WEST VIRGINIA CODE: §31A-8-12

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

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

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

(2) A banking institution located in a county where there is also a higher educational institution as defined in section two, article one, chapter eighteen-b of this code may establish a temporary business office on the campus of any educational institution located in the county for the limited purposes of opening accounts and accepting deposits for a period not in excess of four business days per semester, trimester or quarter. However, prior to opening any temporary office, a banking institution must first obtain written permission from the institution of higher education. The term "business days", for the purpose of this subsection, means days exclusive of Saturdays, Sundays and legal holidays as defined in section one, article two, chapter two of this code;

(3) Any banking institution which on January 1, 1984, was authorized to operate an off-premises walk-in or drive-in facility, pursuant to the law then in effect, may, as of June 7, 1984, operate such facility as a branch bank and it is not necessary, for the continued operation of the branch bank, to obtain additional approvals, notwithstanding the provisions of subsection (d) of this section and subdivision (6), subsection (b), section two, article three of this chapter.

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

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

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

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

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

(d) Subject to and in furtherance of the board's authority under the provisions of subdivision (6), subsection (b), section two, article three of this chapter and subsection (g) of this section, the board, by order, may approve or disapprove the application of any state banking institution to establish a branch bank.

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

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

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

(h) The commissioner shall prescribe the form of the application for a branch bank under the provisions of this section and shall collect an examination and investigation fee of $500 for each filed application for a branch bank that is to be established by the construction, lease or acquisition of a branch bank facility and $500 for a branch bank that is to be established by the purchase of the business and assets and assumption of the liabilities of or merger or consolidation with another banking institution. Notwithstanding the above, if the merger or consolidation is between an existing banking institution and a bank newly incorporated solely for the purpose of facilitating the acquisition of the existing banking institution, the commissioner shall collect an examination and investigation fee of $100. The commissioner may require an examination of a financial institution or an office of a financial institution that is being merged into a state-chartered bank. If an examination is required, the applicant is responsible for paying the examination costs at a rate of $50 per examiner hour. The board shall complete the examination and investigation within ninety days from the date on which the application and fee are received, unless the board requests in writing additional information and disclosures concerning the proposed branch bank from the applicant banking institution. If the board makes that request, the ninety-day period shall be extended

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for an additional period of thirty days plus the number of days between the date of the request and the date the additional information and disclosures are received.

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

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

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

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

(j) A state banking institution may not establish a branch bank until the board, following an examination, investigation, notice and hearing, enters an order approving an application for that branch bank. However, a hearing is not required with respect to any application to establish a branch bank which is approved by the board unless a banking institution has timely filed a petition to intervene pursuant to subsection (g) of this section. The order shall be accompanied by findings of fact that:

(1) The applicant state-chartered banking institution satisfies such reasonable and appropriate requirements as to sound financial condition. For purposes of this subdivision, "sound financial condition" means that a state banking institution meets the required minimum level to be adequately capitalized for each capital measure as determined by its primary federal regulator and is not subject to supervisory action by either a state or federal financial regulatory agency;

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

(3) The establishment of the proposed branch bank would not have the effect in any section of the state of substantially lessening competition, nor tend to create a monopoly or in any other manner be in restraint of trade, unless the anticompetitive effects of the establishment

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of that proposed branch bank are clearly outweighed in the public interest by the probable effect of the establishment of the proposed branch bank in meeting the convenience and needs of the community to be served by that proposed branch bank;

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

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

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

(7) The applicant state-chartered banking institution does not present a significant supervisory concern or raise a significant legal or policy issue by filing the application.

(k) Any party who is adversely affected by the order of the board is entitled to judicial review thereof in the manner provided in section four, article five, chapter twenty-nine-a of this code. Any such party adversely affected by a final judgment of a circuit court following judicial review as provided in the foregoing sentence may seek review thereof by appeal to the Supreme Court of Appeals in the manner provided in article six, chapter twenty-nine-a of this code.

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

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

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