

HB 2281

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LEGISLATIVE DEPARTMENT

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1999

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 2281

(By Delegates H. White, Douglas, Collins,
Varner, Stalnaker and Willison)

Passed March 4, 1999

In Effect Ninety Days from Passage

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SECRETARY OF STATE

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FOR

H. B. 2281

(BY DELEGATES H. WHITE, DOUGLAS, COLLINS,
VARNER, STALNAKER AND WILLISON)

[Passed March 4, 1999; in effect ninety days from passage.]

AN ACT to amend and reenact section two, article three, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section twelve, article eight of said chapter; to further amend said article by adding thereto a new section, designated section twelve-d; and to amend and reenact section three, article eight-e of said chapter, all relating to branch banking; authorizing the board of banking and financial institutions to receive and hear appeals from parties adversely affected by an order of the commissioner issued under section twelve-d, article eight, chapter thirty-one-a; reducing the examination and investigation fee of applicants for a branch bank and authorizing the commissioner to require examinations of financial institutions that are merged into a state-chartered bank; providing new standards for an applicant state-chartered banking institution to qualify for branch banking; providing an alternative procedure for a banking institution to establish a branch bank by de novo construction or lease; and procedures for interstate branching by West Virginia state banks.

Be it enacted by the Legislature of West Virginia:

That section two, article three, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section twelve, article eight of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section twelve-d; and that section three, article eight-e of said chapter be amended and reenacted, all to read as follows:

ARTICLE 3. BOARD OF BANKING AND FINANCIAL INSTITUTIONS.

§31A-3-2. General powers and duties.

1 (a) In addition to other powers conferred by this chapter,
2 the board has the power to:

3 (1) Regulate its own procedure and practice;

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

7 (3) Advise the commissioner in all matters within his or her
8 jurisdiction;

9 (4) Study the organization, programs and services of
10 financial institutions and the laws relating thereto in this state
11 and in other jurisdictions, and to report and recommend to the
12 governor and the Legislature all such changes and amendments
13 in laws, policies and procedures relating thereto as it considers
14 proper;

15 (5) Grant permission and authority to a financial institution:

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

22 (B) To engage in any financial institution activity, services,
23 procedures and practices in which financial institutions of the
24 same type subject to the jurisdiction of the federal government

25 may hereafter be authorized by federal laws, rules or regula-
26 tions to engage, notwithstanding any contrary provision of this
27 code; and

28 (C) To pay interest on demand deposits of the United States
29 or any agency thereof, if the payment of interest is permitted
30 under any applicable federal law, rule or regulation.

31 Any permission and authority granted by the board pursuant
32 to this subdivision shall terminate upon the adjournment of the
33 next regular session of the Legislature, unless the Legislature
34 enacts legislation authorizing the financial institution participa-
35 tion, activity, services and procedures or payment of interest
36 with respect to which such permission and authority were
37 granted, in which event the permission and authority shall
38 continue in effect until the effective date of the legislation; and

39 (6) Seek judicial enforcement to compel compliance with
40 any of its orders and to seek and obtain civil penalties as set
41 forth under this chapter.

42 (b) The board also has the power, by entering appropriate
43 orders, to:

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

48 (2) Compel the holder of shares in any corporate financial
49 institution to refrain from voting the shares on any matter when,
50 in the judgment of the board, the order is necessary to protect
51 the institution against reckless, incompetent or careless man-
52 agement, to safeguard funds of depositors in the institution or
53 to prevent willful violation of any applicable law or of any rule
54 and regulation or order issued thereunder. In such a case the
55 shares of the holder may not be counted in determining the
56 existence of a quorum or a percentage of the outstanding shares
57 necessary to take any corporate action;

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

61 (4) Approve or disapprove applications to incorporate and
62 organize state-chartered bankers' banks in accordance with the
63 provisions of sections six and seven, article four of this chapter;

64 (5) Exempt a bankers' bank from any provision of this
65 chapter if the board finds that the provision is inconsistent with
66 the purpose for which a bankers' bank is incorporated and
67 organized and that the welfare of the public or any banking
68 institution or other financial institution would not be jeopard-
69 ized thereby;

