WEST VIRGINIA CODE CHAPTER 31A ARTICLE 4

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§31A-4-1. General corporation laws applicable; charter applications to be approved by West Virginia Board of Banking and Financial Institutions.

(a) The general corporation laws of the state, including the provisions of chapter thirty-one-d of this code, shall govern banking institutions and the chartering thereof, except as otherwise provided in or where inconsistent with the provisions of this chapter, when the banking institutions are chartered as business corporations.

(b) The provisions of the Uniform Limited Liability Company Act, chapter thirty-one-b of this code shall govern banking institutions and the organizing thereof, except as otherwise provided in or where inconsistent with the provisions of this chapter when the banking institutions are chartered as limited liability companies. Any reference in this chapter to "directors" of a bank, in the case of limited liability company banks, refers to the bank's members if the bank is a member-managed company or to the bank's managers if it is a manager-managed company.

(c) No charter shall issue in this state for any banking institution unless the application therefor shall have been submitted to and approved by the West Virginia Board of Banking and Financial Institutions: Provided, That the board may not approve the application to charter any banking institution unless the proposed banking institution does business within this state and is subject to the supervision of the Commissioner of Banking.

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§31A-4-2. Use of terms; unlawfully engaging in banking business; penalties; enforcement.

(a) No person doing business in this state, except a banking institution, a person authorized by the commissioner under the terms of this section or an insurer licensed pursuant to article three, chapter thirty-three of this code under a name including the terms set forth herein as of December 31, 2003, may use or advertise in connection with such business, or as a designation or title thereof, the term "bank," "banker," "banking," "banking company," "industrial bank," "savings bank" or "trust company" and the Insurance Commissioner shall notify the commissioner of each insurer so licensed. Notwithstanding the foregoing restriction, the term "banker" may be used in (1) the legal name of a real estate franchisor; and (2) the tradename of a real estate brokerage firm who is a current or future franchisee of a real estate franchise system, if in either case the use of the term "banker" stems from a family surname belonging to a principal or former principal of the firm, whether or not such principal or former principal is currently living. No person doing business in this state except a banking institution or a person authorized by the commissioner under this article may engage in the banking or trust business in this state. A nonbanking subsidiary of a bank holding company or a nonbanking subsidiary of a banking institution having a bank branch or bank main office in this state that provides trust services pursuant to section fourteen of this article may use the term "trust company" in its title and advertising. A trust entity owned jointly by federally insured depository institutions located within this state and authorized by the commissioner to operate in this state may use the term "trust company" in its title and advertising.

(b) It is unlawful for any person other than banking institutions, as herein excepted, to advertise or hold himself herself, itself or themselves, as the case may be, out to the public in any manner indicating, directly, indirectly or by implication, that any of them are engaged in the banking or trust business or is authorized and approved to engage therein in this state. A nonbanking subsidiary of a bank holding company or nonbanking subsidiary of a banking institution having a bank branch or bank main office in this state that provides trust services pursuant to section fourteen of this article may hold itself out to the public as engaged in the trust business. A trust entity owned jointly by federally insured depository institutions located within this state and authorized by the commissioner to operate in this state may hold itself out to the public as engaged in the trust business.

(c) The commissioner may authorize a person to use the term "bank," or "banc" in connection with nonprofit organizations or medical businesses where the term would have a common meaning separate and apart from a financial institution and would not result in confusion to the public (e.g., food bank; medical databank); and in connection with bank holding companies or their nonbanking affiliates where the term denotes the entities' common affiliation and would not result in confusion to the public.

(d) Any violation of the provisions of this section is a misdemeanor offense, punishable as provided in section fifteen, article eight of this chapter.

(e) The Commissioner of Banking, or any one or more banking institutions, acting individually or jointly may petition the circuit court of the county in which any violation of the provisions of this section occur or are threatened to occur for injunction or other appropriate judicial remedies for enforcement of the provisions of this section and the prevention of further or continued violations of this section.

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

(a) No banking institution may hereafter be incorporated unless it shall have bona fide subscribed capital stock and capital surplus equal to at least $4 million. The West Virginia Board of Banking and Financial Institutions shall require capital in excess of $4 million if, in its judgment, economic conditions or the operating environment of the proposed banking institution make such a requirement necessary.

(b) Notwithstanding any provision of subsection (a) of this section, the Commissioner or the West Virginia Board of Banking and Financial Institutions may approve the incorporation of a bank newly organized solely for the purpose of facilitating the acquisition of another bank if the proposed newly organized bank has a bona fide subscribed capital stock and capital surplus of at least $60,000.

(c) Banking institutions shall issue shares of one or more classes of stock and the shares shall have a nominal or par value of not less than $1 nor more than $100 each and, as to each banking institution, each share shall be equal in all respects with any other share within each class of stock.

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

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§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 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.

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

(a) A state bank may be organized by five or more incorporators, a majority of whom shall be residents of the State of West Virginia. Such banking institution shall have as a part of its corporate name or title one or more of the following words indicative of the business which it is authorized to conduct, namely, "bank", "banking company", "banking association", "trust company", "banking and trust company" or "bank and trust company".

The incorporators shall file with the board an agreement of incorporation, in duplicate, following generally the form prescribed by the Secretary of State for chartering corporations under the provisions of article one, chapter thirty-one of this code. The information set forth in the agreement shall include the following:

(1) The name of the proposed bank;

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

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

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

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

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

The agreement of incorporation shall be signed and acknowledged by each of the incorporators and, when filed with the board, shall be accompanied by the statutory corporation charter fees and an examination and investigation fee of $5,000 payable to the board. However, if the agreement is for the incorporation of a bank to be organized solely for the purpose of facilitating the acquisition of another bank, the examination and investigation fee is $5,000 payable to the board. When transmitting the agreement to the board, the incorporators shall designate by name and give the address of the attorney, agent or other responsible party with whom the board may communicate, on whom the board may call for further information and to whom the board may officially report as to action on the agreement so filed with him or her. The agreement shall constitute and may be considered and treated by the board as an application for the board's approval to incorporate and organize a banking institution in this state.

(b) Notwithstanding the provisions of subsection (a) of this section, a person may apply to the Commissioner to obtain a certificate of authority to organize and operate as a bank under this chapter as a limited liability company, if that limited liability company is formed to have perpetual existence, centralized management, limited liability, free transferability of interests and the Federal Deposit Insurance Corporation has ruled that a bank so organized

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will be eligible for federal deposit insurance.

(c) An existing bank structured as a corporation may apply to the Commissioner to reorganize and operate as a limited liability company.

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§31A-4-6. Examination and investigation of proposed bank by board.

(a) When an agreement of incorporation, fully complying with the requirements of this article, has been filed with the board, it shall promptly make or cause to be made a careful examination and investigation relative to the following:

(1) The character, reputation, financial standing and motives of the organizers, incorporators and subscribers in organizing the proposed bank;

(2) The need for the facilities and services which the proposed bank will offer in the community where it is to be located, giving particular consideration to the adequacy of existing banking and trust facilities and services;

(3) The present and future ability of the community to support the proposed bank and all other existing banking and trust facilities and services in the community;

(4) The character, financial responsibility, banking experience and business qualifications of the proposed officers; and

(5) The character, financial responsibility, business experience and standing of the proposed stockholders and directors.

(b) The board shall approve or disapprove the application, in the exercise of its reasonable discretion, but shall not approve such application unless it finds:

(1) Public convenience and advantage will be promoted by the establishment of the proposed bank;

(2) Local conditions assure reasonable promise of successful operation for the proposed bank and those banks already established in the community;

(3) The proposed capital structure is adequate;

(4) The proposed officers and directors have sufficient banking experience and trust experience, if the bank proposes to engage in the trust business, ability, character and standing to assure reasonable promise of successful operation;

(5) The name of the proposed bank or trust company is not so similar as to cause confusion with the name of an existing bank; and

(6) Provision has been made for suitable banking house quarters in the community specified in the application.

(c) In the course of its examination and investigation, the board may call upon the attorney, agent or other responsible person representing the incorporators and upon the incorporators for additional information and disclosures it deems necessary in taking

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appropriate action on and making proper disposition of the application.

(d) Where the agreement of incorporation is for an interim bank organized solely for the purpose of facilitating the acquisition of another bank, which interim bank will not survive the acquisition and merger, the board may dispense with further investigation and find the criteria set forth in subsections (a) and (b) of this section have been met on the basis of its examination of the performance or attributes of the surviving bank.

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§31A-4-7. Time for completion of investigation; notice and hearing; approval or disapproval of application for incorporation; completion of corporate organization.

The board shall complete its examination and investigation within ninety days from and after the date on which the agreement of incorporation is filed with it, unless it requests in writing additional information and disclosures concerning the proposed banking institution from the incorporators, in which event the period of ninety days shall be extended for an additional period of thirty days.

Upon completion of such examination, the board shall forthwith make and proceed to give notice, hold a hearing and enter an order approving or disapproving the application in the manner provided in section three, article three of this chapter. Such order shall be accompanied by findings of fact and conclusions of law on which such approval or disapproval is based. If no judicial review of such order is sought in the time provided therefor and (1) such order disapproves the application, the agreement of incorporation, the corporation chartering fees, and any other papers filed therewith shall thereupon be promptly returned to the attorney, agent or other responsible person representing the incorporators in the application or (2) if such order approves such application, the agreement of incorporation with a certified copy of the board's order and the accompanying corporation charter fees shall thereupon be transmitted to the Secretary of State for processing as in the case of any other corporate charter application. Upon issuance of the charter to a banking institution, the incorporators shall promptly comply with the provisions of section five of article two of this chapter, preliminary to the commissioner's issuance of a permit or license to engage in the business in this state, and shall likewise comply with other provisions of this chapter relating to completion of its corporate organization, and the corporation's readiness to commence business as a banking institution.

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§31A-4-8. Directors, their qualifications and oaths.

For every state-chartered banking institution there shall be a board of not less than five nor more than twenty-five directors, who shall meet at least once each month and who shall have power to do, or cause to be done, all things that are proper to be done by the banking institution; and a majority of whom shall at all times be United States citizens: Provided, That the Commissioner of Banking, upon application from banking institutions with deposits greater than $500 million, may issue a waiver from the minimum number of meeting requirements established by this section and allow no fewer than four quarterly meetings for such institutions and provided further, That at least four of the board of directors meetings of any state-chartered banking institution shall be held within the State of West Virginia. Every such director shall own capital stock in the banking institution of which he or she is a director in the aggregate par value of not less than $500,: Provided, That if a bank holding company has control of that banking institution, shares owned by a director of the subsidiary bank in the controlling bank holding company will satisfy the requirements of this section: Provided, however, That the director owns, in his or her own right, common or preferred stock of the controlling bank holding company in an amount equal to or greater than any one of the following: (i) Aggregate par value of $500; (ii) aggregate shareholders' equity of $500; or (iii) aggregate fair market value of $500. Determination of the fair market value of the controlling bank holding company's stock shall be based upon the value of that stock on the date it was purchased or on the date the person became a director, whichever is greater. If a bank holding company controls more than one bank subsidiary, a director owning at least $500 of the shares of a bank holding company is qualified, if otherwise permitted by applicable law, to serve as a director of every bank subsidiary controlled by that bank holding company. Before entering on the discharge of his or her duties as such director, he or she shall take an oath that he or she will, so far as the duty devolves upon him or her, diligently and honestly administer the affairs of the banking institution, and that he or she will not knowingly or willingly permit to be violated any of the provisions of the laws of this state relative to banking and banking institutions, and that the stock standing in his or her name upon the books of the banking institution is not hypothecated or pledged in any way as security for loans obtained from or debts owing to the banking institution of which he or she is a director, and that the number of shares necessary to qualify a stockholder to be a director are not now, and shall not at any time while he or she serves as a director be pledged or hypothecated in any manner for any debt or obligation of the director, or any other person; which oath subscribed by him or her and certified by the officer before whom it was taken shall be filed and preserved in the office of the Commissioner of Banking. Should a director fail to subscribe to or renew the oath herein provided within sixty days after notice of his or her election or reelection, or at any time after qualifying as such, sell or dispose of, or in any manner hypothecate or pledge as security for a debt or obligation, such qualifying shares, or any number thereof, necessary for his or her qualification, thereupon the remaining directors shall elect another director in his or her stead. No person shall serve as a director of any banking institution who has evidenced personal dishonesty and unfitness to serve as such director by his or her conduct or practice with another financial institution which resulted in a substantial financial loss or damage thereto or who has been convicted of

any crime involving personal dishonesty.

