WEST VIRGINIA CODE CHAPTER 31A

WV Legislature

§31A-1-1. Short title; objects and purposes.

This chapter shall constitute and may be cited as the state banking Code of West Virginia.

It is the intention of the Legislature in enacting this chapter to foster and promote sound and dynamic financial institutions and particularly banking institutions in the state in order to provide services to the public which are necessary and desirable for the economic, social, and industrial health and development of the state. Therefore the provisions of this chapter shall be interpreted, construed and administered liberally to accomplish these purposes.

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§31A-1-2. Definitions.

As used in this chapter, unless the context in which used plainly requires a different meaning:

(a) The word "action", in the sense of a judicial proceeding, means any proceeding in a court of competent jurisdiction in which rights are adjudicated and determined and shall embrace and include recoupment, counterclaim, setoff and other related, similar and summary proceedings;

(b) The word "affiliate" means any company that controls, is controlled by, or is under common control with another company. For purposes of this definition, the word "control" shall be construed consistently with the Bank Holding Company Act, 12 U.S.C. §1841;

(c) The words "bank" and "banking institution" mean a corporation, limited liability company or association heretofore or hereafter charted to conduct a banking business under the laws of the United States or any state, territory, district or possession thereof, which is authorized in West Virginia to accept deposits that the depositor has a legal right to withdraw on demand and is authorized to engage in the business of commercial lending, and meets the criteria set forth in Section 2(c) of the Bank Holding Company Act, as amended, 12 U.S.C. §1841(c), and shall embrace and include a savings bank, savings and loan association, trust company or an institution combining banking and trust company facilities, functions and services so chartered or authorized to conduct such business in this state;

(d) The words "bankers' bank" mean a banking institution, insured by the federal deposit insurance corporation, the stock of which is owned exclusively by banks and other depository institutions, and such banking institution and all subsidiaries thereof are engaged exclusively in providing services for banks and other depository institutions and their officers, directors and employees;

(e) The term "banking business" means the functions, services and activities contained, detailed and embraced in sections thirteen and fourteen, article four of this chapter and as elsewhere defined by law;

(f) The word "Board" means the West Virginia Board of Banking and Financial Institutions;

(g) The words "branch bank" mean an office or other place at which a bank performs any or all banking business. For purposes of this chapter, a branch bank does not include:

(1) A bank's principal place of business;

(2) Any customer bank communication terminals installed and operated pursuant to section twelve-b, article eight of this chapter; and

(3) Any loan origination office authorized by section twelve-c, article eight of this chapter;

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(h) The words "commercial activities" mean activities in which a bank holding company, a financial holding company, a national bank, or a national bank financial subsidiary may not engage under federal law.

(i) The words "Commissioner" or "Commissioner of Banking" mean the Commissioner of Banking of West Virginia;

(j) The word "community" means a city, town or other incorporated area or, where not so incorporated, a trading area;

(k) The word "department" or "division" means the Division of Banking of West Virginia;

(l)The words "Deputy Commissioner" or "Deputy Commissioner of Banking" mean the Deputy Commissioner of Banking of West Virginia;

(m) The word "fiduciary" means any trustee, agent, executor, administrator, curator, committee, guardian or conservator, special commissioner, receiver, trustee in bankruptcy, assignee for creditors or any holder of a similar position of trust or responsibility;

(n) The words "financial institutions" mean banks, building and loan associations, industrial banks, industrial loan companies, supervised lenders, credit unions and all other similar institutions, whether persons, firms or corporations, which are by law under the jurisdiction and supervision of the Commissioner of Banking;

(o) The word "officer", when referring to any financial institution, means any person designated as such in the bylaws and includes, whether or not so designated, any executive officer, the chairman of the board of directors, the chairman of the executive committee and any trust officer, assistant vice president, assistant treasurer, assistant secretary, assistant trust officer, assistant cashier, assistant comptroller or any other person who performs the duties appropriate to those offices and the term "executive officer" as herein used, when referring to banking institutions, means an officer of a bank whose duties involve regular, active and substantial participation in the daily operations of such institution and who, by virtue of his or her position, has both a voice in the formulation of the policy of the bank and responsibility for implementation of the policy, such responsibility of and functions performed by the individual, and not his or her title or office, being determinative of whether he or she is an "executive officer";

(p) The words "out-of-state bank" or "out-of-state banking institution" mean a bank chartered under the laws of a state or United States territory, possession or district, other than West Virginia, or organized under federal law and having its main office located in a state, United States territory, possession or district, other than West Virginia;

(q) The words "person" or "persons" mean any individual, partnership, society, association, firm, institution, company, public or private corporation, state, governmental agency, bureau, department, division or instrumentality, political subdivision, county commission,

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municipality, trust, syndicate, estate or any other legal entity whatsoever, formed, created or existing under the laws of this state or any other jurisdiction;

(r) The words "safe-deposit box" mean a safe-deposit box, vault or other safe-deposit receptacle maintained by a lessor bank and the rules relating thereto apply to property or documents kept therein in the bank's vault under the joint control of lessor and lessee;

(s) The words "state bank" or "state banking institution" mean, unless the context requires otherwise, a bank chartered under the laws of West Virginia, as distinguished from either an out-of-state bank or a national banking association and is also referred to as a "West Virginia State Bank" or "West Virginia State Banking Institution"; and

(t) The words "trust business" mean the functions, services and activities contained, detailed and embraced in section fourteen, article four of this chapter and as elsewhere defined by law and as may be included within the meaning of the term "banking business".

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§31A-1-3. Application and construction of chapter.

(a) The provisions of this chapter shall apply to all financial institutions whether formed, organized or created before or after the enactment hereof. All such corporate institutions heretofore formed, organized or created shall amend their certificates of incorporation in all respects necessary to comply with this chapter.

(b) Every person, business or activity under the jurisdiction, supervision and control of the commissioner, whether existing or operating as an individual, association, firm, corporation or otherwise, shall be subject to and be controlled by provisions of this chapter regardless of any word or phrase referring to a particular entity, or form of organization. Wherever in this chapter the word corporation is used or wherever reference is made to stockholders, directors, officers, or other personnel normally applicable only to corporate organizations, such reference, unless the context in which used clearly indicates otherwise, shall be construed to apply to and embrace associations, firms, individuals and any other entity or form of organization by which any business or operations under the jurisdiction, supervision and control of the commissioner may be conducted.

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§31A-1-4. Separability; repealer.

