WEST VIRGINIA CODE CHAPTER 31A ARTICLE 8

WV Legislature

§31A-8-1. Hearings before commissioner or hearing examiner; procedure, etc.

(a) Any person who is adversely affected by any order, demand, action, refusal, failure to act, denial or requirement of the commissioner (other than the promulgation of rules and regulations which promulgation shall be in accordance with the provisions of article three, chapter twenty-nine-a of this code) shall be entitled to a hearing thereon before the commissioner or a hearing examiner appointed by him if such person files with the commissioner a written demand for such hearing within ten days after receiving written notice of such order, demand, action, refusal, failure to act, denial or requirement or within ten days after receiving knowledge thereof through the application or implementation thereof or by any other means, whichever event shall first occur.

(b) Upon receipt of a demand for such hearing the commissioner shall set a time and place therefor not less than ten and not more than thirty days thereafter. Said hearing may be continued by the commissioner upon his own motion or for good cause shown by the person demanding the same.

(c) All of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to and govern the hearing and the administrative procedures in connection with and following such hearing.

(d) Any such hearings shall be conducted by the commissioner or a hearing examiner appointed by him For the purpose of conducting such hearings the commissioner or such hearing examiner shall have the power and authority to issue subpoenas and subpoenas duces tecum which shall be issued and served within the time, for the fees and shall be enforced and governed as provided in section one, article five of said chapter twenty-nine-a.

(e) The person demanding such hearing may represent himself thereat or be represented by an attorney at law admitted to practice before any circuit court of this state.

(f) After any such hearing and consideration of all of the testimony, evidence and record in the case, the commissioner shall render his decision in writing affirming, modifying or reversing the order, demand, action, refusal, failure to act, denial or requirement with respect to which such hearing was demanded, which decision 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 such decision and accompanying findings and conclusions shall be served upon the person demanding such hearing, and his attorney of record, if any.

WV Legislature

§31A-8-2. Judicial review; appeals to Supreme Court of Appeals.

(a) Any person adversely affected by any decision of the commissioner made and entered after a hearing as provided in section one of this article shall be entitled to judicial review thereof in the manner provided in section four, article five, chapter twenty-nine-a of this code.

(b) Any person adversely affected by a final judgment of a circuit court following judicial review as provided in subsection (a) of this section 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.

WV Legislature

§31A-8-3. Certain practices by affiliates, officers, etc., of corporate financial institutions forbidden; penalties.

(a) It shall be unlawful for an affiliate of any corporate financial institution or for an officer, director or employee of any corporate financial institution or affiliate thereof:

(1) To solicit, accept or agree to accept, directly or indirectly, from any person other than such institution, any gratuity, compensation or other personal benefit for any action taken or omitted by such institution or for endeavoring to procure the same; or

(2) To have any interest, directly or indirectly, in the proceeds of a purchase or sale made by such institution, unless such purchase or sale is expressly authorized by provisions of this chapter and is approved in advance by vote of a majority of all directors of such institution, any interested director taking no part in such vote; or

(3) To have any interest, direct or indirect, in the purchase at less than its face value of any evidence of indebtedness issued by the institution.

(b) For purposes of this section the term "affiliate" shall include:

(1) Any person who holds a majority of the stock of such corporate financial institution or has been determined by the commissioner of banking to hold a controlling interest therein, or any other corporation in which such person owns a majority of the stock, or any partnership in which he has an interest;

(2) Any corporation in which the institution or an officer, director or employee thereof holds a majority of the stock or any partnership in which such institution or any officer, director or employee thereof has an interest; and

(3) Any corporation of which a majority of the directors are officers, directors or employees of the corporate financial institution or any corporation of which officers, directors or employees thereof constitute a majority of the directors of the corporate financial institution.

(c) Any person who violates any provision of this section shall be guilty of a misdemeanor and, be subject to the penalties provided in section fifteen of this article.

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§31A-8-4. Change in control of banking institution; loans on bank stocks; required procedures; prohibitions; penalties.