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§31A-4-9. Fidelity bonds and insurance.

(a) The directors of a state bank shall direct and require good and sufficient fidelity bonds on all active officers and employees, whether or not they draw salary or compensation, which bonds shall provide for indemnity to such bank on account of any losses sustained by it as the result of any dishonest, fraudulent or criminal act or omission committed or omitted by them acting independently or in collusion or combination with any person or persons. Such bonds may be in individual, schedule or blanket form, and the premiums therefor shall be paid by the bank.

(b) The directors shall also direct and require suitable insurance protection to the bank against burglary, robbery, theft and other similar insurable hazards to which the bank may be exposed in the operations of its business on the premises or elsewhere.

(c) The directors shall be responsible for prescribing at least once in each year the amount or penal sum of such bonds or policies and the sureties or underwriters thereon, after giving due and careful consideration to all known elements and factors constituting such risk or hazard. Such action shall be recorded in the minutes of the board of directors.

(d) A state bank which is a subsidiary of a bank holding company as defined in section one, article eight-a of this chapter may fulfill the requirements of subsections (a) and (b) of this section if such fidelity bonds and insurance protection are obtained on its behalf by the bank holding company: Provided, That the evidence of the existence of such bonds and insurance protection for the state bank must be maintained at the main office of the state bank and the directors of the state bank shall be responsible for reviewing the adequacy of such bonds and insurance protection annually and for recording such review in the minutes of the board.

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§31A-4-10. List of stockholders.

For the purposes of this section, "bank holding company" means any company which has control over any West Virginia state chartered bank, including financial holding companies as defined by the Bank Holding Company Act, 12 U.S.C. §1841(p).

"Control" shall be construed consistently with section 2(a) of the Bank Holding Company Act, 12 U.S.C. §1841(a).

In addition to the requirements of chapter thirty-one-d of this code, the President, or other Executive Officer of every state banking institution and every bank holding company with a controlling interest in a state banking institution shall cause to be kept at all times a full and correct list of the names and post office addresses of the stockholders of the banking institution or bank holding company who directly or indirectly own, control or hold with power to vote five percent or more of the outstanding shares of that institution, and the number of shares owned by each, in the office where its business is transacted. This list shall be open to inspection by all of the stockholders of the banking institution or bank holding company, and the officers authorized by law to assess taxes, during business hours of each day, except Sundays and holidays. A copy of this list shall be made on the first Monday in July of each year and verified by the oath of the President or other executive officer and immediately transmitted by mail to the Commissioner of Banking at his or her office. A bank holding company may comply with the reporting requirement of this section by simultaneously filing with the Commissioner a copy of the annual report it files with its federal reserve bank.

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§31A-4-10a. Stockholder inspection of books and records.

(a) Any stockholder or group of stockholders of a state banking institution, holding of record the number of voting shares of such bank specified below, upon making written demand stating a proper purpose, shall have the right to examine, in person or by agent or attorney, at any reasonable time or times, nonconfidential portions of its books and records of account, minutes and record of stockholders and to make extracts therefrom. Such right of examination is limited to a stockholder or group of stockholders holding of record:

(1) Voting shares having a cost of not less than $100,000 or constituting not less than one percent of the total outstanding voting shares: Provided, That such stockholder or group of stockholders have held of record such voting shares for a period of at least six months before making such written demand; or

(2) Not less than five percent of the total outstanding voting shares.

(b) Except as provided in subsection (a) of this section and in section ten of this article with respect to inspection of a list of stockholders, no stockholder or group of stockholders of a state banking institution shall have any other right under this section or common law to examine its books and records of account, minutes and record of stockholders.

(c) The right to examination authorized by subsection (a) of this section and any right to inspect the list of stockholders provided by a bank's bylaws to an extent greater than that authorized under section ten of this article may be denied to any stockholder or group of stockholders upon the refusal of any such stockholder or group of stockholders to furnish such institution, its transfer agent or registrar an affidavit that such examination or inspection is not desired for any purpose which is in the interest of a business or object other than the business of the institution, that such stockholder has not within the five years preceding the date of the affidavit sold or offered for sale, and does not now intend to sell or offer for sale, any list of stockholders of the bank or of any other bank or bank holding company, and that such stockholder has not within said five-year period aided or abetted any other person in procuring any list of stockholders for purposes of selling or offering such list for sale.

(d) Notwithstanding any provision of this section or any common law, no stockholder or group of stockholders shall have the right to obtain, inspect or copy any portion of any books or records of a state banking institution containing:

(1) A list of depositors in, borrowers from or customers of such banking institution;

(2) The addresses of the banking institution's depositors, borrowers or customers;

(3) Individual deposit or loan balances or records of the banking institution's depositors, borrowers or customers; or

(4) Any data from which such information could be reasonably constructed.

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(e) For purposes of this section, a confidential record includes, but is not limited to:

(1) Any document or information relating to a nonpublic market strategy or plan of the bank;

(2) Any document or information relating to matters declared confidential under state or federal law, including, but not limited to, bank regulatory reports;

(3) Any document or information relating to a proposed merger, acquisition or sale of assets which has not yet been disclosed to the public by the bank, including any document or information which constitutes inside information for purposes of state or federal securities law; and

(4) Any document or information deemed by the bank as proprietary relating to the loan policy established by the bank.

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§31A-4-11. Liability of stockholders.

Each stockholder of any state banking institution, in addition to the liability imposed upon him as a stockholder of a corporation under the provisions of article one of chapter thirty-one of this code, shall be liable to the creditors of the banking institution, on obligations accruing while he is a shareholder, to an amount equal to the par value of the shares of stock held by him and no sale or transfer of the shares of stock made by any such stockholder, after the liability of the banking institution originated or accrued, shall relieve the stockholder from the liability imposed by this section. Any proceeding to enforce the liability of stockholders imposed by this section may be prosecuted severally against any one stockholder or jointly against any number of stockholders. But the additional liability imposed upon such stockholders by provisions of this section shall not apply with respect to any such institution so long as such institution, pursuant to law, has its deposits insured by the federal deposit insurance corporation or by any other similar federal instrumentality or agency hereafter created and in existence for that purpose. Nor shall such additional liability apply with respect to any banking institution from and after the time it shall obtain from the commissioner of banking a certificate setting forth that such institution has, as ascertained by him an unimpaired surplus equal to at least fifty percent of the authorized capital of such institution. Upon application by any state banking institution to the commissioner of banking for such certificate, the commissioner shall ascertain whether such institution has in fact such unimpaired surplus, and if such unimpaired surplus be found by him to exist, then he shall issue such certificate. If impairment of such surplus shall thereafter occur, such impairment shall not impose further or additional liability upon the stockholders of such institution.

Nothing in this section shall affect or impair the authority of the officers and directors of a banking institution to cause to be made good any impairment of the capital of such institution, under the provisions of the next succeeding section of this article.

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§31A-4-12. Impairment of capital forbidden; remedies; assessments; sale of stock.

The officers and directors of a state banking institution shall not pay out, disburse or withdraw, or permit to be paid out, disbursed or withdrawn, in any manner whatever, any part of the capital of the corporation except in case of merger or consolidation, as hereinafter provided. Whenever, from any cause, the capital of such banking institution shall become impaired it shall be the duty of the officers and directors of such institution, forthwith, to cause any such impairment to be made good, by assessing the amount of the deficiency pro rata on the shares of the capital stock outstanding, which assessments shall be paid within thirty days after notice thereof. If any stockholder shall neglect or refuse to pay the assessment on his shares after thirty days' notice, it shall be the duty of the board of directors to cause a sufficient number of his shares of stock to be sold for cash, at public sale at the banking room of the banking institution.

Notice of such sale shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which the banking institution is located. The first publication shall be made at least ten days before the date of such sale.

Any surplus from the sale of any share shall be paid to the defaulting stockholder.

A sale of stock as provided in this section shall effect an absolute cancellation of the outstanding certificate, or certificates, evidencing the stock so sold, and shall make such certificate null and void, and a new certificate shall be issued by the bank to the purchaser of such stock.

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§31A-4-13. Powers of state banking institutions generally.

(a) Any state-chartered banking institution has and may exercise all of the powers necessary for, or incidental to, the business of banking and, without limiting or restricting such general powers, it shall have the right to buy or discount promissory notes and bonds; negotiate drafts, bills of exchange and other evidences of indebtedness; borrow money; receive deposits on such terms and conditions as its officers may prescribe; buy, sell or exchange bank notes, bullion or coin; loan money on personal or other security; rent safe-deposit boxes and receive on deposit for safekeeping jewelry, plate, stocks, bonds and personal property of whatsoever description; and provide customer services incidental to the business of banking, including, but not limited to, the issuance and servicing of and lending money by means of credit cards as letters of credit or otherwise. Any state-chartered banking institution may accept, for payment at a future date not to exceed one year, drafts drawn upon it by its customers. Any state-chartered banking institution may issue letters of credit, with a specified expiration date or for a definite term, authorizing the holders thereof to draw drafts upon it or its correspondents, at sight or on time. Any such banking institution may organize, acquire, own, operate, dispose of and otherwise manage wholly owned subsidiary corporations or entities that are jointly owned with other insured depository institutions for purposes incident to the banking powers and services authorized by this chapter provided any wholly owned or jointly owned entities are subject to federal and state examination and supervision as if the activities are conducted by the bank.

(b) Any state-chartered banking institution may acquire, own, hold, use and dispose of real estate which may not be carried on its books at a value greater than the actual cost: Provided, That the property must be necessary for the convenient transaction of its business, including any buildings, office space or other facilities to rent as a source of income: Provided, however, That the investment hereafter made may not exceed sixty-five percent of the amount of its capital stock and surplus, unless the consent in writing of the Commissioner of Banking is first secured.

(c) Any state-chartered banking institution may acquire, own, hold, use and dispose of real estate which shall be carried on its books at the lower of fair value or cost as defined in rules promulgated by the Commissioner of Banking, subject to the following limitations:

(1) Such as may be mortgaged to it in good faith as security for debts in its favor;

(2) Such as may be conveyed to it in satisfaction of debts previously contracted in the course of its business dealings; and

(3) Such as it may purchase at sales under judgments, decrees, trust deeds or mortgages in its favor, or may purchase at private sale, to secure and effectuate the payment of debts due to it.

