
WEST VIRGINIA CODE CHAPTER 31A
ARTICLE 8E

WV Legislature

§31A-8E-1. Legislative purpose.

It is the express intent of this article to permit interstate branching under Sections 102 and 103 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 and thereby permit interstate branch banking through de novo entry or by acquisition of branches in transactions not involving a whole bank merger or acquisition.

§31A-8E-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) "Acquisition of a branch" means the acquisition of a branch located in a host state, without either engaging in an "interstate merger transaction" as defined in article eight-d of this chapter or acquiring all or substantially all of the assets of another bank by merger or purchase.

(b) "Bank" has the meaning set forth in 12 U.S.C. §1813(h): Provided, That the term "bank" does not include any "foreign bank" as defined in 12 U.S.C. §3101(7), except that the term includes 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.

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

(d) "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.

(e) "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".

(f) "Branch" has the meaning set forth in subsection (f), section two, article one of this chapter. It includes an office of a bank that exercises only trust powers as described by subsection (a), section fourteen, article four of this chapter and a nonbanking subsidiary of a bank holding company or a bank that provides trust services pursuant to the provisions of subsection (d), section fourteen, article four of this chapter.

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

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

(i) "De novo branch" means a branch of a bank located in a host state which: (i) Is originally established by the bank as a branch; and (ii) does not become a branch of the bank as a result of: (A) The acquisition of another bank or a branch of another bank; or (B) the merger, consolidation or conversion involving any such bank or branch.

(j) "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;
or
- (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). (k) "Home state regulator" means, with respect to an out-of-state state bank, the bank supervisory agency of the state in which the bank is chartered.
- (l) "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.
- (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) "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.
- (p) "West Virginia state bank" means a bank chartered under the laws of West Virginia.

§31A-8E-3. Interstate branching by West Virginia state banks through de novo establishment or acquisition of branches in other states.

(a) Beginning on May 31, 1997, and pursuant to the procedures and standards established in either section twelve or section twelve-d, article eight of this chapter, any West Virginia state bank may establish and maintain a de novo branch or acquire a branch in a state other than West Virginia, if the new branch is in conformity with, and would be permitted under the laws of the state where the branch is to be located.

(b) A West Virginia state bank desiring to establish and maintain a branch in another state under this section shall file a notice on a form prescribed by the commissioner and pay the branch notice fee set forth in subsection (a), section twelve-d, article eight of this chapter.

§31A-8E-4. Interstate branching by out-of-state banks through de novo entry or acquisition of branches in West Virginia.

Beginning on May 31, 1997, an out-of-state bank that does not operate a branch in this state and that meets the requirements of this article may establish and maintain a de novo branch in this state, and may also establish and maintain a branch in this state through the acquisition of a branch: Provided, That branches may be so established in West Virginia by out-of-state banks only if the laws of the home state of the out-of-state bank permit West Virginia state banks to establish and maintain de novo branches or to acquire and maintain branches, as applicable, under substantially the same terms and conditions as set forth in this article. If the law of the other state restricts such entry by a West Virginia state bank to that other state, then the board may similarly limit the authority granted by this article for banks having their main office located in that state.

§31A-8E-5. Requirement of notice.

An out-of-state bank desiring to establish and maintain a de novo branch or to acquire a branch in this state pursuant to this article shall provide written notice of the proposed transaction to the commissioner not later than the date on which the bank applies to the responsible federal or state bank supervisory agency for approval to establish the branch. The out-of-state bank may comply with this requirement by filing an additional copy of its branch application with its home state regulator and requesting that the home state regulator provide the copy to the commissioner. The commissioner may notify the home state regulator that the out-of-state bank must pay to the West Virginia Division of Banking a fee of up to \$250.

§31A-8E-6. Conditions for approval.

No branch of an out-of-state bank may be established in this state under this article unless the bank or its home state regulator:

(a) Confirms in writing to the commissioner that as long as it maintains a branch in West Virginia, the out-of-state bank will comply with all applicable laws of this state, including consumer protection laws and any acquisition deposit limitations, as well as maintenance of deposit insurance and capital requirements in the same manner as required for West Virginia state banks.

(b) Provides satisfactory evidence to the commissioner of compliance with the applicable requirements of West Virginia law requiring foreign corporations to qualify to do business in West Virginia.

(c) The commissioner, acting within thirty days after receiving notice of an application under section five of this article, or within seven days after a decision if a hearing is held, certifies to the responsible federal bank supervisory agency that the requirements of this article have been met. Unless preempted by federal law, the commissioner shall have thirty days from receipt of the written notice 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.

§31A-8E-7. 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 activity at a branch outside West Virginia that is expressly permissible for a bank chartered by the host state where the branch is located. Prior to commencing any such activity, 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 establishing another de novo branch, or by acquisition of another bank's branch in West Virginia, the provisions of this article govern the transaction.

§31A-8E-8. 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 require periodic reports regarding any out-of-state bank that has established and maintained a branch in this state pursuant to this article. The required reports shall be provided by the 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 maintaining a branch in this state 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 established and maintained in West Virginia by an out-of-state state bank or any branch established and maintained by 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 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.

§31A-8E-9. 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.

§31A-8E-10. Rules and orders.

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

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§31A-8E-11. 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 out-of-state 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.

§31A-8E-12. Applicability to thrift institutions.

This article shall apply to interstate acquisition of branches of any savings bank, savings and loan association or other thrift institution maintaining federal deposit insurance by a bank where the nonthrift bank survives the transaction and maintains the branches.

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