(a) Whenever a change occurs with respect to the outstanding voting stock of any banking institution which will result in control or in a change in the control of such banking institution, the president or other chief executive officer of such bank shall promptly report such facts to the commissioner of banking upon obtaining knowledge of such change. As used in this subsection, the term "control" means the power to directly or indirectly direct or cause the direction of the management or policies of the banking institution. A change in ownership of voting stock which would result in direct or indirect ownership by a stockholder or an affiliated group of stockholders of less than ten percent of the outstanding voting stock shall not be considered a change of control. If there is any doubt as to whether a change with respect to the outstanding voting stock is sufficient to result in control thereof or to effect a change in the control thereof, such doubt shall be resolved in favor of reporting the facts to the commissioner.

(b) Whenever a banking institution makes a loan or loans, secured, or to be secured, by twenty-five percent or more of the outstanding voting stock of another banking institution, the president or other chief executive officer of the lending bank shall promptly report such fact to the commissioner of banking upon obtaining knowledge of such loan or loans, except that no report need be made in those cases where the borrower has been the owner of record of the stock for a period of one year or more, or the stock is that of a newly organized bank prior to its opening.

(c) The reports required by this section shall contain the following information to the extent that it is known by the person making the report: (1) the number of shares involved, (2) the names and addresses of the sellers (or transferors), (3) the names and addresses of the purchasers (or transferees), (4) the names and addresses of the beneficial owners if the shares are registered in another name, (5) the purchase price, (6) the total number of shares owned by the sellers (or transferors), the purchasers (or transferees) and the beneficial owners both immediately before and after the transaction, and in the case of a loan, (7) the name and address of the borrower, (8) the amount of the loan, and (9) the name of the banking institution issuing the stock securing the loan and the number of shares securing the loan. In addition to the foregoing, such reports shall contain such other information as may be available to inform the commissioner of the effect of the transaction upon control of the bank whose stock is involved.

(d) Whenever such a change as described in subsection (a) of this section occurs, such banking institution shall report promptly to the commissioner any changes or replacements of its chief executive officer or of any director which occur in the next twelve-month period, including in its report a statement of the past and current business and professional affiliations of the new chief executive officer or directors thereof.

(e) It shall be unlawful for any person to purchase or acquire the stock in any banking institution for purposes of transferring, selling, lending, investing or otherwise disposing of

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properties, funds, securities or other assets of the institution in any manner jeopardizing or imperiling the institution's financial condition.

(f) Any person who violates any provision of this section shall be guilty of a misdemeanor and, be subject to the penalties provided in section fifteen of this article.

WV Legislature

§31A-8-5. Dealing in own stock; stock purchases; limitations; exceptions.

(a) No banking institution shall make any loan or discount any obligation on the security of the shares of its own capital stock, unless taken as a pledge to prevent loss upon a debt previously contracted lawfully and in good faith; and all shares of its stock, held in such manner, shall, within six months after the time of the pledge, be sold or disposed of at public or private sale.

(b) A banking institution may purchase its equity securities in an amount up to ten percent of its net worth in any twelve-month period or restructure its ownership interests for a legitimate corporate purpose without the prior approval of the commissioner, so long as the bank remains well-capitalized under federal regulatory guidelines before and after the purchase or restructuring, the bank is well-managed, the bank is not the subject of any unresolved supervisory issues and the transaction does not constitute a change in control of the banking institution that must be reported pursuant to section four of this article. The banking institution must apply for approval for the purchase of equity securities, on a form prescribed by the commissioner, if the gross consideration for the purchase, when aggregated with the net consideration paid by the banking institution for all such purchases during the preceding twelve months, is equal to ten percent or more of the bank's net worth. For purposes of this section, "net consideration" is the gross consideration paid by the banking institution for all of its equity securities purchased during the period minus the gross consideration received for all of its equity securities sold during the period. The commissioner shall approve or deny the application after considering whether the proposed purchase would constitute an unsafe or unsound practice.