If any provision, clause or phrase of this chapter or the application thereof to any person or situation be held invalid, such invalidity shall not affect other provisions, clauses, phrases or applications of the chapter which can be given effect without the invalid provision, clause, phrase or application, and to this end the provisions hereof are declared to be separable.

All laws or parts of laws plainly inconsistent with the provisions hereof are hereby repealed. No provision of this chapter shall be deemed to be repealed by subsequent legislation not specifically repealing it if such construction can be avoided.

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§31A-1-5. Lending and investing powers and authority of fiduciaries, financial institutions, governmental entities and other persons.

The state of West Virginia, counties, municipalities, political subdivisions and agencies and instrumentalities of any of them, fiduciaries, building and loan associations, regulated consumer lenders, insurance companies, fraternal benefit societies and other persons lawfully engaging in the lending and investing business and services shall have and are hereby authorized and empowered to exercise the same lawful rights and privileges as are banking institutions under provisions of sections twenty-seven, twenty-eight and twenty-nine, article four of this chapter.

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§31A-1-6. Deposit insurance required for banking and other depository institutions.

All credit unions established pursuant to article ten, chapter thirty-one of this code and all banking institutions governed by the provisions of this chapter except banks that do not accept deposits and offer only trust or other nondepository services must qualify for and obtain federal deposit insurance.

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§31A-1-7. Acquisition, formation, or control.

(a) A bank chartered by this state may sell or transfer all, or substantially all, of its assets and liabilities by merger, reorganization, purchase, and assumption or any similar business combination to another bank, banking institution, or entity: *Provided*, That the buyer or transferee is insured by the Federal Deposit Insurance Corporation. The provisions of this section do not apply to a sale or transfer of bank assets pursuant to an agreement that was originally executed prior to the date of enactment of this section in the 2025 regular session of the Legislature, or to any subsequent amendment or modification to such agreement. This section does not limit the authority of the Board or the Commissioner provided by the provisions of §31A-8A-1 *et seq*., §31A-8D-1 *et seq*., and §31A-8E-1 *et seq*. of this code.

(b) An interested person, including a bank or bank holding company authorized to do business in this state, may seek to enforce the provisions of this section by applying for equitable relief, including, but not limited to, a permanent or temporary injunction, or restraining order, in any court of competent jurisdiction.

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§31A-2-1. Department of Banking of West Virginia, offices of Commissioner and Deputy Commissioner of Banking continued.

The Department of Banking of West Virginia, the Office of Commissioner of Banking of West Virginia and the Office of Deputy Commissioner of Banking of West Virginia, heretofore created and existing in the state government, are continued and, after the date of the passage of the amendments to this section adopted in the regular Legislative Session of 2012, shall hereafter be referred to, respectively, as the Division of Financial Institutions, the Commissioner of Financial Institutions and the Deputy Commissioner of Financial Institutions.

All references in this code to the Department of Banking or the Division of Banking shall, after the effective date of the amendments to this section adopted in the regular Legislative Session of 2012, be read, construed and understood to mean and to have reference to the Division of Financial Institutions. All references in this code to the Commissioner of Banking and the Deputy Commissioner of Banking shall, after the effective date of the amendments to this section adopted in the regular Legislative Session of 2012, be read, construed and understood to mean and have reference, respectively, to the Commissioner of Financial Institutions and the Deputy Commissioner of Financial Institutions.

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§31A-2-2. Commissioner's appointment, term, qualifications, salary, oath and bond.

The commissioner of banking shall be appointed by the Governor, by and with the advice and consent of the Senate. He shall serve at the will and pleasure of the Governor for the term for which the Governor was elected and until his successor is appointed and qualified, unless earlier removed from office for cause as provided by law.

Any person appointed as commissioner shall have a college degree from an accredited institution, be of good moral character, have knowledge of the theory and practice of banking and be at least twenty-five years of age.

Before entering upon the discharge of his duties as commissioner, he shall take and subscribe to the oath of office prescribed in section five, article four of the Constitution of West Virginia and shall enter into a bond in the penal sum of $100,000, with a corporate surety authorized to engage in business in this state, conditioned upon the faithful discharge and performance of the duties of his office. The premium of such bond shall be payable from the State Treasury out of funds allocated to the department of banking. The executed oath and bond shall be filed in the office of the Secretary of State.

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§31A-2-3. Deputy commissioner's appointment, tenure, salary, qualifications, oath and bond; exercise of commissioner's powers by deputy.

The deputy commissioner of banking shall be appointed by and be under the supervision and direction of the commissioner of banking. The deputy commissioner's tenure in office shall be at the will and pleasure of the commissioner. The deputy commissioner's salary shall be fixed annually by the commissioner and shall be payable in installments as provided by law.

Any person appointed as deputy commissioner shall have had at least three years' experience as an active executive officer of a bank in this state or a minimum of three years' experience in a bank examining or supervisory capacity for this state, for other states, or for the federal government, or a combination thereof, or a minimum of four years' combined experience as such active bank executive officer and in such examining or supervisory capacity.

Before entering upon the discharge of the duties of his office, the deputy commissioner shall comply with the same oath and bond requirements prescribed for the commissioner in section two of this article.

In the event of a vacancy in the office of commissioner or in the event of the disability or absence from the state of the commissioner, the deputy commissioner shall have and may exercise all of the authority and powers of the commissioner and shall be responsible for the performance of all duties, functions and services of the commissioner.

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§31A-2-4. Jurisdiction of commissioner; powers, etc., of division transferred to commissioner; powers and duties of commissioner.

(a) Subject to the powers vested in the board by §31A-3-1 *et seq*. of this code, the commissioner has supervision and jurisdiction over state banks, regulated consumer lenders, residential mortgage lenders, and brokers licensed pursuant to §31-17-1 *et seq*. of this code, credit unions, and all other persons now or hereafter made subject to his or her supervision or jurisdiction. All powers, duties, rights, and privileges vested in the division are hereby vested in the commissioner. He or she shall be the chief executive officer of the Division of Financial Institutions and is responsible for the division' s organization, services, and personnel and for the orderly and efficient administration, enforcement, and execution of the provisions of this chapter and all laws vesting authority or powers in, or prescribing duties or functions for, the division or the commissioner.

