WEST VIRGINIA CODE CHAPTER 31A ARTICLE 1

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§31A-1-1. Short title; objects and purposes.

This chapter shall constitute and may be cited as the state banking Code of West Virginia.

It is the intention of the Legislature in enacting this chapter to foster and promote sound and dynamic financial institutions and particularly banking institutions in the state in order to provide services to the public which are necessary and desirable for the economic, social, and industrial health and development of the state. Therefore the provisions of this chapter shall be interpreted, construed and administered liberally to accomplish these purposes.

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§31A-1-2. Definitions.

As used in this chapter, unless the context in which used plainly requires a different meaning:

(a) The word "action", in the sense of a judicial proceeding, means any proceeding in a court of competent jurisdiction in which rights are adjudicated and determined and shall embrace and include recoupment, counterclaim, setoff and other related, similar and summary proceedings;

(b) The word "affiliate" means any company that controls, is controlled by, or is under common control with another company. For purposes of this definition, the word "control" shall be construed consistently with the Bank Holding Company Act, 12 U.S.C. §1841;

(c) The words "bank" and "banking institution" mean a corporation, limited liability company or association heretofore or hereafter charted to conduct a banking business under the laws of the United States or any state, territory, district or possession thereof, which is authorized in West Virginia to accept deposits that the depositor has a legal right to withdraw on demand and is authorized to engage in the business of commercial lending, and meets the criteria set forth in Section 2(c) of the Bank Holding Company Act, as amended, 12 U.S.C. §1841(c), and shall embrace and include a savings bank, savings and loan association, trust company or an institution combining banking and trust company facilities, functions and services so chartered or authorized to conduct such business in this state;

(d) The words "bankers' bank" mean a banking institution, insured by the federal deposit insurance corporation, the stock of which is owned exclusively by banks and other depository institutions, and such banking institution and all subsidiaries thereof are engaged exclusively in providing services for banks and other depository institutions and their officers, directors and employees;

(e) The term "banking business" means the functions, services and activities contained, detailed and embraced in sections thirteen and fourteen, article four of this chapter and as elsewhere defined by law;

(f) The word "Board" means the West Virginia Board of Banking and Financial Institutions;

(g) The words "branch bank" mean an office or other place at which a bank performs any or all banking business. For purposes of this chapter, a branch bank does not include:

(1) A bank's principal place of business;

(2) Any customer bank communication terminals installed and operated pursuant to section twelve-b, article eight of this chapter; and

(3) Any loan origination office authorized by section twelve-c, article eight of this chapter;

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(h) The words "commercial activities" mean activities in which a bank holding company, a financial holding company, a national bank, or a national bank financial subsidiary may not engage under federal law.

(i) The words "Commissioner" or "Commissioner of Banking" mean the Commissioner of Banking of West Virginia;

(j) The word "community" means a city, town or other incorporated area or, where not so incorporated, a trading area;

(k) The word "department" or "division" means the Division of Banking of West Virginia;

(l)The words "Deputy Commissioner" or "Deputy Commissioner of Banking" mean the Deputy Commissioner of Banking of West Virginia;

(m) The word "fiduciary" means any trustee, agent, executor, administrator, curator, committee, guardian or conservator, special commissioner, receiver, trustee in bankruptcy, assignee for creditors or any holder of a similar position of trust or responsibility;

(n) The words "financial institutions" mean banks, building and loan associations, industrial banks, industrial loan companies, supervised lenders, credit unions and all other similar institutions, whether persons, firms or corporations, which are by law under the jurisdiction and supervision of the Commissioner of Banking;

(o) The word "officer", when referring to any financial institution, means any person designated as such in the bylaws and includes, whether or not so designated, any executive officer, the chairman of the board of directors, the chairman of the executive committee and any trust officer, assistant vice president, assistant treasurer, assistant secretary, assistant trust officer, assistant cashier, assistant comptroller or any other person who performs the duties appropriate to those offices and the term "executive officer" as herein used, when referring to banking institutions, means an officer of a bank whose duties involve regular, active and substantial participation in the daily operations of such institution and who, by virtue of his or her position, has both a voice in the formulation of the policy of the bank and responsibility for implementation of the policy, such responsibility of and functions performed by the individual, and not his or her title or office, being determinative of whether he or she is an "executive officer";