(c) Any banking institution and any officer thereof who violates any provision of this section shall be guilty of a misdemeanor and, subject to penalties provided in section fifteen of this article.

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§31A-8-6. Receiving deposits or issuing choses in action during insolvency.

No financial institution shall accept or receive on deposit, with or without interest, any money of the United States of America, bills, checks or drafts, or fraudulently receive money or money's worth in exchange for the issuance of any choses in action of such institution when such institution is insolvent; and any officer, director, cashier, manager, secretary, member, owner, employee or stockholder of any financial institution who shall knowingly violate the provisions of this section or be accessory to, or permit, or connive at, the receiving or accepting on deposit of any such deposits or such issuance of any choses in action, shall be guilty of a misdemeanor and, subject to the penalties provided in section fifteen of this article.

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§31A-8-7. Certifying checks falsely.

Any officer, agent or employee of any banking institution who shall wilfully certify any check drawn upon such banking institution, unless the person, firm or corporation drawing the same has on deposit, in collected funds subject to check, with the banking institution, at the time such check is certified, an amount of money equal to the amount certified in such check, or shall certify such check before the amount thereof shall have been regularly entered to the credit of the person drawing the same, upon the books or deposit slips of the banking institution, shall be guilty of a misdemeanor and, subject to the penalties provided in section fifteen of this article.

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§31A-8-8. False statements concerning banking institutions.

Whoever, directly or indirectly, wilfully and knowingly makes or transmits to another, or circulates, or counsels, aids, procures, or induces another to make, transmit or circulate, any false or untrue statement, rumor or suggestion derogatory to the financial condition, solvency or financial standing of any banking institution, or with intent to depress the value of the stocks, bonds or securities of any such banking institution, directly or indirectly, wilfully and knowingly makes or transmits to another, circulates or counsels, aids, procures or induces another to make, transmit or circulate any false or untrue statement, rumor or suggestion derogatory to the financial condition, or with respect to the earnings or management of the business of any banking institution or resorts to any fraudulent means with intent to depress in value the stocks, bonds or securities of any banking institution, shall be guilty of a misdemeanor and, subject to the penalties provided in section fifteen of this article.

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§31A-8-8a. Unauthorized disclosure of information from a financial institution examination report.

Any person having a duty to the financial institution or to a state agency to maintain the confidentiality of examination reports by the department of banking, who willfully and knowingly makes an unauthorized public disclosure of confidential information or records from a state-chartered depository financial institution examination report shall be subject to suit by the commissioner or Attorney General for civil penalties of up to $1,000:

Provided, That no such suit shall lie where the person was ordered to make the disclosure by a court of competent jurisdiction, or lawfully compelled to make the disclosure as part of a legislative or executive agency investigation. Officials of the financial institution or the commissioner may refer matters of possible wrongdoing discovered by the examination which impact on the institution's soundness or financial integrity, or which concern possible criminal conduct to law enforcement officials, or other appropriate governmental regulatory agencies, including appropriate State Bar or ethics officials and such referral shall not constitute public disclosure.

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§31A-8-9. Misapplication of funds; fraud by officers or employees; false entries in books; false statements; penalties.

Every officer, director, employee or agent of any financial institution who wilfully misapplies or without authority loans any of the money, funds or credits of the institution, or who, without authority from the directors, issues or puts into circulation any of the notes of any financial institution; or who, without authority, issues or puts forth any certificate of deposit, draws any order or bill of exchange, makes any acceptance, assigns any note, bond, draft, bill of exchange, mortgage, deed of trust, judgment or decree; or who makes or causes to be made any false entry in any book, record, document, report or statement of any financial institution, or fails to make proper entries therein, with intent, in either case, to injure or defraud the institution or any person, or to deceive any officer of any financial institution or other person, or any agent appointed to examine the affairs of such financial institution, and every person who with like intent, in any way aids or abets any officer, director, employee or agent in the violation of this section, shall be guilty of a felony.