(b) The commissioner shall:

(1) Maintain an office for the division and there keep a complete record of all the division's transactions, of the financial conditions of all financial institutions, and records of the activities of other persons as the commissioner considers important. Notwithstanding any other provision of this code, heretofore or hereafter enacted, the records relating to the financial condition of any financial institution and any information contained in the records shall be confidential for the use of the commissioner and authorized personnel of the Division of Financial Institutions. No person shall divulge any information contained in any records except as authorized in this subdivision in response to a valid subpoena or subpoena duces tecum issued pursuant to law in a criminal proceeding or in a civil enforcement action brought by the state or federal regulatory authorities. Subpoenas shall first be directed to the commissioner, who shall authorize disclosure of relevant records and information from the records for good cause, upon imposing terms and conditions considered necessary to protect the confidential nature of the records, the financial integrity of the financial institution, or the person to which the records relate, and the legitimate privacy interests of any individual named in the records. Conformity with federal procedures shall be sought where the institution maintains federal deposit insurance. The commissioner has and may exercise reasonable discretion as to the time, manner, and extent the other records in his or her office and the information contained in the records are available for public examination;

(2) Require all financial institutions to comply with all the provisions of this chapter and other applicable laws, or any rule promulgated or order issued thereunder;

(3) Investigate all alleged violations of this chapter and all other laws which he or she is required to enforce and of any rule promulgated or order issued thereunder; and

(4) Require a criminal background investigation, including requiring fingerprints for submission to the Federal Bureau of Investigation or any governmental agency or entity authorized to receive such information for a state, national, or international criminal history check, of each:

(A) Applicant seeking approval to charter and/or control a state bank, state credit union, or a foreign bank state agency or representative office;

(B) Applicant seeking a license to engage in the business of money transmission, currency exchange, or other activity regulated under §32A-2-1 *et seq*. of this code;

(C) Applicant subject to the commissioner's supervision seeking a license to engage in the business of regulated consumer lending, mortgage lending, or brokering; and

(D) Division of Financial Institutions regulatory employee applicants.

(E) The provisions of this subdivision are not applicable where the applicant is a company or entity already subject to supervision and regulation by the Federal Reserve Board or other federal bank, thrift, or credit union regulator, or is a direct or indirect subsidiary of a company or entity subject to the supervision and regulation, or where the applicant is a company subject to the supervision and regulation of the federal Securities and Exchange Commission whose stock is publicly traded on a registered exchange or through the National Association of Securities Dealers automated quotation system, or the applicant is a direct or indirect subsidiary of such a company, the investigation into criminal background is not required. The provisions of this subdivision are not applicable to applicants seeking interim bank charters organized solely for the purpose of facilitating the acquisition of another bank pursuant to §31A-4-5 of this code. The requirements of this subdivision are applicable to the principals of the applicant where a nonexempt applicant under this subdivision is not a natural person. As used in this subdivision, the term "principals" means the chief executive officer, regardless of title, managing partner if a partnership, members of the organizing group if no chief executive officer has yet been appointed, trustee, or other person controlling the conduct of the affairs of a licensee. A person controlling 10 percent or more of the stock of any corporate applicant shall be considered to be a principal under this provision. Notwithstanding any other provision of this code to the contrary, the commissioner may determine alternate acceptable forms for background check information for direct or indirect principals of a licensee or applicant for a mortgage lender or broker license or a money transmission license who are not residents of the United States if such licensee or applicant also has owners or principals who are residents of the United States and the division has been provided adequate background information, as provided in this subdivision, for such owners or principals of the licensee or applicant who are United States residents. The commissioner may establish relationships or contracts with the Nationwide Mortgage Licensing System and Registry or other entities designated by the Nationwide Mortgage Licensing System and Registry to collect and maintain records related to criminal background investigations and fingerprints of persons subject to this subsection.

To reduce the points of contact which the Federal Bureau of Investigation may have to maintain, the commissioner may use the Nationwide Mortgage Licensing System and Registry or its designated vendor as a channeling agent for requesting information from and distributing information to the Department of Justice or any governmental agency.

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To reduce the points of contact which the commissioner may have to maintain, the commissioner may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting and distributing information to and from any source so directed by the commissioner.

(c) In addition to all other authority and powers vested in the commissioner by provisions of this chapter and other applicable laws, the commissioner may:

(1) Provide for the organization of the division and the procedures and practices of the division and implement the procedures and practices by the promulgation of rules and forms as appropriate and the rules shall be promulgated in accordance with §29A-3-1 *et seq*. of this code;

(2) Employ, direct, discipline, discharge, and establish qualifications and duties for all personnel for the division, including, but not limited to, examiners, assistant examiners, conservators, and receivers, establish the amount and condition of bonds for the personnel he or she considers appropriate and pay the premiums on the bonds and, if he or she elects, have all personnel subject to and under the classified service of the state personnel division;

(3) Cooperate with organizations, agencies, committees, and other representatives of financial institutions of the state in connection with schools, seminars, conferences, and other meetings to improve the responsibilities, services, and stability of the financial institutions;

(4) In addition to the examinations required by §31A-2-6 of this code, inspect, examine, and audit the books, records, accounts, and papers of all financial institutions and any third-party vendor providing information technology services to financial institutions at such times as circumstances in his or her opinion may warrant;

(5) Call for and require any data, reports, and information from financial institutions under his or her jurisdiction, at such times and in such form, content, and detail considered necessary by him or her in the faithful discharge of his or her duties and responsibilities in the supervision of the financial institutions;

(6) Subject to the powers vested in the board by §31A-3-1 *et seq*. of this code, supervise the location, organization, practices, and procedures of financial institutions and, without limitation on the general powers of supervision of financial institutions, require financial institutions to:

(A) Maintain their accounts consistent with rules prescribed by the commissioner and in accordance with generally accepted accounting practices;

(B) Observe methods and standards which he or she may prescribe for determining the value of various types of assets;

(C) Charge off the whole or any part of an asset which at the time of his or her action could

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not lawfully be acquired;

(D) Write down an asset to its market value;

(E) Record or file writings creating or evidencing liens or other interests in property;

(F) Obtain financial statements from prospective and existing borrowers;

(G) Obtain insurance against damage and loss to real estate and personal property taken as security;

(H) Maintain adequate insurance against other risks as he or she may determine to be necessary and appropriate for the protection of depositors and the public;

(I) Maintain an adequate fidelity bond or bonds on its officers and employees;

(J) Take other action that in his or her judgment is required of the institution in order to maintain its stability, integrity, and security as required by law and all rules promulgated by him or her; and

(K) Verify any or all asset or liability accounts;

(7) Subject to the powers vested in the board by §31A-3-1 *et seq*. of this code, receive from any person or persons and consider any request, petition, or application relating to the organization, location, conduct, services, policies, and procedures of any financial institution and to act on the request, petition, or application in accordance with any provisions of law applicable thereto;