(d) The value at which any real estate is held may not be increased by the addition thereto of taxes, insurance, interest, ordinary repairs or other charges which do not materially enhance

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the value of the property.

(e) Any real estate acquired by any such banking institution under subdivisions (2) and (3), subsection (c) of this section shall be disposed of by the banking institution at the earliest practicable date, but the officers thereof shall have a reasonable discretion in the matter of the time to dispose of such property in order to save the banking institution from unnecessary losses: Provided, That in every case such property shall be disposed of within ten years from the time it is acquired by the banking institution, unless an extension of time is given in writing by the Commissioner of Banking.

(f) The sale of insurance by state-chartered banking institutions is subject to the following:

Any state-chartered banking institution having its main or a branch office in any place the population of which does not exceed five thousand inhabitants, as shown by the last preceding decennial census, through its employees or agents, may, from that place or office, directly or through a controlled subsidiary, act as agent for any fire, life, casualty, liability or other insurance company authorized by the authorities of the state to do business in this state, by soliciting and selling insurance and collecting premiums on policies issued by such company; and may receive for services so rendered all permissible fees or commissions as may be agreed upon between the bank and the insurance company for which it may act as agent: Provided, That no bank may in any case assume or guarantee the payment on insurance policies issued through its agency by its principal: Provided, however, That the bank may not guarantee the truth of any statement made by an insured in filing his her or its application for insurance. For purposes of this section, a "controlled subsidiary" is one in which the state-chartered banking institution owns at least eighty percent of all classes of stock. This provision is intended to give state-chartered banking institutions parity with national banks operating in this state with regard to the marketing and sale of insurance, notwithstanding the prohibitions and limitations contained in article eight-c or elsewhere in this chapter and shall be construed consistently with interpretations of 12 U.S.C. §92, the regulations promulgated thereunder and any successor legislation or regulations.

(g) Any state-chartered banking institution may, through its employees or agents, market and sell, as agent, annuities either at its main office or at any of its branches. The marketing and sale of annuities may be made by the bank, through its employees or agents, directly, or through a controlled subsidiary as defined in subsection (f) of this section. This provision is intended to give state-chartered banks parity with national banks operating in this state with regard to the sale of annuities, notwithstanding the prohibitions and limitations contained in article eight-c or elsewhere in this chapter.

(h) Unless waived in writing by the commissioner, a state-chartered bank may not invest or otherwise expend more of its capital and surplus calculated at the end of the previous calendar year on the activities permitted by subsections (f) and (g) of this section on an aggregate basis together with any of its approved financially related products and services than would be allowed for a national bank providing the same services. For purposes of this section, "approved financially related products and services" means those products and

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services offered by a state-chartered bank pursuant to an approved application submitted under article eight-c of this chapter.

(i) The commissioner shall promulgate rules in accordance with chapter twenty-nine-a of this code relating to the sale of insurance or annuities, including, but not limited to, rules requiring notice of the intention to engage in such activities and relating to the policies and procedures state-chartered banking institutions should adopt in connection with these activities.

(j) Any state-chartered banking institution and its employees or agents engaged in the sale of insurance or annuities permitted hereby must also comply with all applicable requirements for the sale of such products imposed by the West Virginia Commissioner of Insurance and by any state or federal securities regulator.

(k) No state-chartered banking institution may hereafter invest more than twenty percent of the amount of its capital and surplus in furniture and fixtures, whether the same be installed in a building owned by the banking institution, or in quarters leased by it, unless the consent in writing of the Commissioner of Banking is first secured.

(l) No financial institution, banking institution, state bank or out-of-state bank may establish or maintain a branch in this state on, or within one and one-half miles of, the premises or property of an affiliate at which the affiliate engages in commercial activities.

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

(a) Every state banking institution which files the reports required in section fifteen of this article and which is not otherwise prohibited by the commissioner or federal bank regulators from doing so, has and may exercise the following powers:

(1) All the powers, rights and privileges of any state banking institution;

(2) To act as trustee, assignee, special commissioner, general or special receiver, guardian, executor, administrator, committee, agent, curator or in any other fiduciary capacity, and to take, assume, accept and execute trusts of every description not inconsistent with the Constitution and laws of the United States of America or of this state; and to receive, hold, manage and apply any sinking fund on the terms and for the purposes specified in the instrument creating the fund;

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

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

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

(6) To act as trustee or agent in any collateral trust and in order to secure the payment of any obligations of any person, firm, private corporation, public corporation, public body or public agency to receive and hold in trust any items of personal property (including, without limitation, notes, bonds, debentures, obligations and certificates for shares of stock) with the right in case of default to sell and dispose of such personal property and to collect, settle and adjust any obligations for the payment of money, and at any sale of personal property held by it, to purchase the same for the benefit of all or any of the holders of the obligations, to secure the payment of which the items of personal property were pledged and delivered to the trustee or agent. Any such sale may be made without any proceedings in any court, and at such times and upon such terms as may be specified in the instrument or instruments creating the trust, or, in the absence of any specification of terms, at the time and upon the terms as the trustee considers reasonable; and

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

(b) All national banks having their main office in this state which have been, or hereafter may be, authorized under the laws of the United States to act as trustee and in other fiduciary capacities in the State of West Virginia shall have all the rights, powers, privileges and immunities conferred hereunder, provided they comply with the requirements hereof.

(c) Banks having their main office in another state which lawfully have a branch in this state

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pursuant to the provisions of federal law or articles eight-d or eight-e of this chapter which have been, or hereafter may be, authorized under the laws of the United States or the laws of the state in which the bank is chartered to act as trustee and in other fiduciary capacities in the state in which their main office is located have all the rights, powers, privileges and immunities conferred hereunder, provided they comply with the requirements hereof.

(d) Any bank having its main office or a branch located in this state pursuant to subsection (c) of this section may offer trust services, but not deposit taking services, as described, permitted and authorized in this section or other applicable sections of this code through an affiliated nonbanking subsidiary of a bank holding company, a nonbanking entity in which the bank owns an interest along with other insured depository institutions, or its own nonbanking subsidiary if the nonbanking affiliate, subsidiary or jointly owned entity:

(1) Maintains a fidelity bond in the same form and amount as would be required of a banking institution providing trust services;

(2) Maintains unimpaired tangible capital and surplus of at least $2 million, or more if determined necessary by the commissioner;

(3) Is subject to examination and supervision by the bank's federal or state chartering authority, the federal deposit insurance corporation or by the board of Governors of the federal reserve system or both the federal deposit insurance corporation and the board of Governors of the federal reserve system to the same extent and in the same manner as if the trust services were offered directly by the bank or banks;

(4) Has as its primary purpose the provision of trust services; and

(5) Registers with the commissioner of banking, on a form prescribed by him or her, at least sixty days prior to providing or offering to provide those services in this state.

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§31A-4-14a. Transfer of fiduciary accounts or relationships between affiliated subsidiary banks of a bank holding company or affiliated nonbanking entities or entities jointly owned by federally insured depository institutions.

(a) Notwithstanding any other provision of this code and unless the will, deed or other instrument creating a trust or fiduciary account or relationship specifically provides otherwise, any affiliated banking institution, nonbanking subsidiary of a bank, nonbanking subsidiary of a bank holding company, or entity jointly owned by federally insured depository institutions which is empowered with and authorized to exercise trust powers within this state, or otherwise performs fiduciary services for a fee, may, without any order or other action on the part of any court or otherwise, transfer to any other affiliate banking institution or nonbanking subsidiary of a bank or affiliate or entity jointly owned by federally insured depository institutions exercising or authorized to exercise trust powers within this state pursuant to the provisions of section fourteen of this article any or all rights, franchises and interests in its fiduciary accounts or relationships, including, but not limited to, any or all appointments, designations and nominations and any other rights, franchises and interests, as trustee, executor, administrator, guardian, committee, escrow agent, transfer and paying agent of stocks and bonds and every other fiduciary capacity; and the transferee or receiving affiliate or jointly owned entity shall hold and enjoy all rights of property, franchises and interests in the same manner and to the same extent as such rights, franchises and interests were held or enjoyed by the transferor affiliate. As to transfers to an affiliate or jointly owned entity pursuant to this section, the receiving affiliate or jointly owned entity shall take, receive, accept, hold, administer and discharge any grants, gifts, bequests, devises, conveyances, trusts, powers and appointments made by deed, deed of trust, will, agreement, order of court or otherwise to, in favor of, or in the name of, the transferor affiliate or jointly owned entity, whether made, executed or entered before or after such transfer and whether to vest or become effective before or after such transfer, as fully and to the same effect as if the receiving affiliate or jointly owned entity had been named in such deed, deed of trust, will, agreement, order or other instrument instead of such transferor affiliate or jointly owned entity. All acts taken or performed in its own name or in the name of or on behalf of the transferor affiliate or jointly owned entity by any receiving affiliate or jointly owned entity as trustee, agent, executor, administrator, guardian, depository, registrar, transfer agent or other fiduciary with respect to fiduciary accounts or relationships transferred pursuant to this section are as good, valid and effective as if made by the transferor entity.

(b) For purposes of this section, the term "affiliate" means: (1) Any two or more subsidiaries (as the term "subsidiary" is defined in section one, article eight-a of this chapter) which are "banks" or "banking institutions" (as those terms are defined in section two, article one of this chapter) or nonbanking institutions providing trust services pursuant to subsection (d), section fourteen of this article and which have a common bank holding company; (2) any "bank" or "banking institution" (as those terms are defined in section two, article one of this chapter) and its nonbanking subsidiary providing trust services pursuant to the provisions of subsection (d), section fourteen of this article; or (3) any entity created to offer trust services

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that is jointly owned by federally insured depository institutions authorized to do banking business in this state. For purposes of this section, the term "bank holding company" shall have the meaning set forth in section one, article eight-a of this chapter.

(c) At least thirty days before any transfer authorized by this section, the transferor shall send a statement of intent to transfer together with the name and address of the transferee or receiving entity by regular United States mail to the most recent known address of all persons who appear in the records of the transferor as having a vested present interest in the trust, fiduciary account or relationship to be transferred.

(d) This section shall be applicable to both domestic and foreign bank holding company affiliates.

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§31A-4-14b. Delegation and fiduciary responsibility.

(a) Any bank, nonbanking subsidiary of a bank holding company, nonbanking subsidiary of a banking institution or trust entity jointly owned by federally insured depository institutions located in this state and authorized by the commissioner to operate in this state that acts as a trustee pursuant to this chapter may delegate any investment, management or administrative function if it exercises reasonable care, judgment and caution in:

(1) Selecting the delegate, taking into account the delegate's financial standing and reputation;

(2) Establishing the scope and other terms of any delegation; and

(3) Reviewing periodically the delegate's actions in order to monitor overall performance and compliance with the scope and other terms of any delegation.

(b) Notwithstanding any delegation permitted by subsection (a) of this section, any bank, nonbanking subsidiary of a bank holding company, nonbanking subsidiary of a banking institution or trust entity jointly owned by federally insured depository institutions located in this state and authorized by the commissioner to operate in this state that acts as a trustee pursuant to this chapter shall retain at all times responsibility for the due performance of any delegated fiduciary function.