Any person who shall wilfully or knowingly make or cause to be made, any false statement, or exhibit any falsified, forged or invalid paper, with intent to deceive any person authorized to examine into the affairs of such financial institution; or shall make, state or publish any false statement of the financial condition of any financial institution, knowing or having reason to believe the same to be false, shall be deemed guilty of a felony.

Any officer, director, employee or agent of any financial institution or any other person guilty of any felony offense as provided in this section shall, upon conviction thereof, be imprisoned in the penitentiary not less than one nor more than five years and also, in the discretion of the court, may be fined not to exceed $10,000.

WV Legislature

§31A-8-10. Unlawful activity by bank personnel.

It shall be unlawful for an officer, director, employee or agent of a banking institution:

(a) To maintain or authorize the maintenance of any account of such institution in a manner which, to his knowledge, does not conform to requirements of the provisions of this chapter and any rules and regulations promulgated by the commissioner of banking thereunder; or

(b) To obstruct or endeavor to obstruct a lawful examination of such institution by any lawfully authorized officer or employee of any state or federal governmental supervisory department, agency or office.

WV Legislature

§31A-8-11. Failure to make, publish or distribute reports; penalty.

Every financial institution failing to make and transmit to the commissioner any of the reports required by law or any rule and regulation or order thereunder in the form prescribed by the commissioner of banking, or failing to publish or distribute the reports, as so required, shall forthwith be notified by the commissioner of banking and, if such failure continues for ten days after receipt of such notice, such delinquent institution shall be subject to a penalty of $100 for each day thereafter that such failure continues, such penalty to be recovered by the commissioner of banking and paid into the State Treasury to the account of the General Fund.

WV Legislature

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

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(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 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.

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(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 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;

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(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.

WV Legislature

§31A-8-12a. Banking from mobile units; limitation of messenger services.

(a) It is illegal for any banking institution or other depository institution to conduct its business in a facility that is a mobile unit not permanently attached to the real estate upon which it is located, except: (i) That such mobile units may be used as temporary banking quarters pending construction of a permanent bank building on the same or adjacent property thereto if a charter for said bank has previously been approved; or except (ii) as provided by subsection (b) of this section. This section may not be construed or interpreted to prohibit a financial institution from providing messenger services to its customers by which items are received by mail, armored car service or other courier or delivery service for subsequent deposit.

(b) Upon the approval of the commissioner, a banking institution may establish one or more mobile facilities to accept or withdraw deposits, pay checks, issue cashier's checks, traveler's checks and other instruments, as well as perform other banking services. Each mobile facility shall be affiliated with and operated by a bank or branch office of a bank physically located and authorized to do business in West Virginia. A mobile facility shall be viewed as an extension of the qualified offices of the bank located in West Virginia and the transactions shall be governed by the laws applicable as if made at such offices. The term "mobile facility" shall include a mobile customer bank communications terminal which is intended to be moved or driven from place to place. A mobile customer bank communications terminal will be treated as an off-premises unit subject to mandatory sharing laws and rules notwithstanding any contrary provisions of this subsection: *Provided*, That no mobile customer bank communications terminal may serve as an automatic loan machine (ALM) terminal on behalf of any other institution other than the operating bank: *Provided, however*, That no mobile facility may be operated within 2,000 feet of another bank's main office or branch office.

WV Legislature

§31A-8-12b. Installation and operation of customer bank communication terminals permitted.

(a) Any banking institution as defined in §31A-1-2 of this code, individually or jointly with one or more other banking institutions or other federally insured financial institutions having their principal offices in this state, or any combination thereof, may upon 10 days prior written notice filed with the commissioner, install, operate and engage in banking business by means of one or more customer bank communication terminals. Any banking institution which installs and operates a customer bank communication terminal:

(1) Shall make the customer bank communication terminal available for use by other banking institutions; and

(2) May make the customer bank communication terminal available for use by other federally insured financial institutions, all in accordance with regulations promulgated by the commissioner. The customer bank communication terminals are not branch banks or branch offices, agencies or places of business or off-premises walk-in or drive-in banking facilities; nor do the operation of such customer bank communication terminals to communicate with and permit financial transactions to be carried out through a nonexclusive access interchange system make any banking institution which is part of such a nonexclusive access interchange system have illegal branch banks or branch offices, agencies or places of business or off-premises walk-in or drive-in banking facilities.