70 (6) Revoke the certificate of authority, permit, certificate or
71 license of any state banking institution to engage in business in
72 this state if that institution fails or refuses to comply with any
73 order of the commissioner entered pursuant to the provisions of
74 paragraph (A) or (B), subdivision (15), subsection (c), section
75 four, article two of this chapter, or at the board's election to
76 direct the commissioner to apply to any court having jurisdic-
77 tion for a prohibitory or mandatory injunction or other appropri-
78 ate remedy to compel obedience to such order;

79 (7) Suspend or remove a director, officer or employee of
80 any financial institution who is or becomes ineligible to hold
81 that position under any provision of law or rule and regulation
82 or order, or who willfully disregards or fails to comply with any
83 order of the board or commissioner made and entered in
84 accordance with the provisions of this chapter or who is
85 dishonest or grossly incompetent in the conduct of financial
86 institution business;

87 (8) To receive from state banking institutions applications
88 to establish branch banks by the purchase of the business and
89 assets and assumption of the liabilities of, or merger or consoli-
90 dation with, another banking institution, or by the construction,
91 lease or acquisition of branch bank facilities in an unbanked
92 area; examine and investigate such applications, to hold
93 hearings thereon, and to approve or disapprove such applica-
94 tions, all in accordance with section twelve, article eight of this
95 chapter;

96 (9) Approve or disapprove the application of any state bank
97 to purchase the business and assets and assume the liabilities of,

98 or merge or consolidate with, another state banking institution
99 in accordance with the provisions of section seven, article seven
100 of this chapter;

101 (10) Approve or disapprove the application of any state
102 bank to purchase the business and assets and assume the
103 liabilities of a national banking association, or merge or
104 consolidate with a national banking association to form a
105 resulting state bank in accordance with the provisions of section
106 seven, article seven of this chapter; and

107 (11) In addition to any authority granted pursuant to section
108 twelve, article eight of this chapter, incident to the approval of
109 an application pursuant to subdivisions (7) or (8) of this
110 subsection, permit the bank the application of which is so
111 approved to operate its banking business under its name from
112 the premises of the bank the business and assets of which have
113 been purchased and the liabilities of which have been assumed
114 by such applicant bank or with which the applicant bank has
115 merged or consolidated: *Provided*, That this permission may be
116 granted only if the board has made the findings required by
117 subsection (f), section three of this article and such applicant
118 bank has no common directors or officers nor common owner-
119 ship of stock exceeding ten percent of total outstanding voting
120 stock with the bank whose business and assets are being
121 purchased and liabilities assumed, or with whom the applicant
122 bank is being merged; and

123 (12) To receive an appeal from any party who is adversely
124 affected by an order of the commissioner issued pursuant to
125 section twelve-d, article eight of this chapter, and hold hearings
126 in accordance with the provisions of article five, chapter
127 twenty-nine-a of this code.

128 (c) A provision of this section may not be construed to
129 alter, reduce or modify the rights of shareholders, or obligations
130 of a banking institution in regard to its shareholders, as set forth
131 in section one hundred seventeen, article one, chapter thirty-one
132 of this code and section seven, article seven of this chapter, and
133 other applicable provisions of this code.

134 (d) Any order entered by the West Virginia board of
135 banking and financial institutions pursuant to this section is a
136 matter of public record.

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

**§31A-8-12. Procedure for authorization of branch banks; tempo-
rary offices at colleges and universities; limitations
and restrictions; examinations and hearings;
standards of review; penalties for violation of
section.**

1 (a) A banking institution may not engage in business in this
2 state at any place other than at its principal office in this state,
3 at a branch bank in this state, at a customer bank communica-
4 tion terminal permitted by section twelve-b of this article or at
5 any loan origination office permitted by section twelve-c of this
6 article:

7 (1) Acceptance of a deposit or allowing a withdrawal at the
8 banking offices of any subsidiary affiliate, as defined in section
9 one, article eight-a of this chapter, for credit or debit to the
10 customer's account at any other subsidiary of the same bank
11 holding company is permissible and does not constitute branch
12 banking. In addition, the conduct of activity at branch offices as
13 an agent for any bank subsidiary of the same bank holding
14 company shall be permitted to the same extent allowed by
15 federal law for national banks pursuant to 12 U.S.C. §1828, and
16 does not constitute branch banking; nor does this activity
17 constitute a violation of section forty-two, article four of this
18 chapter: *Provided*, That a banking institution may not utilize
19 that agency relationship to evade state consumer protection
20 laws, including usury laws, or any other applicable laws of this
21 state, or to conduct any activity that is not financially-related,
22 as that term is defined by section two, article eight-c of this
23 chapter;