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§31A-4-15. Required annual filings before exercising trust powers; penalties; notice of failure to comply.

No banking institution, nonbanking subsidiary of a bank holding company, nonbanking subsidiary of a bank, or entity jointly owned by federally insured depository institutions authorized to conduct banking business in this state shall exercise any of the trust powers mentioned in this article until it shall have filed with the commissioner of banking an annual report of trust assets each calendar year. To meet the requirements of this section, the commissioner may accept a report similar to the report filed by banking institutions with federal regulators. If any such banking institution or its nonbanking subsidiary or the nonbanking subsidiary of a bank holding company or entity jointly owned by federally insured depository institutions authorized to do banking business in this state shall exercise, or attempt to exercise, any such powers or rights without having complied with the requirements of this section as to the filing of such report, it is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $500; and in every such case, whether or not there has been a prosecution or conviction of the company so offending, the commissioner of banking, being satisfied of the facts, may publish a notice of the fact that it has failed to comply with the requirements of this section and is therefore not entitled to exercise the trust powers and rights mentioned in the preceding section. In the event a notice is published as aforesaid, it shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county or counties in which such entity is offering such trust services. The cost of publication shall be paid by the person failing to comply with this section.

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§31A-4-16. Trust funds to be kept separate; bookkeeping and management.

Every banking institution, nonbanking subsidiary of a bank holding company, nonbanking subsidiary of a bank or entity jointly owned by federally insured depository institutions authorized to engage in the trust business pursuant to the provisions of section fourteen of this article, shall keep all trust funds and investments separate and distinct from the assets owned by the corporation; and shall keep a separate set of books and records showing in proper detail all transactions so engaged in; and all investments made by such institution as fiduciary shall be so designated that the trust to which such investments shall appertain or belong shall be clearly and distinctly shown on the books of the institution; and such funds shall be held for the uses of the trust designated and for the beneficiaries thereof, and shall not be liable for any other obligations of the institution.

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§31A-4-17. Oath as fiduciary.

Whenever any court, or the clerk thereof, shall appoint any banking institution, nonbanking subsidiary of a bank holding company, nonbanking subsidiary of a bank or entity jointly owned by federally insured depository institutions exercising trust powers under section fourteen of this article, as trustee, receiver, assignee, guardian, executor, administrator, special commissioner, curator, committee, or in any other fiduciary capacity to perform any duty or execute any trust, the chairman of the board, the president, vice president, secretary, treasurer, trust officer or assistant trust officer of such appointee shall take the oath and make the affirmation required by law of any such fiduciary, before the court or the clerk thereof, or before any other officer authorized to administer oaths.

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§31A-4-18. Capital as fiduciary security; additional security.

Whenever any banking institution, nonbanking subsidiary of a bank holding company, nonbanking subsidiary of a bank or entity jointly owned by federally insured depository institutions authorized to exercise trust powers pursuant to the provisions of section fourteen of this article, and having complied with the requirements of this article, shall be appointed trustee, assignee, receiver, guardian, executor, administrator, special commissioner, curator, committee, or in any other fiduciary capacity, or shall be directed by the order or decree of any court to execute any trust whatsoever, the capital and other assets of the fiduciary corporation shall constitute the security required by law for the faithful performance of its duties and shall be absolutely liable in case of any default whatsoever but, where the liability under any such appointment as trustee, assignee, receiver, guardian, executor, administrator, special commissioner, curator or committee, or, in the execution of any trust by order or decree of any court, shall be equal to, or shall exceed the capital and surplus of such fiduciary corporation, the court making such appointment or entering such order or decree may require, and the fiduciary shall give, additional security. No bond shall be required of any banking institution, nonbanking subsidiary of a bank holding company, nonbanking subsidiary of a bank or entity jointly owned by federally insured depository institutions unless such additional security is required.

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§31A-4-18a. Short-term investments when acting as a fiduciary.

(a) Any individual, bank, trust company or other entity engaged in the business of exercising fiduciary powers for compensation and complying with the provisions of this section is deemed to have satisfied its fiduciary obligations and duties with respect to:

(1) The investment of fiduciary funds awaiting investment or distribution;

(2) The charging of fees in connection therewith; and

(3) The disclosure of policies, procedures and fees in connection therewith.

(b) A fiduciary may invest cash awaiting investment or distribution in short-term trust quality investment vehicles. A bank or trust company serving as a fiduciary may place funds awaiting investment or distribution in deposits of the commercial department of such bank or trust company or in deposits of an affiliate bank: Provided, That the rate of interest paid on such deposits shall be at least equal to the rate paid by such bank or trust company or affiliate bank on deposits of similar terms and amounts.

A fiduciary has complied with this section if cash awaiting investment or distribution in excess of $1,000 is invested within ten days of receipt or accumulation thereof.

(c) A fiduciary may charge a reasonable fee for the temporary investment of cash awaiting investment or distribution, which fee may be paid from the income produced.

(d) A fiduciary has complied with its duty to disclose fees and practices in connection with the investment of funds awaiting investment or distribution if the fiduciary's periodic statements set forth the fiduciary's practice and method of computing fees.

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§31A-4-19. Reports.

Every state banking institution shall make at least four reports each year to the commissioner of banking upon his or her call therefor. The reports shall be called for as nearly as conveniently may be on the dates on which the comptroller of the currency shall call for reports by national banking associations, and be in the form and contain the details as shall be prescribed by the commissioner of banking. The reports shall be verified by the oath of the president or active vice president or cashier and attested by the signatures of at least three directors of the banking institution. Each report shall show in detail, under appropriate heads, the resources and liabilities of the banking institution at the close of business on the date specified by the banking commissioner, and shall be transmitted to the commissioner within ten days from the receipt of the request for the report. The reports may be submitted or made available electronically in a format specified by the commissioner of banking. An electronic filing with the appropriate federal bank regulatory agency may be deemed as meeting the requirements of this section, unless the commissioner objects in writing and requires alternative filing(s).

In lieu of the report, the commissioner of banking shall have discretion to accept from a banking institution which is a member of the federal reserve system a report, the submission thereof which is required of the banking institution by the federal reserve board, or by its agency, provided that the report shall show in detail, under appropriate heads, the resources and liabilities of the banking institution at the close of business on the day specified by the federal reserve board, or by its agency, and shall contain such further details as may be deemed necessary or desirable by the commissioner of banking.

Any report shall be at the expense of the banking institution.

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§31A-4-20. Stockholders' annual meeting; financial statement; appointment, duties and report of outside auditing firm.

(a) The stockholders of each state banking institution shall meet annually. The banking institution shall prepare and submit to the stockholders a copy of the institution's most recent fiscal year audited financial statements. The audited financial statement may be consolidated or combined statements of the banking institution, its holding company and any subsidiaries, that include a balance sheet as of the end of the fiscal year, an income statement for that year and a statement of changes in shareholders' equity for the year. The submission is sufficient if, within 120 days of the close of the fiscal year, the banking institution delivers a physical or digital copy of the requisite statement through traditional mail or courier service, electronic mail or any other means of delivery or provides shareholders with notice of access to a digital copy of the statements published to a website or any other digital media platform or portal.

(b) The board of directors of the banking institution or, if such banking institution is controlled by a bank holding company, the bank holding company shall appoint an outside auditing firm on an annual basis to serve as the banking institution's auditor for the year.

(c) At such time or times as it may be directed to do so by the written request of the board of directors, or the Commissioner of Financial Institutions, such outside independent auditing firm shall immediately proceed to examine the condition of the bank, and upon completion of such examination, shall file its report in writing with the board of directors. Such report shall set forth in detail all items included in the assets of the bank which the firm has reason to believe are not of the value at which they appear on the books and records of the bank, and shall give the value of each of such items according to its judgment. The board of directors shall cause such report to be retained as a part of the records of the bank.

(d) The workpapers of any audit, including any materials associated with an audit of the bank's electronic data procedures, shall be made available to the commissioner or to the examiners of the Division of Financial Institutions upon request, and will be accorded confidentiality in conformity with §31A-2-4 of this code.

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§31A-4-21. Federal deposit insurance; membership in federal reserve system.

State banking institutions are authorized to do any act necessary to obtain insurance of their deposits by the United States or any agency or instrumentality thereof including the federal deposit insurance corporation and to acquire and hold membership in the federal reserve system. Such banking institutions which are members of the federal reserve system shall be vested with all powers conferred upon members of such system by the terms of the Federal Reserve Act, as amended, as fully as if such powers were specifically granted herein; and all such powers shall be exercised subject to all restrictions and limitations imposed by the Federal Reserve Act, as amended, or by regulations of the federal reserve board made pursuant thereto. Any such banking institution shall continue to be subject to the supervision and examinations required by the laws of this state, except that the federal reserve board or the federal deposit insurance corporation shall have the right, if either deems it necessary to make examinations; and the commissioner of banking may disclose to the federal reserve board or the federal deposit insurance corporation, or to examiners duly appointed by either, all information in reference to the affairs of any banking institution which has become, or desires to become, a member of the federal reserve system or the federal deposit insurance corporation.

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§31A-4-22. Reserves required of banking institutions; reports; penalties.

Each state banking institution shall at all times maintain on hand as a reserve in lawful money of the United States of America an amount equal to at least seven percent of the aggregate of all of its deposits which are subject to withdrawal on demand and three percent of its time deposits. Whenever the commissioner of banking shall determine that the maintenance of sound banking practices or the prevention of injurious credit expansion or contraction makes such action advisable, he may by rule from time to time change such requirements as to reserves against demand or time deposits, or both, but the reserves so prescribed shall in no event be less than those specified in this section nor more than twice those specified. Whenever such reserve shall fall below that required, the institution shall not thereafter make any new loan or investment until the required reserve shall be restored. For the purpose of computing such reserve, all deposits requiring notice of thirty days or more for withdrawal and time certificates of deposit and Christmas savings shall be deemed time deposits, and all checking accounts, certified checks, cashier's checks, demand certificates of deposit and balances due other banks shall be deemed demand deposits. But in lieu of lawful money on hand, four fifths of such reserve may consist of balances payable on demand from any national or state bank doing business in this state or solvent banking institutions in other states. The reserve balances required herein shall be computed on the basis of average daily net deposit balances and average daily currency and coin during biweekly periods. The required reserve balance of each bank shall be computed at the close of business each day based upon its net deposit balances and currency and coin at the opening of business on the same day. The biweekly period shall end at the close of business on days to be fixed by the commissioner in his promulgated rules. When, however, the reserve computation period ends with a nonbusiness day, or two or more consecutive nonbusiness days, such nonbusiness day or days may, at the option of the banking institution, and whether or not it had a deficiency in reserve balances in such computation period, be included in the next biweekly computation period.

The commissioner shall, by rule and regulation, require regular reports from such banking institutions, which reports shall be submitted at such times and contain such information as will enable the commissioner to adequately supervise the maintenance of reserves under this section. Penalties for any deficiencies in the required reserves of any banking institution shall be assessed monthly by the commissioner on the basis of average daily deficiencies during each of the computation periods ending in the preceding calendar month. Such penalties shall be assessed at a rate of two percent per annum above the lowest rate applicable to borrowings by member banks from the federal reserve bank of the district in which such deficient institution is located on the first day of the calendar month in which the deficiencies occurred. Such penalties shall be paid by the commissioner into the treasury of the State of West Virginia and credited to the General Fund.