(b) Notwithstanding the provisions of subdivision (1), subsection (a) of this section, a customer bank communication terminal located on the premises of the principal office or branch bank of a banking institution or on the premises of an authorized off-premises facility need not be made available for use by any other banking institution or its customers.

(c) For purposes of this section, "customer bank communication terminal" means any electronic device or machine owned, leased, or operated by a bank, together with all associated equipment, structures and systems, including, without limitation, remote service units, point of sale terminals, through or by means of which a customer and a banking institution may engage in any banking transactions, whether transmitted to the banking institution instantaneously or otherwise, including, without limitation, the receipt of deposits of every kind, the receipt and dispensing of cash, requests to withdraw money from an account or pursuant to a previously authorized line of credit, receiving payments payable at the bank or otherwise transmitting instructions to receive, transfer or pay funds for a customer’s benefit. Personal computers, telephones and associated equipment which enable a bank customer to conduct banking transactions at their home or office through links to their bank’s computer or telephone network, do not constitute a "customer bank communication terminal" under this section. All transactions initiated through a customer bank communication terminal are subject to verification by the banking institution.

(d) No person, other than: (1) A banking institution authorized to engage in the banking business in this state; or (2) a credit union authorized to conduct business in this state, may

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operate any automatic teller machine ("ATM") or automatic loan machine ("ALM") or remote service unit ("RSU") located in this state: Provided, That ATM or RSU terminals of out-of-state banks not having branches in this state are allowed to operate to the same extent as a West Virginia bank if a national bank from that state not having branches in West Virginia could do so through a federal preemption of state law.

(e) For the purposes of this section, "remote service unit" means automated facility, operated by a customer of a bank, that conducts banking functions such as receiving deposits, paying withdrawals, or lending money, and includes an unmanned or automated teller machine, an automated loan machine, and an automated device for receiving deposits. A remote service unit may be equipped with a telephone or video device that allows contact with bank personnel.

(f) For the purposes of this section, "point of sale terminal" means a customer bank communication terminal used for the primary purpose of either transferring funds to or from one or more deposit accounts in a banking institution or segregating funds in one or more deposit accounts in a banking institution for future transfer, or both, in order to execute transactions between a person and his or her customers incident to sales, including, without limitation, devices and machines which may be used to implement and facilitate check guaranty and check authorization programs.

(g) Nothing in this section prevents point of sale terminals and associated equipment from being owned, leased or operated by nonbanking entities: Provided, That those persons may not engage in the business of banking by using point of sale devices. The use of a point of sale terminal to enable a customer or other person to withdraw and obtain cash of more than $50 in excess of the sales transaction purchase amount, is presumed to constitute engaging in the business of banking: Provided, however, That cash withdrawals through a point of sale terminal in excess of $50 is not engaging in the business of banking if the sales transaction is made with the use of a West Virginia check card, as provided in §12-3A-1 et seq. of this code, or with an electronic benefits transfer or other card issued by state spending units to transmit payments of food benefits, temporary assistance to needy families, or other assistance, benefit or entitlement programs mandated or offered by federal or state government: Provided further, That any retailer, agency or person providing cash withdrawals with a West Virginia check card or an electronic benefits transfer card through a POS terminal is limited to charging a fee for the services in the amount of the higher of $1 or one percent of the amount of cash withdrawn.