(p) The words "out-of-state bank" or "out-of-state banking institution" mean a bank chartered under the laws of a state or United States territory, possession or district, other than West Virginia, or organized under federal law and having its main office located in a state, United States territory, possession or district, other than West Virginia;

(q) The words "person" or "persons" mean any individual, partnership, society, association, firm, institution, company, public or private corporation, state, governmental agency, bureau, department, division or instrumentality, political subdivision, county commission,

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municipality, trust, syndicate, estate or any other legal entity whatsoever, formed, created or existing under the laws of this state or any other jurisdiction;

(r) The words "safe-deposit box" mean a safe-deposit box, vault or other safe-deposit receptacle maintained by a lessor bank and the rules relating thereto apply to property or documents kept therein in the bank's vault under the joint control of lessor and lessee;

(s) The words "state bank" or "state banking institution" mean, unless the context requires otherwise, a bank chartered under the laws of West Virginia, as distinguished from either an out-of-state bank or a national banking association and is also referred to as a "West Virginia State Bank" or "West Virginia State Banking Institution"; and

(t) The words "trust business" mean the functions, services and activities contained, detailed and embraced in section fourteen, article four of this chapter and as elsewhere defined by law and as may be included within the meaning of the term "banking business".

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§31A-1-3. Application and construction of chapter.

(a) The provisions of this chapter shall apply to all financial institutions whether formed, organized or created before or after the enactment hereof. All such corporate institutions heretofore formed, organized or created shall amend their certificates of incorporation in all respects necessary to comply with this chapter.

(b) Every person, business or activity under the jurisdiction, supervision and control of the commissioner, whether existing or operating as an individual, association, firm, corporation or otherwise, shall be subject to and be controlled by provisions of this chapter regardless of any word or phrase referring to a particular entity, or form of organization. Wherever in this chapter the word corporation is used or wherever reference is made to stockholders, directors, officers, or other personnel normally applicable only to corporate organizations, such reference, unless the context in which used clearly indicates otherwise, shall be construed to apply to and embrace associations, firms, individuals and any other entity or form of organization by which any business or operations under the jurisdiction, supervision and control of the commissioner may be conducted.

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§31A-1-4. Separability; repealer.

If any provision, clause or phrase of this chapter or the application thereof to any person or situation be held invalid, such invalidity shall not affect other provisions, clauses, phrases or applications of the chapter which can be given effect without the invalid provision, clause, phrase or application, and to this end the provisions hereof are declared to be separable.

All laws or parts of laws plainly inconsistent with the provisions hereof are hereby repealed. No provision of this chapter shall be deemed to be repealed by subsequent legislation not specifically repealing it if such construction can be avoided.

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§31A-1-5. Lending and investing powers and authority of fiduciaries, financial institutions, governmental entities and other persons.

The state of West Virginia, counties, municipalities, political subdivisions and agencies and instrumentalities of any of them, fiduciaries, building and loan associations, regulated consumer lenders, insurance companies, fraternal benefit societies and other persons lawfully engaging in the lending and investing business and services shall have and are hereby authorized and empowered to exercise the same lawful rights and privileges as are banking institutions under provisions of sections twenty-seven, twenty-eight and twenty-nine, article four of this chapter.

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§31A-1-6. Deposit insurance required for banking and other depository institutions.

All credit unions established pursuant to article ten, chapter thirty-one of this code and all banking institutions governed by the provisions of this chapter except banks that do not accept deposits and offer only trust or other nondepository services must qualify for and obtain federal deposit insurance.

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§31A-1-7. Acquisition, formation, or control.

(a) A bank chartered by this state may sell or transfer all, or substantially all, of its assets and liabilities by merger, reorganization, purchase, and assumption or any similar business combination to another bank, banking institution, or entity: *Provided*, That the buyer or transferee is insured by the Federal Deposit Insurance Corporation. The provisions of this section do not apply to a sale or transfer of bank assets pursuant to an agreement that was originally executed prior to the date of enactment of this section in the 2025 regular session of the Legislature, or to any subsequent amendment or modification to such agreement. This section does not limit the authority of the Board or the Commissioner provided by the provisions of §31A-8A-1 *et seq*., §31A-8D-1 *et seq*., and §31A-8E-1 *et seq*. of this code.

(b) An interested person, including a bank or bank holding company authorized to do business in this state, may seek to enforce the provisions of this section by applying for equitable relief, including, but not limited to, a permanent or temporary injunction, or restraining order, in any court of competent jurisdiction.

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