Compliance on the part of any banking institution with the reserve requirements of the federal reserve act, as amended prior to January 31, 1981, shall be considered full compliance with the provisions of this section. No such bank may be required to carry or maintain a reserve other than such as required under terms of the federal reserve act, as

amended prior to January 31, 1981.

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§31A-4-23. Borrowing by banking institutions; records thereof; penalties.

Any state banking institution may borrow money, rediscount any of its notes, or borrow bonds for the use of the bank in order to meet any emergency that may arise. The books and accounts of such banking institutions shall at all times show the amount of such borrowed money, bonds or rediscounts. No officer, director or employee of any such banking institution shall issue the note of such banking institution for borrowed money, or rediscount any note or pledge any of the assets of such banking institution except when authorized by resolution of the board of directors of such banking institution.

A banking institution, when authorized by resolution of the board of directors thereof, may borrow money from and contract with any federal agency or instrumentality created and existing pursuant to an act of the Congress of the United States, or any other person or persons, and may pledge, hypothecate, assign or rediscount to any such federal agency or instrumentality, or to any other person or persons, any assets or securities belonging to the banking institution in such manner or form as may be approved by its board of directors, and subject to any terms or conditions imposed in connection therewith, as collateral security for the payment of any and all such loans. An accurate record of all securities and exact copies of all notes withdrawn from the files of such banking institutions, to be pledged as collateral for borrowed money or other purposes, shall be kept in the files of such banking institution at all times.

It shall be unlawful for any such banking institution to issue its certificate of deposit for purposes of borrowing money or to pledge or hypothecate more than $2 of the book value of any of its assets for each $1 of borrowed money.

In addition to applicable penalties provided in article eight of this chapter for any such violations, the commissioner of banking may act administratively or through judicial proceedings in a court of competent jurisdiction to correct and prevent any such violations.

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§31A-4-24. Capital notes and debentures; retirement; not subject to assessment.

With the written approval of the commissioner of banking and with the approval of its board of directors and stockholders, any banking institution may at any time issue and sell either its nonconvertible capital notes or nonconvertible debentures or both its nonconvertible capital notes and nonconvertible debentures. In connection with his approval or disapproval of the issuance of the notes or debentures, the commissioner of banking shall take into consideration the financial condition of the banking institution, the need of expanded banking capital in the town, city or community in which the banking institution is located, the objects and purposes to be accomplished by issuance of the notes or debentures, and such other economic and monetary factors as he in his judgment and discretion, may deem to be proper bases for his action.

The word "capital," as used in the laws of this state relating to banking, shall be construed to include the amount of outstanding capital notes and debentures legally issued by the banking institution for all purposes. Such capital notes and debentures shall be subordinate and subject to the claims of depositors and may be subordinated and subjected to the claims of other creditors, but shall in no case be subject to any assessment. The holders of such capital notes and debentures shall not be held individually responsible as such holders for any debts, contracts, or engagements of the banking institution, and shall not be held liable for assessments to restore any impairments in the institution's capital. The capital stock of the banking institution shall not be considered to be impaired when the amount of such capital notes and debentures as represented by cash or sound assets exceeds any impairment found by the commissioner of banking. If any such impairment in the institution's capital be found by the commissioner of banking, before any such capital notes or debentures are retired or paid by the bank, any existing deficiency of the bank's capital, disregarding the notes or debentures, must be paid in cash, to the end that the sound capital assets shall at least equal the capital stock of the banking institution.

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§31A-4-25. Dividends; limitations; penal provisions.

(a) The directors of any state-chartered banking institution may, quarterly, semiannually or annually, declare a dividend of so much of the net profits of that banking institution as they shall judge expedient, except that until the surplus fund of such banking institution shall equal its common stock, no dividends shall be declared unless there has been carried to the surplus fund not less than one- tenth part of that banking institution's net profits of the preceding half year in the case of quarterly or semiannual dividends, or not less than one-tenth part of its net profits of the preceding two consecutive half-year periods in the case of annual dividends;

(b) The prior approval of the commissioner of banking shall be required if the total of all dividends declared by such banking institution in any calendar year shall exceed the total of its net profits of that year combined with its retained net profits of the preceding two years;

(c) For the purpose of this section the term "net profits" shall mean the remainder of all earnings from current operations plus actual recoveries on loans and investments and other assets, after deducting from the total thereof, all current operation expenses, actual losses, and all federal and state taxes;

(d) Any director voting to declare any dividend, in violation of the provisions of this section, shall be personally liable to the creditors of such banking institution for any loss occasioned thereby, and shall be guilty of a misdemeanor.

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§31A-4-26. Limitation on loans and extensions of credit; limitation on investments; loans to executive officers and directors of banks and employees of the banking department; exceptions; valuation of securities.

(a) (1) The total loans and extensions of credit made by a state-chartered banking institution to any one person or common enterprise and not fully secured, as determined in a manner consistent with subdivision (2) of this subsection, may not exceed 15 percent of the unimpaired capital and unimpaired surplus of that state-chartered banking institution initially determined for the period such loan or extension of credit is made.

(2) Where the total loans and extensions of credit by a state-chartered banking institution to any one person or common enterprise are fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to the outstanding amount of such loans and extensions, then the bank may provide such loans or extensions of up to 10 percent of the unimpaired capital and unimpaired surplus of that state-chartered banking institution initially determined for the period such loan or extension is made. This limitation shall be separate from and in addition to the limitation contained in subdivision (1) of this subsection.

(3) For the purposes of this subsection:

(A) The term "loans and extensions of credit" includes all direct or indirect advances of funds to a person made on the basis of any obligation of that person to repay the funds or repayable from specific property pledged by or on behalf of the person and to the extent specified by the Commissioner of Financial Institutions; the terms also include any liability of a state-chartered banking institution to advance funds to or on behalf of a person pursuant to a contractual commitment;

(B) The term "person" includes an individual, partnership, sole proprietorship, society, association, firm, institution, company, public or private corporation, not-for-profit corporation, state, governmental agency, bureau, department, division or instrumentality, political subdivision, county commission, municipality, trust, syndicate, estate or any other legal entity whatsoever, formed, created or existing under the laws of this state or any other jurisdiction;

(C) The term "unimpaired capital and unimpaired surplus" means the amount of tier 1 (core) capital, as defined in federal regulations, that is outstanding as indicated in the bank's most recent quarterly report of condition and income as filed with the Commissioner of Financial Institutions pursuant to §31A-4-19 of this code, plus the amount of the allowance for loan losses; and

(D) The term "common enterprise" includes, but is not limited to, persons and entities who are so related by business or otherwise that the expected source of repayment on the loan or

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extension of credit is substantially the same for each person or entity.

(4) The limitations contained in this subsection are subject to the following exceptions:

(A) Loans or extensions of credit arising from the discount of commercial or business paper evidencing an obligation to the person negotiating it with recourse are not subject to any limitation based on capital and surplus;

(B) The purchase of bankers' acceptances of the kind described in Section 13 of the Federal Reserve Act and issued by other banks are not subject to any limitation based on capital and surplus;

(C) Loans and extensions of credit having a term of 10 months or less and secured by bills of lading, warehouse receipts or similar documents transferring or securing title to readily marketable staples are subject to a limitation of 20 percent of unimpaired capital and unimpaired surplus in addition to the general limitations set forth in subdivision (1) of this subsection, provided the market value of the staples securing each additional loan or extension of credit at all times equals or exceeds 115 percent of the outstanding amount of such loan or extension of credit. The staples shall be fully covered by insurance whenever it is customary to insure the staples. If collateral values of the staples fall below the levels required herein, to the extent that the loan is no longer in conformance with its collateral requirements and exceeds the general 15 percent limitation, the loan must be brought into conformance within five business days, except where judicial proceedings, regulatory actions or other extraordinary occurrences prevent the bank from taking action;

(D) Loans or extensions of credit secured by bonds, notes, certificates of indebtedness or treasury bills of the United States or by other such obligations fully guaranteed as to principal and interest by the United States or by bonds, notes, certificates of indebtedness which are general obligations of the State of West Virginia or by other such obligations fully guaranteed as to principal and interest by the State of West Virginia are not subject to any limitation based on capital and surplus;

(E) Loans or extensions of credit to or secured by unconditional takeout commitments or guarantees of any department, agency, bureau, board, commission or establishment of the United States or of the State of West Virginia or any corporation wholly owned directly or indirectly by the United States are not subject to any limitation based on capital and surplus;

(F) Loans or extensions of credit secured by a segregated deposit account in the lending bank are not subject to any limitation based on capital and surplus;

(G) Loans or extensions of credit to any banking institution or to any receiver, conservator or other agent in charge of the business and property of such banking institution or other federally insured depository institution, when the loans or extensions of credit are approved by the Commissioner of Financial Institutions, are not subject to any limitation based on capital and surplus;

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(H) (i) Loans and extensions of credit arising from the discount of negotiable or nonnegotiable installment consumer paper which carries a full recourse endorsement or unconditional guarantee by the person or common enterprise transferring the paper are subject under this section to a maximum limitation equal to 25 percent of such unimpaired capital and unimpaired surplus, notwithstanding the collateral requirements set forth in subdivision (2) of this subsection;

(ii) If the bank's files or the knowledge of its officers of the financial condition of each maker of consumer paper is reasonably adequate and an officer of the bank designated for that purpose by the board of directors of the bank certifies in writing that the bank is relying primarily upon the responsibility of each maker for payment of such loans or extensions of credit and not upon any full or partial recourse endorsement or guarantee by the transferor, the limitations of this section as to the loans or extensions of credit of each such maker are the sole applicable loan limitations;

(I)(i) Loans and extensions of credit secured by shipping documents or instruments transferring or securing title covering livestock or giving a lien on livestock when the market value of the livestock securing the obligation is not at any time less than 115 percent of the face amount of the note covered shall be subject under this section to a maximum limitation equal to 25 percent of the unimpaired capital and unimpaired surplus, notwithstanding the collateral requirements set forth in subdivision (2) of this subsection;

(ii) Loans and extensions of credit which arise from the discount by dealers in livestock of paper given in payment for livestock, which paper carries a full recourse endorsement or unconditional guarantee of the seller and which are secured by the livestock being sold, are subject under this section to a limitation of 25 percent of the unimpaired capital and unimpaired surplus, notwithstanding the collateral requirements set forth in subdivision (2) of this subsection;

(iii) If collateral values of the livestock documents, instruments or discount paper fall below the levels required herein, to the extent that the loan is no longer in conformance with its collateral requirements and exceeds the general 15 percent limitation, the loan must be brought into conformance within 30 business days, except where judicial proceedings, regulatory actions or other extraordinary occurrences prevent the bank from taking action;

(J) Loans or extensions of credit to the Student Loan Marketing Association are not subject to any limitation based on capital and surplus; and

(K) Loans or extensions of credit to a corporation owning the property in which that state-chartered banking institution is located, when that state-chartered banking institution has an unimpaired capital and surplus of not less than $1 million or when approved in writing by the Commissioner of Financial Institutions, are not subject to any limitation based on capital and surplus.