(h) Except for customer bank communication terminals located on the premises of the principal office or a branch bank of the banking institution or on the premises of an authorized off-premises walk-in or drive-in banking facility, a customer bank communication terminal shall be unattended or attended by persons not employed by any banking institution utilizing the terminal: Provided, That:

(1) Employees of the banking institution may be present at the terminal not located on the premises of an authorized off-premises facility solely for the purposes of installing,

maintaining, repairing and servicing same; and

(2) A banking institution may provide an employee to instruct and assist customers in the operation thereof: Provided, That the employee may not engage in any other banking activity.

(i) The commissioner shall prescribe by rule the procedures and standards regarding the installation and operation of customer bank communication terminals, including, without limitation, the procedure for the sharing thereof.

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§31A-8-12c. Loan origination offices permitted.

(a) Origination of loans by employees or agents of a banking institution at offices other than that banking institution's principal office or branch bank is permitted: Provided, That any such loans originating at said office are approved and made at the banking institution's principal place of business or branch bank.

(b) Origination of loans by employees or agents of a federally-insured depository institution of banking chartered outside the State of West Virginia at nonbranch offices within this state is permitted: Provided, That a license is obtained pursuant to section five, article two of this chapter and that any such loans originating at the office are approved and made at the banking institution's principal place of business or branch bank: Provided, however, That any consumer loans made in this manner conform with state consumer protection laws. The commissioner of banking may examine the operations of such offices and collect fees for their examination in the amount of $50 per hour of examiner time. A loan production office authorized under this section or by federal law may indicate its bank affiliation notwithstanding section two, article four of this chapter.

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

(a) As an alternative to using the procedures established in subdivisions (g) through (j), inclusive, section twelve of this article, a banking institution desiring to establish a branch bank by de novo construction or lease may file a notice, containing information as prescribed by the commissioner, of its intent which must be received by the commissioner at least twenty-one days prior to the date on which the proposed branch will be established accompanied by a fee of $250. The commissioner shall provide written notice of his or her acceptance or rejection of the branch notice prior to the expiration of the 21-day period. However, if the commissioner requests additional information from the branching institution, the period for the commissioner's consideration of the notice is extended an additional fifteen days from the time the information requested is received by the commissioner.

(b) A state banking institution may not establish a branch bank under this section until the commissioner provides written approval of the notice for that branch bank. The commissioner's approval or rejection of the notice must be accompanied by findings of fact on whether the applicant bank:

(1) 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 well 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) Meets a satisfactory standard of compliance with federal and state community reinvestment act requirements as evidenced by its most recent state or federal examination;

(3) 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;

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

(5) Does not present a significant supervisory concern or raise a significant legal or policy issue by filing the application.

(c) Any party who is adversely affected by an action of the commissioner taken pursuant to the criteria established by subsection (b) of this section may appeal within ten business days of the commissioner's decision to the Board of Banking and Financial Institutions which must, after holding a hearing pursuant to the provisions of subdivision (12), subsection (b), section two, article three of this chapter, affirm, reverse or modify the order of the commissioner. Any party who is adversely affected by an order of the Board of Banking and Financial Institutions issued pursuant to the provisions of this subsection is entitled to judicial review in the same manner as provided by the provisions of subsection (k), section

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twelve of this article.

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§31A-8-13. Banking institution not to be surety; hypothecation and other dealings with securities and assets limited.