24 (2) A banking institution located in a county where there is
25 also a higher educational institution as defined in section two,
26 article one, chapter eighteen-b of this code, may establish a
27 temporary business office on the campus of any educational
28 institution located in the county for the limited purposes of

29 opening accounts and accepting deposits for a period not in
30 excess of four business days per semester, trimester or quarter:
31 *Provided*, That prior to opening any temporary office, a banking
32 institution must first obtain written permission from the
33 institution of higher education. The term “business days”, for
34 the purpose of this subsection, means days exclusive of
35 Saturdays, Sundays and legal holidays as defined in section one,
36 article two, chapter two of this code;

37 (3) Any banking institution which on the first day of
38 January, one thousand nine hundred eighty-four, was authorized
39 to operate an off-premises walk-in or drive-in facility, pursuant
40 to the law then in effect, may, as of the seventh day of June, one
41 thousand nine hundred eighty-four, operate such facility as a
42 branch bank and it is not necessary, for the continued operation
43 of the branch bank, to obtain additional approvals, notwith-
44 standing the provisions of subsection (d) of this section and
45 subdivision (6), subsection (b), section two, article three of this
46 chapter.

47 (b) Except for a bank holding company, it is unlawful for
48 any individual, partnership, society, association, firm, institu-
49 tion, trust, syndicate, public or private corporation, or any other
50 legal entity, or combination of entities acting in concert, to
51 directly or indirectly own, control or hold with power to vote,
52 twenty-five percent or more of the voting shares of each of two
53 or more banks, or to control in any manner the election of a
54 majority of the directors of two or more banks.

55 (c) A banking institution may establish branch banks either
56 by:

57 (1) The construction, lease or acquisition of branch bank
58 facilities within any county of this state; or

59 (2) The purchase of the business and assets and assumption
60 of the liabilities of, or merger or consolidation with, another
61 banking institution.

62 (d) Subject to and in furtherance of the board’s authority
63 under the provisions of subdivision (6), subsection (b), section
64 two, article three of this chapter, and subsection (g) of this

65 section, the board, by order, may approve or disapprove the
66 application of any state banking institution to establish a branch
67 bank.

68 (e) The main office or a branch of a West Virginia state
69 banking institution may not be relocated without the approval
70 by order of the commissioner.

71 (f) Any banking institution which is authorized to establish
72 branch banks pursuant to this section may provide the same
73 banking services and exercise the same powers at each such
74 branch bank as may be provided and exercised at its principal
75 banking house.

76 (g) The board shall, upon receipt of any application to
77 establish a branch bank under the provisions of this section,
78 provide notice of the application to all banking institutions. A
79 banking institution may, within ten days after receipt of the
80 notice, file a petition to intervene and shall, if it files a petition,
81 thereupon become a party to any hearing relating thereto before
82 the board.

83 (h) The commissioner shall prescribe the form of the
84 application for a branch bank under the provisions of this
85 section and shall collect an examination and investigation fee
86 of five hundred dollars for each filed application for a branch
87 bank that is to be established by the construction, lease or
88 acquisition of a branch bank facility, and five hundred dollars
89 for a branch bank that is to be established by the purchase of the
90 business and assets and assumption of the liabilities of, or
91 merger or consolidation with another banking institution.
92 Notwithstanding the above, if the merger or consolidation is
93 between an existing banking institution and a bank newly
94 incorporated solely for the purpose of facilitating the acquisi-
95 tion of the existing banking institution, the commissioner shall
96 collect an examination and investigation fee of one hundred
97 dollars. The commissioner may require an examination of a
98 financial institution or an office of a financial institution that is
99 being merged into a state-chartered bank. If an examination is
100 required, the applicant is responsible for paying the examina-
101 tion costs at a rate of fifty dollars per examiner hour. The board

102 shall complete the examination and investigation within ninety
103 days from the date on which the application and fee are
104 received, unless the board requests in writing additional
105 information and disclosures concerning the proposed branch
106 bank from the applicant banking institution. If the board makes
107 that request, the ninety-day period shall be extended for an
108 additional period of thirty days plus the number of days
109 between the date of the request and the date the additional
110 information and disclosures are received.