(5) (A) The Commissioner of Financial Institutions may prescribe rules to administer and

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carry out the purposes of this subsection including rules to define or further define terms used in this subsection and to establish limits or requirements other than those specified in this subsection for particular classes or categories of loans or extensions of credit;

(B) The Commissioner of Financial Institutions may also prescribe rules to deal with loans or extensions of credit, which were not in violation of this section prior to the effective date of this article, but which will be in violation of this section upon the effective date of this article; and

(C) The Commissioner of Financial Institutions may also determine when a loan putatively made to a person is, for purposes of this subsection, attributed to another person.

(b) (1) Except as hereinafter provided or otherwise permitted by law, nothing herein contained authorizes the purchase by a state-chartered banking institution for its own account of any shares of stock of any corporation: *Provided,* That a state-chartered banking institution may purchase and sell securities and stock without recourse, solely upon the order and for the account of customers.

(2) The total amount of investment securities of any one obligor or maker held by a state-chartered banking institution for its own account may not exceed that percentage of the unimpaired capital and unimpaired surplus of that state-chartered banking institution as is permitted for investment by national banks or for any federally insured depository institution.

(3) For purposes of this subsection:

(A) The term "investment securities" means a marketable obligation in the form of a stock, bond, note or debenture commonly regarded as an investment security and that is salable under ordinary circumstances with reasonable promptness at a fair value. "Derivative security" means a type of investment security involving a financial contract whose value depends on the values of one or more underlying assets or indexes of asset values. The term "derivative" refers inter alia to financial contracts such as collateralized mortgage obligations, forwards, futures, forward rate agreements, swaps, options and caps/floors/collars whose primary purpose is to transfer price risks associated with fluctuations in asset values;

(B) The term "person" includes any individual, partnership, sole proprietorship, society, association, firm, institution, company, public or private corporation, not-for-profit corporation, state, governmental agency, bureau, department, division or instrumentality, political subdivision, county commission, municipality, trust, syndicate, estate or any other legal entity whatsoever, formed, created or existing under the laws of this state or any other jurisdiction; and

(C) The term "unimpaired capital and unimpaired surplus" has the same meaning as set forth in subsection (a) of this section.

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(4) Notwithstanding any other provision of this subsection, a state-chartered banking institution may invest its funds in any investment authorized for national banking associations or for any other federally insured depository institution. The investments by state-chartered banking institutions shall be on the same terms and conditions applicable to national banking associations or any other federally insured depository institution: *Provided,* That: (i) The purchase of investment securities under this subdivision may be made only when in the bank's prudent judgment, which judgment may be based in part on estimates which it believes to be reliable, there is adequate evidence that the obligor will be able to perform all it undertakes to perform in connection with the securities, including all debt service requirements, and that the securities may be sold with reasonable promptness at a price that corresponds to their fair value; and (ii) the purchase conforms to the requirement of subdivision (5) of this subsection. The Commissioner of Financial Institutions may, from time to time, provide notice to state-chartered banking institutions of authorized investments under this paragraph.

(5) The purchase of investment securities, including derivative securities, in which the investment characteristics are considered distinctly or predominantly speculative, or the purchase of such securities that are in default, whether as to principal or interest, is prohibited. The proper management of interest rate risk through the use of derivative or other investment securities may not be held a speculative purpose.

(6) The Commissioner of Financial Institutions may prescribe rules to administer and carry out the purposes of this subsection, including rules to define or further define terms used in this subsection and to establish limits or requirements other than those specified in this subsection for particular classes or categories of investment securities.

(c) If there is a material decline of unimpaired capital and unimpaired surplus of a state-chartered bank during any quarterly reporting period of more than 20 percent from that amount reported in the bank's most recent report of income and condition, or where there is a decrease of more than 30 percent in any 12 month period, the bank shall review its outstanding loans, extensions of credit and investments and report to the Commissioner of Financial Institutions those loans, extensions and investments that exceed the limitations of this section using the bank's current reevaluated unimpaired capital and unimpaired surplus. The report shall detail the bank's position in each such loan, extension of credit and investment. The commissioner may, within his or her discretion, require that such loans, extensions of credit and investments be brought into conformity with the bank's current reevaluated legal lending and investment limitation.

(d) Notwithstanding any other provision of this section, in order to ensure a bank's safety and soundness, the Commissioner of Financial Institutions retains the authority to direct any state-chartered bank to recalculate its lending and investment limits at more frequent intervals than otherwise provided herein and to require all outstanding loans, extensions of credit and investments be brought into conformance with the reevaluated limitations. In such cases, the commissioner will provide the bank a written notice explaining briefly the specific reasons why the determination was made to require the more frequent calculations.

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(e) Loans to directors or executive officers are subject to the following limitations:

(1) A director or executive officer of any banking institution may not borrow, directly or indirectly, from a banking institution with which he or she is connected more than $25,000 or five percent of unimpaired capital and surplus to a maximum aggregate amount of $500,000 without the prior approval of a majority of the board of directors or discount committee of the banking institution, or of any duly constituted committee whose duties include those usually performed by a discount committee. The approval shall be by resolution adopted by a majority vote of the board or committee, exclusive of the director or executive officer to whom the loan is made.

(2) If any director or executive officer of any bank owns or controls a majority of the stock of any corporation, or is a partner in any partnership, a loan to the corporation or partnership constitutes a loan to the director or officer.

(3) For purposes of this subsection, an "executive officer" means:

(A) A person who participates or has authority to participate, other than in the capacity of a director, in major policy-making functions of the company or bank, regardless of any official title, salary or other compensation. The chairman of the board, the president, every vice president, the cashier, the secretary and the treasurer of a company or bank are considered executive officers unless the officer is excluded, by resolution of the board of directors or by the bylaws of the bank or company from participation, other than in the capacity of director, in major policy-making functions of the bank or company and the officer does not actually participate therein.

(B) An executive officer of a company of which the bank is a subsidiary, and any other subsidiary of that company, unless the executive officer of the subsidiary is excluded, by name or by title, from participation in major policy-making functions of the bank by resolutions of the boards of directors of both the subsidiary and the bank and does not actually participate in such major policy-making functions.

(4) Prior approval under subdivision (1) of this subsection is not required for:

(A) Payments of overdrafts pursuant to: (i) A written, preauthorized, interest-bearing extension of credit plan that has been approved by the board of directors or an appropriate committee and that specifies a method of repayment; or (ii) a written, preauthorized transfer of funds from another account of the account holder at the bank; or

(B) Payments of inadvertent overdrafts on an account in an aggregate amount of $1,000 or less: *Provided,* That: (i) The account is not overdrawn for more than five consecutive business days; and (ii) the bank charges the director or executive officer the same fee charged to any other customer of the bank in similar circumstances.

(f) An employee of the Division of Financial Institutions whose regulatory activities involve

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participation in an examination, audit, visitation, review, investigation or any other particular matter involving depository institutions chartered by the division may not borrow, directly or indirectly, any sum of money from a state-chartered bank or state-chartered credit union. An employee of the Division of Financial Institutions whose regulatory activities involve participation in an examination, audit, visitation, review, investigation or any other particular matter involving nondepository institutions licensed by the division may not borrow, directly or indirectly, any sum of money from a nondepository entity that is licensed by the division. The commissioner, deputy commissioner and in-house legal counsel of the Division of Financial Institutions may not borrow, directly or indirectly, any sum of money from any entity that is under the jurisdiction of the division.

(g) Securities purchased by a state-chartered banking institution shall be entered upon the books of the bank at actual cost. For the purpose of calculating the undivided profits applicable to the payment of dividends, securities may not be valued at a valuation exceeding their present cost as determined by amortization of premiums and accretion of discounts pursuant to generally accepted accounting principles, that is, by charging to profit and loss a sum sufficient to bring them to par at maturity: *Provided,* That securities held for trade or permissible marketable equity securities and any other types of debt securities which pursuant to generally accepted accounting principles are to be carried on the bank's books at fair market value shall have the unrealized market appreciation and depreciation included in the income and capital as permitted by generally accepted accounting principles.

(h) The market value of securities purchased and loans extended by a state-chartered banking institution shall be reported in all public reports and quarterly reports to the commissioner pursuant to §31A-4-19 of this code in accordance with generally accepted accounting principles and any applicable state or federal law, rule or regulation.

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§31A-4-27. Loans eligible for federal insurance or guaranty.

Banking institutions are authorized:

(a) To make such loans and advances of credit and purchases of obligations representing loans and advances of credit as are eligible for insurance or guaranty by the federal housing commissioner or United States administrator of veterans' affairs, or by any other officer, department, agency or instrumentality of the United States for the purpose of financing alterations, repairs and improvements upon real property, and to obtain such insurance or guaranty; and

(b) To make such loans secured by real property or leasehold as the federal housing commissioner or administrator of veterans' affairs or any other officer, department, board, bureau, commission, agency or instrumentality of the United States insures or guarantees or makes a commitment to insure or guarantee and to obtain such insurance or guaranty.

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§31A-4-28. Investments in obligations secured by mortgages or deeds of trust insured or guaranteed by United States; securities of federal agencies; use of such obligations and securities as collateral, etc.

It shall be lawful for banking institutions to invest their funds and the moneys in their custody or possession eligible for investment, in notes, bonds or other obligations secured by mortgages or deeds of trust insured or guaranteed by the federal housing commissioner or United States administrator of veterans' affairs or by any other officer, department, agency or instrumentality of the United States and in notes, bonds, debentures and other obligations and securities issued by, insured by, or guaranteed by the federal housing commissioner, federal national mortgage association or government national mortgage association or in other federal agencies securities.

Wherever, by statute of this state, collateral is required as security for the deposit of public or other funds; or deposits are required to be made with any public official or department; or an investment of capital or surplus, or a reserve or other fund, is required to be maintained consisting of designated securities, such notes and bonds, debentures, obligations and federal agencies securities shall be eligible for such purposes.

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§31A-4-29. Application of other laws to loans and investments under §§31A-4-27 and 31A-4-28.

No law of this state prescribing the security upon which loans or investments may be made or the nature, amount, or form of such security, or prescribing or limiting the period for which loans or investments may be made shall be deemed to apply to loans or investments made pursuant to the provisions of the two preceding sections of this article by banking institutions or by any person pursuant to the provisions of section five, article one of this chapter; and no law limiting interest rates upon loans or investments shall be deemed to apply to any such loans or investments.

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§31A-4-30. Charges and interest allowed in certain cases; negotiability of installment notes.

In addition to the interest rate provided in article six, chapter forty-seven of this code and elsewhere by law, a banking institution may charge interest together with other finance charges at a rate of eighteen percent per annum or less calculated according to the actuarial method, or one and one-half percent per month, computed on unpaid balances. Additional charges in connection with consumer loans are limited as provided in section one hundred nine, article three, chapter forty-six-a of this code. Loans may be made on a precomputed basis: Provided, That upon prepayment in full of a precomputed loan, the bank shall rebate the unearned portion of such finance charges as specified in section five-d, article six, chapter forty-seven of this code. Any note evidencing any such installment loan may provide that the entire unpaid balance thereof at the option of the holder shall become due and payable upon default in the payment of any stipulated installment without impairing the negotiability of such note if otherwise negotiable.

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§31A-4-30a. Alternative maximum interest rate on loans by banks chartered under state law.