No banking institution shall become or be accepted as surety on any bond or undertaking required by the laws or by the courts of this state or any other state or shall become surety or guarantor of any person for the discharge of any duty in any position or the performance of any contract or undertaking. No banking institution shall pledge, hypothecate or deliver any of its assets of any description whatsoever to any person to indemnify him as surety for such banking institution or as surety for any other person. But a bank may pledge, hypothecate, deliver or deposit securities to guarantee deposits of the United States, or any agency or instrumentality thereof, the State of West Virginia, or any agency or instrumentality thereof, or any county, district, municipal corporation or other governmental agency or instrumentality, and the deposits of a bankrupt's estate made pursuant to an order of a court of bankruptcy, and, with the consent in writing of the commissioner of banking, may pledge, hypothecate, deliver or deposit securities or assets to guarantee deposits made by receivers of closed or insolvent banking institutions; and the receiver of a closed or insolvent banking institution, if the proceeding be not in court, with the consent in writing of the commissioner of banking, and if the proceeding be in court, with the consent in writing of the commissioner of banking and the approval of the court, may accept securities or assets of a banking institution to secure deposits made by such receiver. In every such case, the hypothecation of such securities or assets shall be by proper legal transfer as collateral security to protect and indemnify by trust any and all loss in case of any default on the part of the banking institution in its capacity as a depository for any such deposits as aforesaid, and such collateral security shall be released only by order of record of the public officer or public body, or by the receiver of a closed or insolvent banking institution, if the proceeding be not in court, with the consent in writing of the commissioner of banking, and if the proceeding be in court, with the consent in writing of the commissioner of banking and the approval of the court, when satisfied that full and faithful accounting and payment of all the moneys has been made under the provisions hereof. The public officer or public body, or the receiver of a closed or insolvent banking institution, shall make ample provision for the safekeeping of such hypothecated securities or assets, and the interest thereon when paid shall be turned over to the banking institution, so long as it is not in default as aforesaid.

The foregoing shall not prevent the hypothecation of the securities or assets of any banking institution to secure the repayment of money borrowed from another banking institution; nor shall the foregoing prevent a bank's indemnification of its officers, directors or employees by purchase of insurance or otherwise, to the extent that such indemnification is permitted to that institution under federal law. Indemnification articles or bylaws must conform to, or be more restrictive than, that set forth in section nine, article one, chapter thirty-one of this code. The commissioner reserves the right to prohibit or limit, by regulation or order, any indemnification payment for reasons of safety and soundness or nonconformity to the bank's articles of incorporation or bylaws or to the restrictions placed on indemnification contained in this section or other applicable state law.

www.Legislature

§31A-8-14.

Repealed.

Acts, 1981 Reg. Sess., Ch. 40.

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§31A-8-15. General penalties.

(a) Upon conviction for any misdemeanor offense under the provisions of this chapter, an offending financial institution shall be fined not more than $5,000 nor less than $50 and may, in the discretion of the court in consideration of the nature of the offense, be required to forfeit its corporate charter and franchise. Upon conviction of any individual, whether officer, director, agent, employee or any other person connected or not connected with a financial institution, of any misdemeanor offense under the provisions of this chapter, the offending individual shall be fined not more than $5,000 nor less than $50 and may, in the discretion of the court, be confined in the county jail for not more than twelve months.

(b) Any person or financial institution which violates the provisions of this chapter, the rules adopted thereunder, or a lawful order of the commissioner or board, shall, unless previously fined under the provisions of subsection (a) of this section, be subject to civil penalties in an amount not more than $5,000 nor less than $50 in civil actions brought by the commissioner or the board.

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§31A-8-16. Misdemeanors and felonies.

The willful failure to perform any duty required of any financial institution or individual pursuant to provisions of this chapter, or the willful doing of any act by any financial institution or individual forbidden by the provisions of this chapter, shall constitute a misdemeanor offense, except any act which is made a felony offense by specific language of this article.

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§31A-8-17. Legal representation of commissioner and board.

The board and the commissioner shall, upon request, be represented by the Attorney General and by his assistants in any hearings before them, or either of them, and in any actions, proceedings or appeals to which they, or either of them, may be a party and shall also be represented in any action, proceeding or appeal in any circuit court of this state by the prosecuting attorney of such county, all without additional compensation.

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§31A-8-18. References to code provisions.

Wherever in the Code of West Virginia, in any act, in general law or elsewhere in the law, reference is made to any section, any article, any chapter or any particular provision or term thereof of the Code of West Virginia which is repealed by the passage of this new chapter thirty-one-a of the Code of West Virginia, as such section, article, chapter, particular provision or term thereof existed immediately prior to the effective date of this new chapter thirty-one-a, such reference shall henceforth be read, construed and understood to mean the comparable section, article, chapter, particular provision or term of this new chapter thirty-one-a.

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