111 (i) Upon completion of the examination and investigation
112 with respect to the application, the board shall, if a hearing be
113 required pursuant to subsection (j) of this section, forthwith
114 give notice and hold a hearing pursuant to the following
115 provisions:

116 (1) Notice of hearing must be given to the banking institu-
117 tion with respect to which the hearing is to be conducted in
118 accordance with the provisions of section two, article seven,
119 chapter twenty-nine-a of this code, and the hearing and the
120 administrative procedures in connection therewith are governed
121 by all of the provisions of article five, chapter twenty-nine-a of
122 this code, and must be held at a time and place set by the board
123 but may not be less than ten nor more than thirty days after the
124 notice is given;

125 (2) At the hearing a party may represent himself or herself
126 or be represented by an attorney at law admitted to practice
127 before any circuit court of this state;

128 (3) After the hearing and consideration of all the testimony
129 and evidence, the board shall make and enter an order approv-
130 ing or disapproving the application, which order shall be
131 accompanied by findings of fact and conclusions of law as
132 specified in section three, article five, chapter twenty-nine-a of
133 this code, and a copy of the order and accompanying findings
134 and conclusions shall be served upon all parties to the hearing,
135 and their attorneys of record, if any.

136 (j) A state banking institution may not establish a branch
137 bank until the board, following an examination, investigation,

138 notice and hearing, enters an order approving an application for
139 that branch bank: *Provided*, That a hearing is not required with
140 respect to any application to establish a branch bank which is
141 approved by the board unless a banking institution has timely
142 filed a petition to intervene pursuant to subsection (g) of this
143 section. The order shall be accompanied by findings of fact
144 that:

145 (1) The applicant state-chartered banking institution
146 satisfies such reasonable and appropriate requirements as to
147 sound financial condition as the commissioner or board may
148 from time to time establish;

149 (2) The establishment of the proposed branch bank would
150 not result in a monopoly, nor be in furtherance of any combina-
151 tion or conspiracy to monopolize the business of banking in any
152 section of this state;

153 (3) The establishment of the proposed branch bank would
154 not have the effect in any section of the state of substantially
155 lessening competition, nor tend to create a monopoly or in any
156 other manner be in restraint of trade, unless the anticompetitive
157 effects of the establishment of that proposed branch bank are
158 clearly outweighed in the public interest by the probable effect
159 of the establishment of the proposed branch bank in meeting the
160 convenience and needs of the community to be served by that
161 proposed branch bank;

162 (4) The applicant state-chartered banking institution meets
163 a satisfactory standard of compliance with federal and state
164 community reinvestment act requirements as evidenced by its
165 most recent state or federal examination;

166 (5) The applicant state-chartered banking institution meets
167 a satisfactory standard of compliance with federal and state
168 consumer compliance law and regulations as evidenced by its
169 most recent state or federal regulatory examination; and

170 (6) The applicant state-chartered banking institution meets
171 acceptable standards for investment in premises and fixed
172 assets as permitted by section thirteen, article four of this
173 chapter.

174 (k) Any party who is adversely affected by the order of the
175 board is entitled to judicial review thereof in the manner
176 provided in section four, article five, chapter twenty-nine-a of
177 this code. Any such party adversely affected by a final judg-
178 ment of a circuit court following judicial review as provided in
179 the foregoing sentence may seek review thereof by appeal to the
180 supreme court of appeals in the manner provided in article six,
181 chapter twenty-nine-a of this code.

182 (l) Pursuant to the resolution of its board of directors and
183 with the prior written approval of the commissioner, a state
184 banking institution may discontinue the operation of a branch
185 bank upon at least thirty days prior public notice given in such
186 form and manner as the commissioner prescribes.

187 (m) Any violation of any provision of this section is a
188 misdemeanor offense punishable by applicable penalties as
189 provided in section fifteen of this article.

**§31A-8-12d. Expedited procedure for authorization of de novo
branch banks.**

1 (a) As an alternative to using the procedures established in
2 subdivisions (g) through (j) of section twelve of this article, a
3 banking institution desiring to establish a branch bank by de
4 novo construction or lease may file a notice, containing
5 information as prescribed by the commissioner, of its intent
6 which must be received by the commissioner at least thirty-five
7 days prior to the date on which the proposed branch will be
8 established accompanied by a fee of two hundred fifty dollars.
9 The commissioner must provide written notice of his or her
10 acceptance or rejection of the branch notice prior to the
11 expiration of the thirty-five day period. However, if the
12 commissioner requests additional information from the branch-
13 ing institution, the period for the commissioner's consideration
14 of the notice shall be extended an additional fifteen days from
15 the time the information requested is received by the commis-
16 sioner.