(a) The Legislature hereby finds and declares that:

(1) Under federal banking laws, national banking associations are permitted to charge interest on loans at a rate not exceeding one percent in excess of the discount rate on ninety-day commercial paper in effect at the federal reserve bank in the federal reserve district where the national banking association is located;

(2) Banks chartered under the laws of West Virginia should be able to charge interest on a comparable basis, and hence avoid being placed at a competitive disadvantage in relation to national banking associations having their principal offices in the state;

(3) It is in the best interest of the citizens of this state to preserve the state banking system and to that end, and in order to foster equitable competition as to interest rates, to provide a means by which banks chartered under the laws of West Virginia, as an alternative to the interest rates authorized by any other provisions of this code, may charge interest at a rate comparable to the rate permitted to national banking associations; therefore,

(4) As an alternative to the interest rate authorized by any other provisions of this code, any bank now or hereafter chartered under the laws of West Virginia may, after the effective date of this section, on any loan of money, contract in writing for the payment of interest at a rate, including points expressed as a percentage of the loan divided by the number of years of the loan contract, not to exceed one percent in excess of the discount rate on ninety-day commercial paper in effect at the federal reserve bank in the federal reserve district where the state bank is located.

(b) For the purpose of subsection (a) of this section, the term "points" is defined as the amount of money, or other consideration, received by any person or by such banks, from whatever source, as a consideration for making the loan and not otherwise expressly permitted by statute.

(c) A commitment to make a loan pursuant to this section which provides for consummation within some future time may be consummated pursuant to the provisions, including interest rate, of such commitment notwithstanding the fact that the maximum rate of interest at the time the loan contract is entered into is less than a commitment rate of interest: Provided, That the commitment rate of interest does not exceed the maximum interest rate in effect on the date the commitment was issued: Provided, however, That the commitment when agreed to by the borrower constitutes a legally binding obligation on the part of such person or such bank to make such a loan within a specified time period in the future at a rate of interest not exceeding the maximum rate of interest effective as of the date of commitment, and the commitment does not include any condition for increase of the interest rate at the time of loan consummation even though the maximum rate of interest is then higher.

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(d) Nothing contained in this section shall prohibit the parties to any loan transaction from contracting for a rate of interest authorized by any other provision of this code.

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§31A-4-31. Uniform and continuing depository bonds authorized; review of such bonds; correction of inadequacy; security for federally insured deposits not required.

Notwithstanding any provision of any law, ordinance, order, rule, regulation or resolution requiring depository bonds of banking institutions covering state, county and municipal deposits or the deposits of any state, county, municipality or other political subdivision agency, bureau, department, instrumentality or officer or public corporation to be renewed annually or periodically, all such depository bonds may be uniform in content and continuing in nature and need not be renewed annually or periodically, but it shall be the responsibility of any such depositor to review the bonds covering its deposits from time to time, and at least once each year on or about the anniversary date of each one thereof, to ascertain and verify that the coverage and sureties are adequate and sufficient in all particulars and that such bonds comply with all lawful requirements. In the event any bond is found to be inadequate or insufficient, written notice of the inadequacy or insufficiency shall be given to the banking institution, and it shall be the responsibility of the banking institution to act promptly to correct the same by executing a new bond or enlarging and correcting the coverage of the existing bond, or by taking such other action as may be required.

The commissioner of banking, with the approval of the Attorney General, shall prescribe the form of the uniform and continuing type of depository bonds as authorized by this section.

Notwithstanding any provision of any such law, ordinance, order, rule, regulation or resolution requiring security for such deposits in the form of collateral, surety bond or other assets or documents, security for such deposits shall not be required to the extent such deposits are insured by the federal deposit insurance corporation.

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§31A-4-32. Adverse claims to deposits and property held in safe deposit.

(a) A banking institution shall not be required, in the absence of a court order or indemnity required by this section, to recognize any claim to, or any claim of authority to exercise control over, a deposit account or property held in safe deposit (whether by the institution or in a safe-deposit box or other receptacle leased to a customer) made by a person or persons other than:

(1) The customer in whose name the account or property is held by the institution, or

(2) An individual or group of individuals who are authorized to draw on or control the account or property pursuant to a certified corporate resolution or other written arrangement with the customer, currently on file with the institution, which:

(A) Has not been revoked by valid corporate action in the case of a corporation, or by a valid agreement or other valid action appropriate for the form of legal organization of any other customer, of which the institution has received notice, and

(B) Is not the subject of a dispute known to the institution as to its original validity.

(b) To require an institution to recognize an adverse claim to, or adverse claim of authority to control, a deposit account or property held in safe deposit, whoever makes the claim must either:

(1) Obtain and serve on the institution an appropriate order directed to the institution by a court restraining any action with respect to the account or property until further order of such court or instructing the institution to pay the balance of the account or deliver the property, in whole or in part, as provided in the order, or

(2) Deliver to the institution a bond, in form and amount and with sureties satisfactory to the institution, indemnifying the institution against any liability, loss, damage, cost or expense, including reasonable attorney fees, which it might incur because of its recognition of the adverse claim or because of its refusal by reason of such claim to honor any check or other order of, or to deliver any property to anyone described in subdivisions (1) and (2) of subsection (a) of this section.

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§31A-4-33. Deposits in trust; deposits in more than one name; limitation on liability of institutions making payments from certain accounts; notice requirements; pledges or garnishment of joint accounts; financial institutions duties; multiple-fiduciary accounts; payment of multiple-fiduciary accounts.

(a) If any deposit in any banking institution be made by any person describing him or herself in making such deposit as trustee for another, and no other or further notice of the existence and terms of a legal and valid trust than such description shall be given in writing to the banking institution, in the event of the death of the person so described as trustee, such deposit, or any part thereof, together with the interest thereon, may be paid to the person for whom the deposit was thus stated to have been made.

(b) When a deposit is made by any person in the name of such depositor and another or others and in form to be paid to any one of such depositors, or the survivor or survivors of them, such deposit, and any additions thereto, made by any of such persons, upon the making thereof, shall become the property of such persons as joint tenants. All such deposits, together with all interest thereon, shall be held for the exclusive use of the persons so named, and may be paid to any one of them during the lifetime of them, or to the survivor or survivors after the death of any of them.

(c) Payment to any joint depositor and the receipt or the acquittance of the one to whom such payment is made shall be a valid and sufficient release and discharge for all payments made on account of such deposit, prior to the receipt by the banking institution of notice in writing, signed by any one of such joint tenants not to pay such deposit in accordance with the terms thereof. Prior to the receipt of such notice, no banking institution shall be liable for the payment of such sums.

(d) When any joint deposit account is opened on or after July 1, 1994, the owners thereof shall be given written notice either on a signature card or in connection with the execution of a signature card that the entire balance of any such account may be paid to a creditor or other claimant of any one of the joint tenants pursuant to legal process, including, but not limited to, garnishment, suggestion, or execution, regardless of the receipt of any notice from any of the joint tenants. Such notice shall also advise the owners of a joint deposit account that the entire balance of any such account may be paid to any of the named joint tenants at any time; pledged as security to a banking institution by any of the named joint tenants; or otherwise encumbered at the request of any of the named joint tenants unless written notice is given to the banking institution, signed by any one of the joint tenants, not to permit such payment, pledge, or encumbrance. The giving of the notice required by this section to any of the joint deposit account owners shall be deemed effective notice to all owners of the joint deposit account.

(e) If a pledge or encumbrance of any joint account created pursuant to this section is made to a banking institution and the banking institution has not received, prior to the date of the pledge, any written notice signed by any one of the joint tenants prohibiting such a pledge or encumbrance, the banking institution shall not be liable to any one of the joint tenants for its

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recourse against the deposit in accordance with the terms of the pledge.

(f) A banking institution may pay the entire amount of a deposit account created pursuant to this section to a creditor or other claimant of any one of the joint tenants in response to legal process employed by the creditor including, but not limited to, garnishment, suggestion, or execution, regardless of any notice received from any of the joint tenants. Upon such payment, the banking institution shall be released and discharged from all payments on account of such deposit: *Provided*, That payment by a banking institution to any such creditor shall be without prejudice to any right or claim of any joint tenant against the creditor or any other person to recover his or her interest in the deposit.

(g) A banking institution may enter into multiple-fiduciary accounts with more than one fiduciary to the same extent that they may enter into fiduciary accounts with one fiduciary. Any multiple-fiduciary account may be paid, on request: (i) To any one or more fiduciaries, including any successor fiduciary upon proof showing that the successor fiduciary is duly authorized to act; or (ii) at the direction of any one or more of the fiduciaries. For the purposes of this section:

(1) "Fiduciary account" means: (i) An estate account for a decedent; (ii) an account established by one or more agents under a power of attorney or an existing account of a principal to which one or more agents under a power of attorney are added; (iii) an account established by one or more conservators; (iv) an account established by one or more committees; (v) a regular trust account under a testamentary trust or a trust agreement that has significance apart from the account; or (vi) an account arising from a fiduciary relationship such as an attorney-client relationship. "Fiduciary account" does not include a trust account;

(2) "Multiple-fiduciary account" means a fiduciary account where more than one fiduciary is authorized to act.

(h) The commissioner shall promulgate rules in accordance with the provisions of chapter 29A of this code regarding the procedures required by this section.

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§31A-4-33a. Establishment of payable on death accounts; rights of account owners; change of beneficiary to be in writing; rights of beneficiaries; limitation on liability of institutions making payments from such accounts.

(a) Any person may enter into a written contract with any banking institution located in this state to establish a payable on death bank account, which may be abbreviated as a "p.o.d." account. A payable on death account contract shall provide that upon the death of the account owner the balance of any such account shall be paid to the beneficiary or beneficiaries specifically designated by the owner of the account who are surviving at the time of the owner's death. Two or more persons may own such an account as joint tenants with right of survivorship, in which case the interest of any designated beneficiary shall vest only upon the death of the last surviving joint owner. Upon the death of the owner, or last surviving owner, the balance of the account shall be paid only to the designated surviving beneficiaries. The terms of the payable on death contract take precedence over contrary provisions of any other testamentary document.

(b) The owner of a payable on death account shall maintain all right, title and interest in the banking account, including principal and interest, during his or her lifetime; may freely withdraw and use the moneys on deposit in the payable on death account, in whole or in part; and may terminate or close the account at will.

(c) The account owner may change the designated beneficiary at any time. Such change must be in writing and executed in the form and manner prescribed by the bank. Any such change of beneficiary must be delivered to the bank prior to the death of the payable on death account owner in order to be valid.

(d) Designated beneficiaries have no rights or claims to a payable on death account until the death of the last surviving owner of such account. Unless otherwise provided in the written contract, where two or more beneficiaries are designated, upon the death of the account owner, each surviving beneficiary shall be paid a per capita share of the account balance. If no designated beneficiary survives the last account owner, any account balance shall become a part of the last surviving account owner's estate.

(e) If a designated beneficiary is a minor at the time he or she becomes vested with any part of a payable on death account, that portion of the account shall be paid to the minor beneficiary in accordance with the provisions of section thirty-four, article four, chapter thirty-one-a of this code.

(f) Upon the death of the last surviving account owner, delivery of moneys in a payable on death account to the designated beneficiary or beneficiaries pursuant to the terms of the written contract shall fully and completely discharge the banking institution of all obligations under said contract.

