# WEST VIRGINIA CODE CHAPTER 31A ARTICLE 8D

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## §31A-8D-1. Legislative purpose.

It is the express intent of this article to permit interstate branching by merger under Section 102 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Public Law No. 103-328, in accordance with the provisions set forth in this article.

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## §31A-8D-2. Definitions.

As used in this article, unless a different meaning is required by the context, the following words and phrases shall have the following meanings:

(a) "Bank" has the meaning set forth in 12 U.S.C. §1813(h): Provided, That the term "bank" shall not include any "foreign bank" as defined in 12 U.S.C. §3101(7), except that such term shall include any foreign bank organized under the laws of a territory of the United States, Puerto Rico, Guam, American Samoa or the Virgin Islands, the deposits of which are insured by the federal deposit insurance corporation.

(b) "Bank holding company" has the meaning set forth in 12 U.S.C. §1841(a)(1).

(c) "Bank supervisory agency" means:

(1) Any agency of another state with primary responsibility for chartering and supervising banks; and

(2) The office of the comptroller of the currency, the federal deposit insurance corporation, the board of Governors of the federal reserve system and any successor to these agencies.

(d) "Board of Banking and Financial Institutions" means the board created pursuant to the provisions of article three of this chapter and referred to herein as "board".

(e) "Branch" or "branch bank" has the meaning set forth in subsection (f), section two, article one of this chapter.

(f) "Commissioner" means the West Virginia commissioner of banking then in office and, where appropriate, all of his or her successors and predecessors in office.

(g) "Control" shall be construed consistently with the provisions of 12 U.S.C. §1841(a)(2).

(h) "Home state" means:

(1) With respect to a state bank, the state by which the bank is chartered;

(2) With respect to a national bank, the state in which the main office of the bank is located;

(3) With respect to a foreign bank, the state determined to be the home state of such foreign bank under 12 U.S.C. §3103(c).

(i) "Home state regulator" means, with respect to an out-of-state state bank, the bank supervisory agency of the state in which such bank is chartered.

(j) "Host state" means a state, other than the home state of a bank, in which the bank maintains, or seeks to establish and maintain, a branch.

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(k) "Insured depository institution" has the meaning set forth in 12 U.S.C. §§1813(c)(2) and (3).

(l) "Interstate merger transaction" means:

(1) The merger or consolidation of banks with different home states, and the conversion of branches of any bank involved in the merger or consolidation into branches of the resulting bank; or

(2) The purchase of all or substantially all of the assets (including all or substantially all of the branches) of a bank whose home state is different from the home state of the acquiring bank.

(m) "Out-of-state bank" means a bank whose home state is a state other than West Virginia.

(n) "Out-of-state state bank" means a bank chartered under the laws of any state other than West Virginia.

(o) "Resulting bank" means a bank that has resulted from an interstate merger transaction under this article.

(p) "State" means any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, the Virgin Islands and American Samoa.

(q) "West Virginia bank" means a bank whose home state is West Virginia.

(r) "West Virginia state bank" means a bank chartered under the laws of West Virginia.

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## §31A-8D-3. Authority of West Virginia state banks to establish interstate branches by merger.

Beginning on May 31, 1997, and with prior approval upon order of the board, a West Virginia state bank may establish, maintain and operate one or more branches in a state other than West Virginia pursuant to an interstate merger transaction in which the West Virginia state bank is the resulting bank. Not later than the date on which the required application for the interstate merger transaction is filed with the responsible federal bank supervisory agency, the applicant West Virginia state bank shall file an application on a form prescribed by the commissioner together with a $3,000 application fee. The applicant shall also comply with the applicable provisions of section twelve, article eight of this chapter. If the board finds that: (i) The proposed transaction will not be detrimental to the safety and soundness of the applicant or the resulting bank, including that local conditions assure reasonable promise of successful operation of the proposed bank branch; (ii) any new officers and directors of the resulting bank are qualified by character, experience and financial responsibility to direct and manage the resulting bank; (iii) the acquired branch offices of which will provide suitable physical facilities for their intended business; (iv) establishment of the proposed branch bank would not result in a substantial reduction of competition in any section of this state unless the anticompetitive effects of the proposed action are clearly outweighed in the public interest by the probable effect of the action in meeting the convenience and needs of the community to be served, or result in a monopoly, or be in furtherance of any combination or conspiracy to monopolize, or any attempt to monopolize the business of banking in any section of this state; (v) the proposed merger is consistent with the convenience and needs of the communities to be served by the resulting bank in this state and is otherwise in the public interest; and (vi) the new branch is in conformity with, and would be permitted under the laws of the state where the branch is to be located, it shall approve the interstate merger transaction and the operation of branches outside of West Virginia by the West Virginia state bank. The findings required herein shall supplant any other findings of fact otherwise required by subdivisions (1) through (6), subsection (j), section twelve, article eight of this chapter. Such an interstate merger transaction may be consummated only after the applicant has received the board's written approval by entry of an order granting the application.

