attorney-at-law admitted to
120 practice before any circuit court of this state.

121 (3) After such hearing and consideration of all the
122 testimony and evidence, the board shall make and enter
123 an order approving or disapproving the application,
124 which order shall be accompanied by findings of fact
125 and conclusions of law as specified in section three,
126 article five, chapter twenty-nine-a of this code, and a
127 copy of such order and accompanying findings and
128 conclusions shall be served upon all parties to such
129 hearing, and their attorneys of record, if any.

130 (j) No state banking institution may establish a branch
131 bank until the board, following an examination, inves-
132 tigation, notice and hearing, enters an order approving
133 an application for that branch bank: *Provided*, That no
134 such hearing shall be required with respect to any
135 application to establish a branch bank which is ap-
136 proved by the board unless a banking institution has
137 timely filed a petition to intervene pursuant to subsec-
138 tion (g) of this section. The order shall be accompanied
139 by findings of fact that:

140 (1) Public convenience and advantage will be pro-
141 moted by the establishment of the proposed branch
142 bank;

143 (2) Local conditions assure reasonable promise of
144 successful operation of the proposed branch bank and of
145 those banks and branches thereof already established in
146 the community;

147 (3) Suitable physical facilities will be provided for the

148 branch bank;

149 (4) The applicant state-chartered banking institution
150 satisfies such reasonable and appropriate requirements
151 as to sound financial condition as the commissioner or
152 board may from time to time establish by regulation;

153 (5) The establishment of the proposed branch bank
154 would not result in a monopoly, nor be in furtherance
155 of any combination or conspiracy to monopolize the
156 business of banking in any section of this state; and

157 (6) The establishment of the proposed branch bank
158 would not have the effect in any section of the state of
159 substantially lessening competition, nor tend to create a
160 monopoly or in any other manner be in restraint of
161 trade, unless the anticompetitive effects of the establish-
162 ment of that proposed branch bank are clearly out-
163 weighed in the public interest by the probable effect of
164 the establishment of the proposed branch bank in
165 meeting the convenience and needs of the community to
166 be served by that proposed branch bank.

167 (k) Any party who is adversely affected by the order
168 of the board shall be entitled to judicial review thereof
169 in the manner provided in section four, article five,
170 chapter twenty-nine-a of this code. Any such party
171 adversely affected by a final judgment of a circuit court
172 following judicial review as provided in the foregoing
173 sentence may seek review thereof by appeal to the
174 supreme court of appeals in the manner provided in
175 article six, chapter twenty-nine-a of this code.

176 (l) Pursuant to the resolution of its board of directors
177 and with the prior written approval of the commis-
178 sioner, a state banking institution may discontinue the
179 operation of a branch bank upon at least thirty days'
180 prior public notice given in such form and manner as
181 the commissioner prescribes.

182 (m) Any violation of any provision of this section shall
183 constitute a misdemeanor offense punishable by appli-
184 cable penalties as provided in section fifteen, article
185 eight of this chapter.

ARTICLE 8A. ACQUISITION OF BANK SHARES.

§31A-8A-4. Acquisition of bank shares; when prior notification of board necessary; exemptions.

1 (a) Unless an order approving such action has been
2 entered by the board, it is unlawful, prior to one
3 hundred and twenty days following the date of the
4 submission to the board of complete, true and accurate
5 copies of the reports required under federal laws or
6 regulations pursuant to Title 12, United States Code,
7 §§1841-1850 (being the act of Congress entitled the Bank
8 Holding Company Act of 1956, as amended), and the
9 payment of an examination and investigation fee to the
10 board of four thousand five hundred dollars:

11 (1) For any action to be taken that causes any
12 company to become a bank holding company;

13 (2) For any action to be taken that causes any bank
14 to become a subsidiary of a bank holding company;

15 (3) For any bank holding company to acquire direct
16 or indirect ownership or control of any shares of any
17 bank if, after such acquisition, such company will
18 directly or indirectly own or control more than five
19 percent of the voting shares of such bank;

20 (4) For any bank holding company or subsidiary
21 thereof, other than a bank, to acquire all or substantially
22 all of the assets of a bank;

23 (5) For any bank holding company to merge or
24 consolidate with any other bank holding company; or

25 (6) For any bank holding company to take any action
26 which would violate the Federal Bank Holding Com-
27 pany Act.