(8) In connection with the investigations required by §31A-2-4(b)(3) of this code, issue subpoenas and subpoenas duces tecum, administer oaths, examine persons under oath, and hold and conduct hearings. Any subpoenas or subpoenas duces tecum shall be issued, served, and enforced in the manner provided in §29A-5-1 of this code. Any person appearing and testifying at a hearing may be accompanied by an attorney employed by him or her;

(9) Issue declaratory rulings in accordance with the provisions of §29A-4-1 of this code;

(10) Study and survey the location, size, and services of financial institutions, the geographic, industrial, economic, and population factors affecting the agricultural, commercial, and social life of the state, and the needs for reducing, expanding, or otherwise modifying the services and facilities of financial institutions in the various parts of the state, and compile and keep current data thereon to aid and guide him or her in the administration of the duties of his or her office;

(11) Implement all of the provisions of this chapter, except the provisions of §31A-3-1 *et seq*. of this code, and all other laws which he or she is empowered to administer and enforce by the promulgation of rules in accordance with the provisions of §29A-3-1 *et seq*. of this code;

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(12) Implement the provisions of chapter 46A of this code applicable to consumer loans and consumer credit sales by the promulgation of rules in accordance with the provisions of §29A-3-1 *et seq*. of this code as long as the rules do not conflict with any rules promulgated by the state's Attorney General;

(13) Foster and encourage a working relationship between the Division of Financial Institutions and financial institutions, credit, consumer, mercantile, and other commercial and finance groups and interests in the state in order to make current appraisals of the quality, stability, and availability of the services and facilities of financial institutions;

(14) Provide to financial institutions and the public copies of the West Virginia statutes relating to financial institutions, suggested drafts of bylaws commonly used by financial institutions, and any other forms and printed materials found by him or her to be helpful to financial institutions, their shareholders, depositors, and patrons and make reasonable charges for the copies;

(15) Delegate the powers and duties of his or her office, other than the powers and duties excepted in this subdivision, to qualified division personnel who shall act under the direction and supervision of the commissioner and for whose acts he or she is responsible, but the commissioner may delegate to the deputy commissioner of financial institutions and to no other division personnel the following powers, duties, and responsibilities, all of which are hereby granted to and vested in the commissioner and for all of which the commissioner also is responsible. The commissioner shall:

(A) Order any person to cease violating any provision or provisions of this chapter or other applicable law or any rule promulgated or order issued thereunder;

(B) Order any person to cease engaging in any unsound practice or procedure which may detrimentally affect any financial institution or depositor of the financial institution;

(C) Revoke the certificate of authority, permit, or license of any financial institution except a banking institution in accordance with the provisions of §31A-2-13 of this code; and

(D) Accept an assurance in writing that the person will not in the future engage in the conduct alleged by the commissioner to be unlawful, which could be subject to an order under the provisions of this chapter. This assurance of voluntary compliance shall not be considered an admission of violation for any purpose, except that if a person giving the assurance fails to comply with its terms, the assurance is prima facie evidence that prior to this assurance the person engaged in conduct described in the assurance;

(16) Seek and obtain civil administrative penalties against any person who violates this chapter, the rules issued pursuant to this chapter, or any orders lawfully entered by the commissioner or Board of Banking and Financial Institutions in an amount not more than $5,000 per day for each violation: *Provided*, That all of the pertinent provisions of §29A-5-1 *et seq*. of this code shall apply to any assessment of a penalty under this subsection;

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(17) Receive from state banking institutions applications to change the locations of their principal offices and to approve or disapprove these applications;

(18) Expend funds in order to promote consumer awareness and understanding of issues related to residential mortgage lending. In furtherance of this duty, there is established in the State Treasury a special revenue account to be known as the Consumer Education Fund, which shall be administered by the Commissioner of Financial Institutions. Ten percent of all civil administrative penalties collected by the Division of Financial Institutions during each fiscal year shall be deposited into the fund and may be expended by the commissioner to promote consumer awareness and understanding of issues related to residential mortgage lending. The account shall be a special revenue account and may be invested and retain all earnings and interest. Any remaining balance less than $500,000, including accrued interest, in the fund at the end of the fiscal year shall not revert to the General Revenue Fund, but shall remain in the account. Any balance which exceeds $500,000 as of June 30, 2012, and each year thereafter, shall revert to the General Revenue Fund; and

(19) Take other action as he or she may consider necessary to enforce and administer the provisions of this chapter, except the provisions of §31A-3-1 *et seq*. of this code, and all other laws which he or she is empowered to administer and enforce and apply to any court of competent jurisdiction for appropriate orders, writs, processes, and remedies.

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§31A-2-4a. Orders of the commissioner of banking to be made public.

Any order entered by the commissioner of banking against any person:

(1) To cease violating any provision or provisions of this chapter or other applicable law or rule and regulation promulgated or order issued thereunder;

(2) To cease engaging in any unsound practice or procedure which may detrimentally affect any financial institution;

(3) To revoke the certificate of authority, permit or license of any financial institution; and

(4) To take such other action as the commissioner of banking may deem necessary to enforce and administer the provisions of this chapter and all other laws which the commissioner is empowered to enforce is a matter of public record.

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§31A-2-4b. Provision of legal services.

(a) The commissioner of banking has plenary power and authority to acquire those legal services the commissioner deems necessary to carry out the functions and duties of the Division of Banking or the office of commissioner of banking, including, but not limited to, representation of the division or the commissioner in any administrative or judicial proceeding.

(b) The commissioner may acquire legal services from attorneys licensed to practice law who are employed by the commissioner on a salary basis or retained by the commissioner on a reasonable fee basis.

(c) The commissioner may also request the assistance of the Attorney General and be represented in an administrative or judicial proceeding by a deputy or assistant Attorney General acceptable to the commissioner.

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§31A-2-4c. County Clerk to file reports of trustees regarding sales of residential real property pursuant to deeds of trust and forward to the banking commissioner; transfer of powers and duties relating to reports of trustees to the West Virginia Housing Development Fund.

(a) In addition to the jurisdiction, powers, and duties set out in section four of this article, the banking commissioner is vested with the jurisdiction, powers and duties to receive and compile the data into an electronic database and make available the raw data that is required to be reported by trustees to county clerks pursuant to section eight-a, article one, chapter thirty-eight of the Code of West Virginia. The commissioner has the power to promulgate rules in accordance with this section and the provisions of article three, chapter twenty-nine-a of this code in order to carry out the requirements of this section. The commissioner is authorized to expend funds for this purpose.