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## §31A-8D-4. Interstate merger transactions and branching involving out-of-state banks permitted.

(a) Beginning on May 31, 1997, one or more West Virginia banks may enter into an interstate merger transaction with one or more out-of-state banks under this article, and an out-of-state bank resulting from such transaction may maintain and operate the branches and offices in West Virginia of a West Virginia bank that participated in such transaction: *Provided*, That the conditions and filing requirements of this article are met.

(b) A merger transaction shall not be permitted under this article if, upon consummation of such transaction, the resulting bank (including all insured depository institution affiliates of the resulting bank) would assume sufficient additional deposits to cause it to control deposits in this state in excess of that allowed by §31A-2-12a of this code: *Provided*, That the commissioner may by rule adopt a procedure whereby said acquisition deposit limitation as set forth in this code may be waived for good cause shown. The commissioner shall calculate the acquisition deposit limitation based upon the most recently available reports containing such deposit information filed with state or federal authorities.

(c) A merger transaction resulting in the acquisition by an out-of-state bank of a West Virginia state bank, or all or substantially all of the branches of a West Virginia state bank, or resulting in the acquisition by an out-of-state state bank of a West Virginia bank or the change of control over a branch operating in West Virginia, shall not be permitted under this article unless the out-of-state bank confirms in writing to the commissioner that as long as it maintains a branch in West Virginia: (i) It will comply with all applicable laws of this state, including consumer protection laws; (ii) deposits of the resulting bank in this state are insured in conformity with the provisions of §31A-1-6 of this code; and (iii) the resulting bank, if state chartered, meets the capital requirements set forth in §31A-4-3 of this code.

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## §31A-8D-5. Notice and filing requirements.

(a) Any out-of-state state bank that will be the resulting bank pursuant to a merger transaction involving a West Virginia bank, or will be the resulting bank pursuant to a merger transaction affecting the change of control over a branch operating in West Virginia shall notify the commissioner of the proposed merger not later than the date on which it files an application for the merger transaction with the responsible federal bank supervisory agency, and shall submit a copy of that application to the commissioner and pay a filing fee of $250.

(b) Any West Virginia state bank which is a party to an interstate merger transaction shall comply with state law governing shareholder rights and director and officer duties with respect to affecting the merger and with other applicable state and federal laws. In addition, the West Virginia state bank shall give written notice to the commissioner at least forty-five days before the effective date of a merger where the resulting bank will be an out-of-state bank, unless a shorter period of notice is required under applicable federal law.

(c) Unless preempted by federal law, the commissioner shall have thirty days from receipt of the written notice under subsection (a) of this section to object to the proposed transaction and request a hearing before the board on the basis that the transaction is contrary to applicable West Virginia law. The failure to object within thirty days shall be construed as consent by the commissioner, or, in his or her discretion, the commissioner may, at any time, consent in writing. The commissioner may also request a hearing on the basis that the bank supervisory agency of the home state of the resulting out-of-state bank is without authority or procedures under its state's law to review the transaction, or is not under its state's law viewed as the primary regulator of its chartered banks' out-of-state branches, in which event the criteria, fees and procedures set forth in section three of this article shall apply.

(d) Any out-of-state state bank which shall be the resulting bank in such an interstate or other merger transaction shall provide satisfactory evidence to the commissioner of compliance with applicable requirements of West Virginia law requiring foreign corporations to qualify to do business in West Virginia.

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## §31A-8D-6. Powers; additional branches.

(a) An out-of-state state bank which establishes and maintains one or more branches in West Virginia under this article may conduct any activities at such branch or branches that are authorized under the laws of this state for West Virginia state banks.

(b) A West Virginia state bank may conduct any activities at any branch outside West Virginia that are expressly permissible for a bank chartered by the host state where the branch is located. Prior to commencing any such activities, the West Virginia state bank shall give the commissioner forty-five days advance notice of the intention to exercise any such powers which are not permitted to West Virginia state banks in their operations in this state under state law. This notice shall be made together with a filing providing a written summary with details of the proposed action or program, along with legal analysis for the authority to conduct the activities and how the exercise of the authority will not impair the safety and soundness of the bank and will be kept separate from its operations within West Virginia. Unless, within thirty days after receipt of the notice and filing, the commissioner objects or requests a hearing on the matter before the board, the exercise of the powers shall be deemed authorized. In the discretion of the commissioner or the board, authorization of such powers may be given in writing at any time.

(c) An out-of-state bank that has established or acquired a branch in West Virginia under this article may establish or acquire additional branches in West Virginia to the same extent that any West Virginia bank may establish or acquire a branch in West Virginia under applicable federal and state law. To the extent that an out-of-state bank has already established or acquired a branch in West Virginia and proposes to create additional branches by merger with a West Virginia bank, the provisions of this article govern the transaction.