28 (b) If a bank holding company, pursuant to subsection
29 (a), subdivision (3) above, acquires more than five
30 percent, but less than twenty-five percent of the voting
31 shares of a bank, and is not determined to be acquiring
32 control over the bank, the examination and investigation
33 fee to be paid to the board shall be determined by
34 multiplying the examination and investigation fee
35 established in subsection (a) by the percentage of voting

36 shares to be acquired.

37 (c) The provisions of subsection (a) of this section shall
38 not apply to:

39 (1) Shares acquired by a bank:

40 (A) In good faith in a fiduciary capacity, except where
41 shares are held under a trust that constitutes a company
42 as defined in section two of this article and except as
43 provided in subdivisions (2) and (3), subsection (b),
44 section three of this article; or

45 (B) In the regular course of securing or collecting a
46 debt previously contracted in good faith, but any shares
47 acquired after the seventh day of June, one thousand
48 nine hundred eighty-four, in securing or collecting any
49 such previously contracted debt shall be disposed of
50 within a period of five years from the date on which they
51 were acquired; or

52 (2) Additional shares acquired by a bank holding
53 company in a bank in which such bank holding company
54 owned or controlled a majority of the voting shares prior
55 to such acquisition. For the purpose of the preceding
56 sentence, bank shares acquired after the seventh day of
57 June, one thousand nine hundred eighty-four, shall not
58 be deemed to have been acquired in good faith in a
59 fiduciary capacity if the acquiring bank or company has
60 sole discretionary authority to exercise voting rights
61 with respect thereto, but in such instances acquisitions
62 may be made without prior notice to the board if the
63 board, upon notice and submission of information in
64 form and content as it shall approve, filed within ninety
65 days after the shares are acquired, approved retention
66 or, if retention is disapproved, the acquiring bank
67 disposes of the shares or its sole discretionary voting
68 rights within five years after issuance of the order of
69 disapproval.

70 (d) If, within one hundred twenty days from the date
71 of submission pursuant to subsection (a) of this section,
72 after notice and a hearing pursuant to the provisions of
73 section three, article three of this chapter, the board
74 enters an order disapproving the proposed action

75 described in subdivision (1), (2), (3), (4), (5) or (6),
76 subsection (a) of this section, it shall be unlawful to take
77 such action. The board shall disapprove the proposed
78 action described in subdivision (1), (2), (3), (4), (5) or (6),
79 subsection (a) of this section on the following grounds:

80 (1) The action would result in a monopoly, or would
81 be in furtherance of any combination of conspiracy to
82 monopolize or to attempt to monopolize the business of
83 banking in any section of this state;

84 (2) The action would have the effect in any section of
85 the state of substantially lessening competition, or would
86 tend to create a monopoly or in any other manner would
87 be in restraint of trade, unless the anticompetitive
88 effects of the proposed action are clearly outweighed in
89 the public interest by the probable effect of the action
90 in meeting the convenience and needs of the community
91 to be served; or

92 (3) Taking into consideration the financial and
93 managerial resources and further prospects of the
94 company or companies and the banks concerned, the
95 action would be contrary to the best interests of the
96 shareholders or customers of the bank whose shares are
97 affected by such action.

98 (e) Notwithstanding any other provision of law, no
99 bank holding company, or any other company, shall
100 establish, acquire or control any banking institution as
101 defined in section three of this article, when said
102 banking institution does not both (i) accept deposits that
103 the depositor has a legal right to withdraw on demand
104 and (ii) engage in the business of making commercial
105 loans.

106 (f) Nothing contained in this section shall affect the
107 obligation of any person or company to comply with the
108 provisions of any order of any court or the commissioner
109 entered prior to the seventh day of June, one thousand
110 nine hundred eighty-four.

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

Lomer Heck

Chairman Senate Committee

Ernest C. Moore

Chairman House Committee

Originating in the House.

Takes effect July 1, 1991.

Harrell E. Atkins
Clerk of the Senate

Donald G. Kopp
Clerk of the House of Delegates

Keith Foust
President of the Senate

Bob Cole
Speaker of the House of Delegates

The within *approved* this the *30* day of *April*, 1991.

Yaston Caperton
Governor

PRESENTED TO THE

GOVERNOR

Date 3/20/91

Time 4:30 PM