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§31A-4-34. Payment of deposits to minors.

Whenever any minor shall make, or have credit for, a deposit in any banking institution, in his or her name, the money so deposited may be paid out on the check or order of such depositor the same as in case of a depositor of legal age, and such payment shall be in all respects valid, except when such banking institution has been specifically directed in writing by the parent or guardian of such minor not to make such payment.

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§31A-4-35. Reproduction of checks and other records; admissibility of copies in evidence; disposition of originals; record production generally.

(a) Any bank may cause to be copied or reproduced, by any photographic, photostatic, microphotographic or by similar miniature photographic process or by nonerasable optical image disks (commonly referred to as compact disks) or by other records retention technology approved by rule of the Commissioner of Banking, all or any number of its checks and all or any part of its documents, books, records, correspondence and all other instruments, papers and writings in any manner relating to the operation of its business, other than its notes, bonds, mortgages and other securities and investments, and may substitute such copies or reproductions either in positive or negative form for the originals thereof. Thereafter, such copy or reproduction in the form of a positive print thereof shall be deemed for all purposes to be an original counterpart of and shall have the same force and effect as the original thereof and shall be admissible in evidence in all courts and administrative agencies in this state, to the same extent and for the same purposes as the original thereof, and the banking institution may destroy or otherwise dispose of the original, but every banking institution shall retain either the originals or such copies or reproductions of its records of final entry, including, without limiting the generality of the foregoing, cards used under the card system and deposit tickets for deposits made, for a period of at least five years from the date of the last entry on such books or the date of making of such deposit tickets and card records or, in the case of a banking institution exercising trust or fiduciary powers, accounting and legal records shall be retained until the expiration of five years from the date of termination of any trust or fiduciary relationship relating to such accounting and legal records by a final accounting, release, court decree or other proper means of termination and supporting documentation for fiduciary account transactions shall be retained for five years from the dates of entry of such transactions.

All circumstances surrounding the making or issuance of such checks, documents, books, records, correspondence and other instruments, papers or writings, or the photographic, photostatic or microphotographic copies or optical disks or other permissible reproductions thereof, when the same are offered in evidence, may be shown to affect the weight but not the admissibility thereof.

Any device used to copy or reproduce such documents and records shall be one which correctly and accurately reproduces the original thereof in all details and any disk or film used therein shall be of durable material.

(b) When a subpoena duces tecum is served upon a custodian of records of any bank in an action or proceeding in which the bank is neither a party nor the place where any cause of action is alleged to have arisen and the subpoena requires the production of all or any part of the records of the bank relating to the conduct of its business with its customers, the bank shall be entitled to a search fee not to exceed $10, together with reimbursement for costs incurred in the copying or other reproduction of any such record or records which have already been reduced to written form, in an amount not to exceed 75 cents per page. Any and all such costs shall be borne by the party requesting the production of the record or

records.

(c) Notwithstanding any other provision of this code establishing a statute of limitations for any period greater than five years, any action by or against a bank for any balance, amount, or proceeds from any time, savings or demand deposit account based on the contents of records for which a period of retention or preservation is set forth in subsection (a) of this section shall be brought within the time for which the record must be retained or preserved.

(d) If records are retained beyond the period set forth in subsection (a) of this section or the bank otherwise has information regarding the status of funds held or previously held in any time, savings or demand deposit account, the bank shall provide such information, to the extent permitted by all applicable state and federal privacy laws, upon written request, to anyone with a legal interest in such balance, amount, or proceeds. This section does not apply to savings accounts or certificates of deposit established as a result of any legal action for the benefit of a minor: *Provided*, That an action to enforce a demand, savings, or time deposit, including a deposit that is automatically renewable, is barred where the property meets the criteria for abandonment pursuant to §36-8-2(a)(5) of this code.

(e) No liability shall accrue against any bank because of the destruction of any of its records or copies thereof as permitted by subsection (a), and in any judicial or other action or proceeding in which any such records or copies thereof may be called in question or be demanded of the institution or any officer or employee thereof, a showing that such records or copies thereof have been destroyed in accordance with the provisions of subsection (a) is a sufficient defense for the failure to produce them.

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§31A-4-36. Statement of account to customers; duties of customers; limitations.

When a banking institution makes a statement of account available to its customer in the manner provided in section four hundred six, article four, chapter forty-six of this code, such customer shall, with respect to errors in said account, have the same duties and shall be bound by the same rules, preclusions and limitations as are provided in said section four hundred six with respect to any alteration of an item.

WV Legislature

§31A-4-37. Sale of machine operations and services.

Any state banking institution or institutions, or institution or institutions jointly with a national banking association or associations, owning, leasing or renting, directly or through a subsidiary corporation wholly owned by it or them, computer, bookkeeping, or other like or similar machines or equipment for its or their own business operations, may contract for the sale of and sell the services, use and products of the machines or equipment to other financial institutions and businesses, upon such terms and conditions as may be the subject of agreement between the parties, but only when the use and services of the machines and equipment are not employed in the orderly operations of such banking institution, institutions, association or associations.

WV Legislature

§31A-4-38. Direct leasing of personal property.

Banking institutions may, subject to rules and regulations promulgated by the commissioner of banking, acquire and lease personal property pursuant to a binding arrangement for the leasing of such property to any person upon terms requiring payment to the institution, during the minimum period of the lease, of rentals which in the aggregate will exceed a reasonable estimate of the total expenditures to be made by the institution for or in connection with the acquisition, ownership, maintenance and protection of the property.

WV Legislature

§31A-4-39. Transactions on legal holidays and Sundays.

No act or transaction of any banking institution shall be void or voidable because done on a legal holiday or a Sunday. But this section shall not be construed to require of any such institution the doing of any act on a legal holiday or a Sunday.

WV Legislature

§31A-4-40. Permissive closing on fixed weekday or portions of weekdays; notice of closings; emergency closings; procedures.

(a) Any banking institution may elect to operate branches that are open for business on the days and for the hours as determined appropriate by that banking institution. Prior to changing the days or hours a branch or main office will be open for business, the banking institution shall provide notice of the change to its customers in the form of conspicuous signage in the lobby and any drive-through lanes at that branch posted at least forty-five days prior to the change. The banking institution shall also provide the Commissioner of Financial Institutions with forty-five days' advance written notice of the change.

(b) Any banking institution may close, without notice, during any period of actual or threatened enemy attack affecting the community in which the banking institution is located or during any period of other emergency including, but not limited to, fire, flood, hurricane, riot, snow or civil commotion: Provided, That the commissioner shall be notified of any closing made pursuant to this subsection as soon as practical thereafter.

(c) Any fixed weekday and/or portion of one or more weekdays on which any banking institution elects to close and any period during which the commissioner may permit it to close pursuant to the authority of this section is a legal holiday with respect to the banking institution and not a business day or banking day for the purposes of the law relating to negotiable instruments and any act or contract authorized, required or permitted to be carried out or performed at, by or with respect to the banking institution may be performed on the next business or banking day and no liability or loss of rights on the part of any person or banking institution shall result therefrom.

WV Legislature

§31A-4-41. Additional authority of board as to limited operations and cessation of business by state banks.

The board may, by and with the consent of the Governor, permit or require any state bank or any number or all of such banks to:

(1) Operate and do business in such manner and under such limitations and regulations as the board, with the approval of the Governor, may prescribe, or

(2) Cease business for such period of time as the board, with the approval of the Governor, may direct, in which case the period of such cessation shall be held to be a legal holiday as to such bank or banks.

WV Legislature

§31A-4-42. Unlawful for persons other than banking institutions to engage in the banking business; penalties.

No person, except banking institutions chartered under the laws of this state, or authorized to conduct a banking business in this state under the laws of the United States of America or those chartered under the laws of another state or the United States of America with branch offices in this state under the provisions of articles eight-d and eight-e of this chapter, may engage in the business of banking or the trust business in the State of West Virginia, or shall receive or accept deposits of money, or borrow money by receiving and giving credits for deposits, or by issuing certificates of deposits or certificates of indebtedness, or by making and negotiating any writing purporting to be a bond, contract or other obligation, the performance of which requires the holder or other party to make deposits of money with the issuer or receive or accept deposits by means of any other plan, pretext, scheme, shift or device: Provided, That a nonbanking subsidiary of a bank holding company, a nonbanking subsidiary of a banking institution or an entity jointly owned by federally insured depository institutions may provide trust services pursuant to subsection (d), section fourteen of this article.

Nothing contained in this section may affect the rights, privileges, objects or purposes delegated to other corporations by the general corporation law or other laws of this state.

Any corporation or individual who violates any of the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $5,000 and, in addition to penalty, every corporation so offending shall forfeit its corporate franchise and every individual so offending is subject to a further penalty by confinement in the county or regional jail for not more than one year.

WV Legislature

§31A-4-43. Negotiable order of withdrawal accounts allowed.

A banking institution may permit the owner of a deposit or account on which interest or dividends are paid to make withdrawals by negotiable or transferable instruments for the purpose of making transfers to third parties if such deposit or account consists solely of funds in which the entire beneficial interest is held by one or more individuals or by an organization which is operated primarily for religious, philanthropic, charitable, educational or similar purposes and which is not operated for a profit or if such deposit or account consists of public funds deposited by an officer, employee or agent of the United States, any state, county, municipality or political subdivision thereof.

WV Legislature

§31A-4-44. Employment information.

It is not unlawful for any officer of a financial institution, as that term is defined in section two, article one, chapter thirty-one-a of this code, to provide employment information about an employee or former employee to another financial institution when that information is limited to the employee's, or former employee's, active participation in a violation of any state or federal statute, rule or regulation related to financial institutions and which has been duly reported to the proper state or federal prosecutorial authorities.

WV Legislature

§31A-4-45. Refusal of banking institutions to open checking accounts for certain individuals convicted of worthless check violations; authorizing criminal background investigation by banking institutions; civil immunity; and confidentiality.

(a) Any banking institution may refuse to open an account with a potential customer based on its actual or constructive knowledge, or when through background investigation it has acquired information or knowledge, that the customer has previously been convicted of two or more violations of section thirty-nine or section thirty-nine-a, article three, chapter sixty-one of this code, involving obtaining property in return for a worthless check or issuance of a worthless check within five years prior to the request to open the account, or during that period has been of two violations of such activity under federal law or the laws of another state. This provision shall not impair the bank's ability to refuse to open an account for a potential customer for any other lawful reason, including, but not limited to, past experience with that customer involving overdrawn accounts of checks returned for insufficient funds.

(b) Any banking institution acting pursuant to subsection (a) of this section shall be immune from civil liability for refusing to open an account based on the potential customer's past conviction for obtaining property in return for a worthless check or issuance of a worthless check: Provided, That this immunity shall not apply to any violations of subsection (c) of this section.

(c) Any and all nonpublic records or credit information obtained by the bank, its employees or agents in conducting a background investigation on a customer's or potential customer's previous convictions for violation of section thirty-nine or section thirty-nine-a, article three, chapter sixty-one of this code, or convictions under federal law or the laws of another state involving obtaining property in return for a worthless check or issuance of a worthless check, shall remain confidential and no agent or employee of the banking institution shall publicly disclose or publish any such information obtained.

WV Legislature