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**§31A-8D-7. Examinations; periodic reports; cooperative agreements; assessment of fees.**

(a) To the extent consistent with subsection (c) of this section, the commissioner may make such examinations of any branch established and maintained in this state pursuant to this article by an out-of-state state bank as the commissioner may deem necessary to determine whether the branch is being operated in compliance with the laws of this state and in accordance with safe and sound banking practices. The provisions of article two of this chapter shall apply to such examinations.

(b) The commissioner may prescribe requirements for periodic reports regarding any out-of-state bank that operates a branch in West Virginia pursuant to this article. The required reports shall be provided by such bank, or upon request of the commissioner by the bank supervisory agency having primary responsibility for such bank. Any reporting requirements prescribed by the commissioner under this subsection shall be: (i) Consistent with the reporting requirements applicable to West Virginia state banks; and (ii) appropriate for the purpose of enabling the commissioner to carry out his or her responsibilities under this article. Unless the information is filed by its bank holding company pursuant to subsection (a), section seven, article eight-a of this chapter, an out-of-state bank with a branch in West Virginia shall also file the information required by said section within the time stated in said section.

(c) The commissioner may enter into cooperative, coordinating and information-sharing agreements with any other bank supervisory agencies or any organization affiliated with or representing one or more bank supervisory agencies with respect to the periodic examination or other supervision of any branch in West Virginia of an out-of-state state bank, or any branch of a West Virginia state bank in any host state, and the commissioner may accept such parties' reports of examination and reports of investigation in lieu of conducting his or her own examinations or investigations.

(d) The commissioner may enter into contracts with any bank supervisory agency that has concurrent jurisdiction over a West Virginia state bank or an out-of-state state bank operating a branch in this state pursuant to this article to engage the services of such agency's examiners at a reasonable rate of compensation, or to provide the services of the commissioner's examiners to such agency at a reasonable rate of compensation: Provided, That any such contract shall be deemed excluded from the requirements of article three, chapter five-a of this code.

(e) The commissioner may enter into joint examinations or joint enforcement actions with other bank supervisory agencies having concurrent jurisdiction over any branch in West Virginia of an out-of-state state bank or any branch of a West Virginia state bank in any host state: Provided, That the commissioner may at any time take such actions independently if the commissioner deems such actions to be necessary or appropriate to carry out his or her responsibilities under this article or to ensure compliance with the laws of this state: Provided, however, That, in the case of an out-of-state state bank, the commissioner shall

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recognize the authority of the home state regulator over corporate governance matters and the primary responsibility of the home state regulator with respect to safety and soundness matters.

(f) Each out-of-state state bank that maintains one or more branches in this state may be assessed and, if assessed, shall pay supervisory and examination fees in accordance with the laws of this state and rules of the commissioner. Such fees may be shared with other bank supervisory agencies or any organization affiliated with or representing one or more bank supervisory agencies in accordance with agreements between such parties and the commissioner.

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## §31A-8D-8. Enforcement.

If the commissioner determines that a branch maintained by an out-of-state state bank in this state is being operated in violation of any provision of the laws of this state, or that such branch is being operated in an unsafe and unsound manner, the commissioner shall have the authority to take all such enforcement actions as he or she would be empowered to take if the branch were a West Virginia state bank: Provided, That the commissioner shall promptly give notice to the home state regulator of each enforcement action taken against an out-of-state state bank and, to the extent practicable, shall consult and cooperate with the home state regulator in pursuing and resolving said enforcement action.

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## §31A-8D-9. Rules and orders.

The commissioner and board may promulgate such rules and issue such orders as they determine to be necessary or appropriate to implement the provisions of this article.

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## §31A-8D-10. Notice of subsequent merger.

An out-of-state state bank that has established and maintains a branch in this state pursuant to this article, shall give at least forty-five days' prior written notice (or, in the case of an emergency transaction, such shorter notice as is consistent with applicable state or federal law) to the commissioner of any merger, consolidation or other transaction that would cause a change of control with respect to such bank or any bank holding company that controls such bank, with the result that an application would be required to be filed pursuant to the federal Change in Bank Control Act of 1978, as amended, 12 U.S.C. §1817(j), or the federal Bank Holding Company Act of 1956, as amended, 12 U.S.C. §§1841 et seq., or any successor statutes thereto. Notice under this section shall not obviate the need the acquiring entity may have to file with the commissioner or board pursuant to section five of this article, or section three, article eight-a of this chapter.

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## §31A-8D-11. Applicability to thrift institutions.

This article shall apply to interstate mergers involving banks with any savings bank, savings and loan association or other thrift institution maintaining federal deposit insurance where the nonthrift bank survives the merger transaction.

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