(b) On and after July 1, 2010, the jurisdiction, powers and duties vested in the banking commissioner in subsection (a) of this section are hereby transferred and imposed upon the West Virginia Housing Development Fund established in article eighteen, chapter thirty-one of this code and all data that has been received and compiled by the banking commissioner pursuant to subsection (a) of this section shall be transferred to the West Virginia Housing Development Fund.

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§31A-2-5. Certificate or license to engage in business; filing of amendments to charter, bylaws and foreign statutes.

(a) No person shall engage or continue in the business of a financial institution in this state without a license or certificate to do so issued in accordance with this section, or other applicable law, which license or certificate remains unsuspended, unexpired and unrevoked except that a corporation which proposes to apply for such license or certificate may secure its charter, adopt bylaws, elect its directors and officers and perfect its organization.

(b) No person shall operate an office in West Virginia which regularly makes consumer loans in this state other than first mortgage loans unless they are a financial institution, licensed pawnbroker or a federally insured depository institution authorized and qualified to do business in this state. The purchase of consumer paper does not constitute the making of consumer loans for the purposes of this subsection, unless the purchase is made by a business affiliated with the credit provider pursuant to a standing arrangement.

(c) Application for such license or certificate shall be upon such forms and contain such information as the Commissioner may prescribe. In connection with such applications every corporate financial institution shall file a certified copy of its charter and bylaws, a statement as to the amount of capital that has been subscribed and paid in and a statement of its financial condition duly verified under oath by its president or vice president and its cashier or secretary as the case may be and every financial institution other than a corporation shall file a verified statement of its financial condition.

(d) If the application be that of a West Virginia state banking institution, the Commissioner of Banking shall examine the information, documents and statements submitted and, if he or she finds that such banking institution has adopted bylaws which provide practical, safe, just and equitable rules and methods for the management of its business and it has complied in all respects with the provisions of this chapter and other applicable laws, he or she shall issue to it a certificate or license permitting it to engage in business. If the application be that of a financial institution other than a banking institution, the Commissioner of Banking shall examine the information, documents and statements submitted and, if he or she finds that such financial institution has adequate resources for the proposed business and has provided practical, safe, just and equitable rules and methods for the management of its business, and it has complied in all respects with the provisions of this chapter and other applicable laws, and that the public convenience and advantage will be promoted by the issuance of a certificate or license thereto, he or she shall issue to it a certificate or license permitting it to engage in business. Such certificate or license shall be preserved and the original or copy thereof displayed in all the places of business of such banking or other financial institution located in this state.

(e) In addition to the requirements of subsections (b) and (c) of this section, every foreign corporation applying for a license or certificate to engage in the business of a financial institution in this state, other than an out-of-state banking institution, shall file with the Commissioner of Banking a copy of the bylaws under which it operates, together with a cite

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to the statutes of the jurisdiction where it is organized which pertain to its organization and powers and the conduct of its business. The commissioner shall examine the information, documents and statements submitted by such foreign corporation and if he or she finds that they provide practical, safe, just and equitable rules and methods for the management of the business of the corporation, that it has adequate resources for the proposed business and it has complied in all respects with the provisions of this chapter and other applicable laws and that the public convenience and advantage will be promoted by the issuance of a license or certificate thereto, he or she shall issue to such corporation a certificate or license permitting it to engage in business in this state, which certificate or license shall authorize such corporation to engage in the business of the type of financial institution specified therein, until the thirtieth day of the following June. Thereafter a new certificate or license shall be secured annually by any such foreign corporation, except where annual renewal of the license or certificate is specifically not required for the type of institution involved. The fee for the original and each additional license or certificate issued to a foreign corporation shall be $100, unless otherwise provided by statute. A verified statement of the financial condition of every such foreign corporation shall be filed with the Commissioner before the issuance of each annual certificate or license. Such certificate or license shall be preserved and the original or copy thereof displayed in the West Virginia place of business of such corporation.

(f) Unless the institution is a federally insured depository institution or it is otherwise provided for by statute, a new certificate or license shall be secured annually by all domestic state financial institutions and the fee for the original and each additional license or certificate shall be $100.

(g) No amendment of the charter or bylaws of any domestic or foreign corporation, other than an out-of-state banking institution, engaging in business in this state as a financial institution shall become effective until the proposed change shall have been submitted to and approved by the Commissioner of Banking; but, if the Commissioner does not disapprove such proposed change within twenty days after it is received by him or her, it shall be deemed to have been approved.

(h) Unless specifically provided for by this chapter, nothing contained in this code shall authorize any person to engage in the banking business in this state except corporations chartered to conduct a banking business under the laws of West Virginia and which hold a license or certificate to do so issued under this section, limited liability companies organized to conduct a banking business under the laws of West Virginia and which hold a license or certificate to do so under this section or associations authorized to conduct a banking business in West Virginia under the laws of the United States and having their principal place of business in this state.

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§31A-2-6. Commissioner's examinations of financial institution; reports; records; communications from commissioner to institution; examination by federal or out-of-state agency in lieu of commissioner's examination.

(a) The commissioner shall make a thorough examination of all the books, accounts, records and papers of every depository financial institution using the same frequency of examination schedule as the financial institution's primary federal regulator. He or she shall carefully examine all of the assets of each institution, including its notes, drafts, checks, mortgages, securities deposited to assure the payment of debts unto it and all papers, documents and records showing, or in any manner relating to, its business affairs and shall ascertain the full amount and the nature in detail of all of its assets and liabilities. The commissioner may also, at his or her discretion, make or cause to be made an annual or periodic examination of the books, accounts, records and papers of other financial institutions under his or her supervision for the purposes of determining compliance with applicable consumer and credit lending laws and verifying information provided in any license application or annual report submitted to the commissioner. The commissioner may also make an examination of any subsidiaries or affiliates of a financial institution as he or she may consider necessary to ascertain the financial condition of the financial institution, the relations between the financial institution and its subsidiaries and affiliates and the effect of the relations upon the affairs of the financial institution. A full report of every examination shall be made and filed and preserved in the office of the commissioner and a copy of it immediately mailed to the institution examined. Every institution shall retain all of its records of final entry for the period of time as required in section thirty-five, article four of this chapter for banking institutions. Unless otherwise covered by assessments or a specific provision of this code, the cost of examinations made pursuant to this section shall be borne by the financial institution at a rate of $50 per each examiner hour expended.

(b) Every official communication from the commissioner to any institution, or to any officer thereof, relating to an examination or an investigation of the affairs of the institution conducted by the commissioner or containing suggestions or recommendations as to the manner of conducting the business of the institution, shall be read by the board of directors at the next meeting after its receipt and the president, or other executive officer, of the institution shall immediately notify the commissioner in writing of the presentation and reading of the communication and of any action taken on it by the institution.

