WEST VIRGINIA CODE: §31A-4-4

§31A-4-4. Majority of stock to be paid in full before engaging in business; sale of additional stock; organizational expense fund; affidavit of incorporators; penalties; stockholder preemptive rights.

(a) The majority of the capital stock of every banking institution, chartered under the laws of this state, shall be paid in full in cash and issued to the ultimate subscribers, not an agent or broker acting on behalf of the organizers, before it shall be authorized to engage in business, except such business as is incidental and necessary preliminary to its organization. Authorized but unissued stock may be issued from time to time to employees of the bank pursuant to a stock option or stock purchase plan approved by the commissioner or may be issued for such other purposes and consideration as may be approved by the board of directors of said bank. The commissioner shall establish the minimum amount of authorized capital stock which shall be paid in full in cash and issued prior to opening the bank for business.

(b) Each subscriber at the time he or she subscribes to the stock of a proposed banking institution shall pay in cash a sum at least equal to five percent of the par value of such stock into a fund to be used to defray the expenses of organization of said institution. No organizational expenses shall be paid out of any other funds of the bank. The amount of any organizational expenses which are accumulated and recorded on the newly organized bank's accounting records as an asset to be amortized over a period of time according to generally accepted accounting principles shall be added to the capital requirement for incorporation of the bank as determined by the West Virginia board of banking and financial institutions pursuant to subsection (a), section three, article four of this chapter. Upon the grant of a charter to the institution any unexpended balance in the organizational expense fund shall be transferred to undivided profits of the institution. If the charter application is finally denied, any unexpended balance in said fund shall be distributed among the contributors in proportion to their respective payments.

(c) A majority of the incorporators shall file with the West Virginia board of banking and financial institutions at the time of filing of the charter application an affidavit: (1) Setting forth all expenses incurred or to be incurred in connection with the organization of the institution, subscriptions for its shares and sale of its shares, and (2) stating that no fee, compensation or commission prohibited by this section has been or will be paid or incurred. The board may disapprove the charter application on account of any violation of this section and order the incorporators to restore any sum expended for other than proper organizational expense. In addition, violations hereof shall constitute a misdemeanor offense punishable as prescribed in section fifteen, article eight of this chapter.

(d) Unless otherwise provided in the charter, whenever additional stock is offered for sale, stockholders of record on the date of the offer shall have the right to subscribe to such proportion of the shares as the stock held by them bears to the total of the outstanding

WV Legislature

stock. This right shall be transferable but shall terminate if not exercised within sixty days of the offer. If the right be not exercised, the stock shall not be offered for sale to others at a lower price without the stockholders again being accorded a preemptive right to subscribe. No banking institution shall sell its shares of stock at less than par, but may sell its shares at such price above par as may be set by the board of directors. The preemptive rights of the stockholders, as provided in this paragraph, shall not apply to any stock issued by a banking institution, to another bank or financial institution or the stockholders thereof, pursuant to a merger or consolidation with such other bank or financial institution, or to authorized but unissued stock authorized by the charter of the banking institution.

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