17 (b) A state banking institution may not establish a branch
18 bank under this section until the commissioner provides written

19 approval of the notice for that branch bank. The commissioner's
20 approval or rejection of the notice must be accompanied by
21 findings of fact on whether the applicant bank:

22 (1) Satisfies such reasonable and appropriate requirements
23 as to sound financial condition as the commissioner or board,
24 from time to time, may establish;

25 (2) Meets a satisfactory standard of compliance with federal
26 and state community reinvestment act requirements as evi-
27 denced by its most recent state or federal examination;

28 (3) Meets a satisfactory standard of compliance with federal
29 and state consumer compliance law and regulations as evi-
30 denced by its most recent state or federal regulatory examina-
31 tion; and

32 (4) Meets the acceptable standards for investment in
33 premises and fixed assets as permitted by section thirteen,
34 article four of this chapter.

35 (c) Any party who is adversely affected by an action of the
36 commissioner taken pursuant to the criteria established by
37 subsection (b) of this section may appeal within ten business
38 days of the commissioner's decision to the board of banking
39 and financial institutions which must, after holding a hearing
40 pursuant to the provisions of subdivision (12), subsection (b),
41 section two, article three of this chapter, affirm, reverse or
42 modify the order of the commissioner. Any party who is
43 adversely affected by an order of the board of banking and
44 financial institutions issued pursuant to the provisions of this
45 subsection is entitled to judicial review in the same manner as
46 provided by the provisions of subsection (k), section twelve of
47 this article.

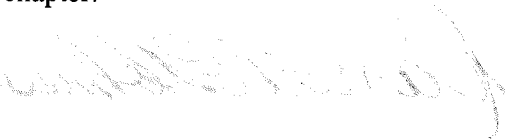
**ARTICLE 8E. INTERSTATE BRANCHING BY DE NOVO ENTRY AND
ACQUISITION OF BRANCHES.**

**§31A-8E-3. Interstate branching by West Virginia state banks
through de novo establishment or acquisition of
branches in other states.**

1 (a) Beginning on the thirty-first day of May, one thousand
2 nine hundred ninety-seven, and pursuant to the procedures and

3 standards established in either section twelve or section twelve-
4 d, article eight of this chapter, any West Virginia state bank
5 may establish and maintain a de novo branch or acquire a
6 branch in a state other than West Virginia, if the new branch is
7 in conformity with, and would be permitted under the laws of
8 the state where the branch is to be located.

9 (b) A West Virginia state bank desiring to establish and
10 maintain a branch in another state under this section shall file
11 a notice on a form prescribed by the commissioner and pay the
12 branch notice fee set forth in subsection (a), section twelve-d,
13 article eight of this chapter.



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



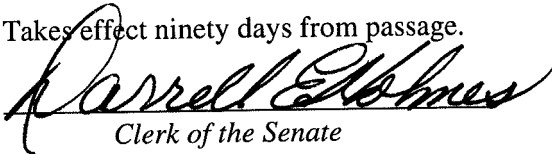
Chairman Senate Committee



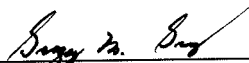
Chairman House Committee

Originating in the House.

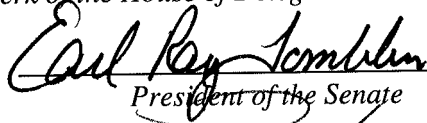
Takes effect ninety days from passage.



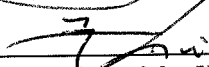
Clerk of the Senate



Clerk of the House of Delegates

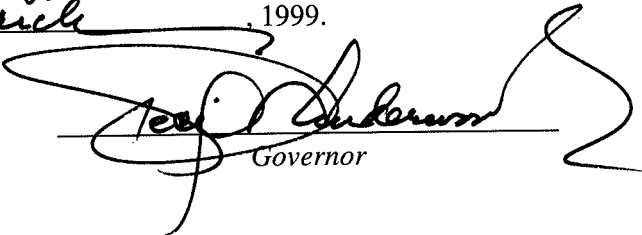


President of the Senate



Speaker of the House of Delegates

The within approved this the 18th
day of March, 1999.



Governor

PRESENTED TO THE

GOVERNOR

Date

3/12/99

Time

9:26 am