(c) The Commissioner of Banking, in his or her discretion, may: (i) Accept a copy of a reasonably current examination of any banking institution made by the Federal Deposit Insurance Corporation or the Federal Reserve System in lieu of an examination of the banking institution required or authorized to be made by the laws of this state and the commissioner may furnish to the Federal Deposit Insurance Corporation or the Federal Reserve System or to any official or examiner thereof any copy or copies of the commissioner's examinations of and reports on the banking institutions; (ii) accept a copy of a reasonably current examination of any out-of-state bank or any West Virginia state bank's out-of-state activities made by another state's banking regulatory authority in lieu of an

WV Legislature

examination of the banking institution required or authorized to be made by the laws of this state and the commissioner may furnish to the other state's banking regulatory authority or to any official or examiner thereof any copy or copies of the commissioner's examinations of and reports on the banking institutions; but nothing in this subsection shall be construed to limit the duty and responsibility of banking institutions to comply with all provisions of law relating to examinations and reports, nor to limit the powers and authority of the commissioner of banking with reference to examinations and reports under existing laws. The provision or exchange of examination reports and other records of financial condition and individuals pursuant to cooperative, coordinating or information-sharing agreements with other bank supervisory agencies and persons as permitted by this chapter under an agreement of confidentiality shall not constitute a violation of section four of this article.

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§31A-2-7. Duties of officers, employees, etc., of financial institution in connection with examination; examination under oath; offenses and penalties.

All officers, directors, employees and other persons connected with any financial institution, upon request of the commissioner of banking, or his or her duly authorized representative, shall furnish and give full access to all of the books, papers, notes, bills and other evidences of debts due to the institution; produce and furnish all documents, records, writings and papers relating to the business of the institution which the commissioner is authorized to examine; disclose fully, accurately and in detail all of the debts and liabilities of the institution; and furnish the clerical aid and assistance as may be required in the performance of the commissioner's duties as provided by law. The commissioner or his or her representative, as the case may be, shall have the right and authority to administer oaths and to examine under oath each officer, director, employee or other person connected with the institution concerning any matter and thing pertaining to the business and condition of the institution.

Any officer, director, employee or other person connected with any such institution who willfully fails or refuses to so furnish the documents, papers, materials or information as herein required or who willfully fails to discharge any other duty or obligation as herein provided shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to the penalties provided in section fifteen, article eight of this chapter.

WV Legislature

§31A-2-8. Commissioner's assessments and examination fund; assessments, costs and expenses of examinations; collection.

(a) All moneys collected by the commissioner from financial institutions and bank holding companies for assessments, examination fees, investigation fees or other necessary expenses incurred by the commissioner in administering such duties shall be paid to the commissioner and paid by the commissioner to the treasurer of the state to the credit of a special revenue account to be known as the "commissioner's assessment and examination fund" which is hereby established. The assessments and fees paid into this account shall be appropriated by law and used to pay the costs and expenses of the Division of Banking and all incidental costs and expenses necessary for its operations. At the end of each fiscal year, if the fund contains a sum of money in excess of twenty percent of the appropriated budget of the Division of Banking, the amount of the excess shall be transferred to the General Revenue Fund of the state. The Legislature may appropriate money to start the special revenue account.

(b) the Commissioner of Banking shall charge and collect from each state banking institution or other financial institution or bank holding company and pay into a special revenue account in the State Treasury for the Division of Banking assessments as follows: (1) For each state banking institution, a quarterly assessment payable on January 1, April 1, July 1, and October 1 each year, computed upon the total assets of the banking institution shown on the report of condition of the banking institution filed as of the preceding June 30, September 30, December 31 and March 31, respectively, as follows:

Total Assets

But Not Of Excess

Over Over This Over

Million Million Amount Plus Million

$ 0 $ 2 $ 0 .001645020 0

2 20 3,290 .000205628 2

20 100 6,991 .00016450 220

100 200 20,151 .000106926 100

200 1,000 30,844 .000090476 200

1,000 2,000 103,225 .000074026 1,000

2,000 6,000 177,251 .000065801 2,000

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6,000 20,000 440,454 .000055988 6,000

20,000 40,000 1,224,292 .000052670 20,000

(2) For each regulated consumer lender, an annual assessment payable on July 1, each year, computed upon the total outstanding gross loan balances and installment sales contract balances net of unearned interest of the regulated consumer lender shown on the report of condition of the regulated consumer lender as of the preceding thirty-first day of December, respectively, as follows:

Total Outstanding Balances

But Not This Of Excess

Over Over Amount Plus Over

$ 0 $ 1,000,000 800 - -

1,000,000 5,000,000 800 .000400 1,000,000

5,000,000 10,000,000 2,400 .000200 5,000,000

10,000,000 - 4,200 .000100 10,000,000

If a regulated consumer lender's records or documents are maintained in more than one location in this state, then eight hundred dollars may be added to the assessment for each additional location.

In addition to the assessment provided in this subdivision, the commissioner shall charge and collect from each regulated consumer lender the actual and necessary costs and expenses incurred in connection with any examination of a regulated consumer lender.

(3) For each credit union, an annual assessment as provided for in section eight, article one, chapter thirty-one-c of this code as follows:

Total Assets

But Not This Of Excess

Over Over Amount Plus Over

$ 0 $ 100,000 100 - -

100,000 500,000 300 - -

500,000 1,000,000 500 - -

WV Legislature

1,000,000 5,000,000 500 .000400 1,000,000

5,000,000 10,000,000 2,100 .000200 5,000,000

10,000,000 - 3,100 .000100 10,000,000

(4) For each bank holding company, an annual assessment as provided for in section eight, article eight-a of this chapter. The annual assessment may not exceed ten dollars per million dollars in deposits rounded off to the nearest million dollars.

(c) The commissioner shall each December March, June and September prepare and send to each state banking institution a statement of the amount of the assessment due. The commissioner shall further, each June, prepare and send to each regulated consumer lender and each state credit union a statement of the amount of the assessment due. The commissioner shall annually, during the month of January, prepare and send to each bank holding company a statement of the amount of the assessment due.

State banking institution assessments may be prescribed every three months, not later than June 15 September 15, December 15 and March 15 by written order of the commissioner, but shall not exceed the maximums as set forth in subsection (b) of this section. In setting the assessments the primary consideration shall be the amount appropriated by the Legislature for the Division of Banking for the corresponding annual period. Reasonable notice of the assessments shall be made to all interested parties. All orders of the commissioner for the purpose of setting assessments are not subject to the provisions of the West Virginia administrative procedures act under chapter twenty-nine-a of this code.

(d) For making an examination within the state of any other financial institution for which assessments are not provided by this code, the commissioner of banking shall charge and collect from such other financial institution and pay into the special revenue account for the Division of Banking the actual and necessary costs and expenses incurred in connection therewith, as fixed and determined by the commissioner. Banks that provide only trust or other nondepository services, nonbanking subsidiaries of bank holding companies that provide trust services, nonbanking subsidiaries of banks that provide trust services and any trust entity that is jointly owned by federally insured depository institutions may be assessed for necessary costs and expenses associated with an examination pursuant to this subsection.

(e) If the records of an institution are located outside this state, the institution at its option shall make them available to the commissioner at a convenient location within the state or pay the reasonable and necessary expenses for the commissioner or his or her representatives to examine them at the place where they are maintained. The commissioner may designate representatives, including comparable officials of the state in which the records are located, to inspect them on his or her behalf.

(f) The Commissioner of Banking may maintain an action for the recovery of all assessments,

WV Legislature

costs and expenses in any court of competent jurisdiction.

WV Legislature

§31A-2-9. Correction of violations of law, irregularities and unsound practices; disposition of doubtful assets and past-due obligations; stockholders' meetings.

Whenever it appears that any law, rule and regulation or order applicable to any financial institution is being violated, or that any irregularities exist or unsound practices or procedures are being engaged in, it shall be the duty of the commissioner of banking to promptly call the same to the attention of the officers and directors of the financial institution offending and to demand that the same be promptly corrected; and he or she may require a sworn statement from the said officers and directors covering the matter of all such violations and of all such irregularities, unsound practices or procedures to be furnished to him or her as often as he or she may deem necessary, until he or she is satisfied that such violations have ceased and that the irregularities, unsound practices or procedures complained of have been corrected. Such reports shall not be made public, except as necessary as part of any order or other enforcement action or proceeding.

If any such institution owns any asset, the value of which, in the judgment of the commissioner of banking, is questionable, or owns past-due obligations, the commissioner of banking may require the assets of doubtful value to be at once converted into money or charged off of the books of the financial institution at the expiration of three months from the date of such order; or require legal proceedings to be at once instituted for the collection of any past-due obligations to the financial institution or that they be charged off.

Upon the written notice of the commissioner of banking, the directors of any financial institution shall call a general meeting of the stockholders thereof to consider such matters as the commissioner may prescribe. Notice of such meeting shall be given in accordance with applicable statutes and the bylaws of the financial institution. The expense of such meeting and notice thereof shall be borne by the financial institution whose stockholders are so required to convene.

WV Legislature

§31A-2-10.

Repealed.

Acts, 1997 Reg. Sess., Ch. 96.

WV Legislature

§31A-2-11.

Repealed.

Acts, 2005 Reg. Sess., Ch. 31.

WV Legislature

§31A-2-12. Commissioner's annual report; contents; affidavit.

Annually on or before December 1, the commissioner of banking shall prepare and submit to the Governor a careful and complete report, detailing the work, services and functions performed by him during the preceding fiscal year. The report shall show the total resources and liabilities of all financial institutions, the increase or decrease for the year in the aggregate of such resources and liabilities, carefully noting any failures that may have occurred, stating the causes thereof, and making such remarks, suggestions and recommendations as he may deem pertinent, including recommendations on policy, administration and legislation pertaining to all financial institutions.

Such report shall be verified by the affidavit of said commissioner, who shall swear that, in making the examination of each financial institution he or a qualified person in his department appointed by him has personally and carefully inspected the books, papers and affairs of the institution, or in the case of any banking institution, that he has accepted a reasonably current examination made by the federal deposit insurance corporation or the federal reserve system in lieu of conducting such an examination, and that he has not, and, so far as he knows or is informed, no person in his department has, in any case received or agreed to receive directly or indirectly any reward, gift, or promise thereof, from any officer or other person connected with any financial institution.

WV Legislature

§31A-2-12a. Establishment of deposit acquisition limitation.

After a review of the structure of depository institutions in the State of West Virginia, the Legislature hereby determines that:

(a) It is in the best interest of this state and its citizens to foster and encourage healthy competition among its domestic depository institutions;

(b) Obtaining excessive concentration or control of the deposit resources of this state by merger or acquisition is antithetical to fostering a competitive environment; and

(c) Therefore, an acquisition or merger shall not be permitted under this chapter or otherwise if upon consummation of the transaction, the resulting depository institution or its holding company, including any depository institution(s) affiliated therewith, would assume sufficient additional deposits to cause it to control deposits in this state in excess of the following acquisition deposit limitation amount: Twenty percent of the total amount of all deposits held by insured depository institutions, which permissible amount shall increase to twenty-five percent of such total deposits on May 31, 1997.

(d) The term "depository institutions", as used in this section, shall include, but is not limited to, state-chartered banking institutions, national banking associations, federal savings and loan associations, bank holding companies, savings and loan holding companies, federal savings banks, state-chartered credit unions and federally-chartered credit unions.

(e) Any merger or acquisition contrary to this provision is unlawful: Provided, That the commissioner may by rule adopt a procedure whereby said acquisition deposit limitation as set forth herein may be waived for good cause shown.

WV Legislature

§31A-2-13. Enforcement of orders of the commissioner against financial institutions.

(a) If any financial institution shall fail or refuse to comply with any order of the commissioner, entered pursuant to the provisions of paragraphs (A) or (B), subdivision (15), subsection (c), section four of this article, the commissioner may apply to any court having jurisdiction for a prohibitory or mandatory injunction or other appropriate remedy to compel obedience to such order; or may apply to the board of banking and financial institutions for appropriate relief.

(b) In addition, if any financial institution other than a state bank shall fail or refuse to comply with any order of the commissioner, entered pursuant to the provisions of paragraphs (A) or (B), subdivision (15), subsection (c), section four of this article, the commissioner may make and enter an order revoking the certificate of authority, permit or license of such institution to engage in the business of a financial institution in this state.

WV Legislature

§31A-2-14. Banking interests of and acceptance of gratuities by officers and employees of department.

No officer or employee of the department of banking shall be an officer, director, trustee, attorney, owner, shareholder, or partner in or of any financial institution. Nor shall any officer or employee of the department receive, directly or indirectly, any payment or gratuity from any financial institution, or be engaged in any manner in the negotiation of loans for others therewith. Nothing herein shall prohibit said persons from having shares as a result of membership in a credit union, mutual savings association, or similar depository institution by virtue of being a customer; nor shall it prohibit the receipt of interest or other payments on accounts made in the regular course of business.

WV Legislature

§31A-2-15.

Repealed.

Acts, 1997 Reg. Sess., Ch. 96.

WV Legislature

§31A-2-16. Effective date.

The amendments to this article enacted during the first extraordinary session of the Legislature in the year 1996 shall be effective as of June 7, 1996.

WV Legislature

§31A-2A-1. Definitions.

As used in this article:

(a) "Customer" means any person or his or her duly authorized representative who has transacted business with or has used the services of a financial institution or for whom a financial institution has acted as a fiduciary in relation to an account maintained in such person's name;

(b) "Financial institution" means a bank, a savings and loan association, a trust company or a credit union chartered pursuant to any state or federal law, a regulated consumer lender licensed under article four, chapter forty-six-a of this code, a mortgage lender broker or servicer licensed under article seventeen, chapter thirty-one of this code, a money service business licensed under article two, chapter thirty-two-a of this code or other institutions which are by law under the jurisdiction and supervision of the Commissioner of Banking;

(c) "Financial record" means the original or a copy of any record or document held by a financial institution pertaining to a customer of the financial institution, including any record of a transaction conducted by means of a customer bank communication terminal or other electronic device. "Financial record" also means any information derived from such records or documents;

(d) "Investigation" includes, but is not limited to, any inquiry by a state or local law-enforcement officer, sheriff or prosecuting attorney or any inquiry made by a state or local governmental entity for the purpose of determining whether there has been a violation of any law which is punishable by imprisonment or by a fine or other monetary liability;

(e) "Person" means an individual, partnership, corporation, limited liability company, association, trust or any other legal entity;

(f) "State entity" means any state or local governmental office, officer, department, division, bureau, board or commission, including the Legislature, and any other state or local government agency of West Virginia, its political subdivisions and any agent thereof; and

(g) "Subpoena" includes a subpoena duces tecum or any other lawful subpoena to compel testimony or the disclosure or production of documents.

WV Legislature

§31A-2A-2. Requirements for government access to records.

(a) No state entity may have access to or obtain from a financial institution financial records of any customer except as set forth in section four of this article or under the following circumstances:

(1) The customer has executed a written authorization pursuant to section three of this article;

(2) The financial records are disclosed in response to a judicial order, warrant, summons or subpoena issued by a court of competent jurisdiction or a valid administrative order or subpoena of a state entity expressly ordering or requiring the disclosure of financial records: Provided, That any subpoena issued pursuant to the provisions of this subsection shall comply with the provisions of section five of this article;

(3) The financial records are disclosed in response to a judicial order authorizing the appointment of the state entity or its agent: (A) As guardian of the customer or conservator of his or her property; or (B) as administrator or executor of the customer's estate;

(4) The financial records are disclosed: (A) Pursuant to a state or federal rule of civil or criminal procedure or any comparable rule of another court of competent jurisdiction; (B) in response to a subpoena issued in connection with any pending civil or criminal proceeding in which a state entity is a party; or (C) in response to interrogatories in aid of execution propounded by a state entity where it is a judgment creditor of the customer;

(5) The financial records are disclosed to law-enforcement officers pursuant to a grand jury or trial subpoena resulting from a criminal investigation which complies with the provisions of section six of this article; or

(6) As may be required or permitted by any other state or federal law.

(b) No state entity obtaining financial records pursuant to the provisions of this article and no person who obtains financial records from a state entity which obtained such financial records pursuant to the provisions of this article shall disclose such financial records: (i) To any other state entity unless such other state entity has authority or authorization to receive the financial record in accordance with the provisions of this article; or (ii) to any person unless such person has authority or authorization to receive the financial record: Provided, That nothing herein shall limit or prevent the disclosure of financial records which are otherwise public documents or matters of public record or the disclosure of financial records made to facilitate a lawful proceeding, investigation, examination or inspection by a state entity. Financial records obtained under this article by a state entity shall not be subject to disclosure under the provisions of article one, chapter twenty-nine-b of this code.

WV Legislature

§31A-2A-3. Written authorization of customer; contents; certification of compliance.

(a) A customer may authorize disclosure under section two of this article by signing and dating a statement in which he or she:

(1) Authorizes the disclosure for such period as may be agreed upon;

(2) Indicates an understanding of his or her right to revoke such authorization at any time before the financial records are disclosed;

(3) Identifies the financial records which are authorized to be disclosed;

(4) Specifies the purposes for which, and the state entity to which, such records may be disclosed; and

(5) Acknowledges that he or she has been advised of his or her rights under this article by the state entity seeking the disclosure of the financial records.

(b) No authorization as provided in subsection (a) of this section shall be required as a condition of doing business with any financial institution.

(c) No financial institution shall release the financial records of a customer pursuant to his or her authorization under this section until the state entity seeking the records also provides certification in writing to the financial institution that it has complied with the applicable provisions of this article. The financial institution and the state entity seeking to obtain the disclosure of the financial records shall retain copies of this written authorization.

WV Legislature

§31A-2A-4. Exceptions.

(a) Nothing in this article is intended to, or shall prohibit, apply to, or interfere with:

(1) The lawful authority or ability of the commissioner of banking or any other state or federal regulatory agency of a bank, savings and loan association, trust company, or credit union to obtain or to share between such regulatory agencies any records which the commissioner of banking or such state or federal regulatory agency may deem appropriate for the examination and regulation of the financial institution: *Provided*, That nothing in this subdivision permits disclosure of protected financial information in violation of §31A-2B-1 *et seq*. of this code;

(2) The lawful authority or ability of the Insurance Commissioner or the State Auditor to obtain any records from a financial institution relating to the financial institution's sale of insurance or securities;

(3) The dissemination or publication of information derived from financial records if the information cannot be identified to any particular customer, deposit, or account, or if the information is in composite form and is not disseminated or published in a way which identifies any particular customer, deposit, or account;

(4) The making of reports or returns specifically required or permitted by federal or state law, including applicable tax law or regulations;

(5) The disclosure of any information under the provisions of the uniform commercial code governing the dishonor of a negotiable instrument, or the disclosure to any purported state entity payee or to any purported state entity holder of a check, draft, order, or other item, whether or not such instrument has been accepted by such payee or holder as payment, as to whether or not such instrument would be honored if presented at the time of such disclosure;

(6) A state entity obtaining a credit report or consumer credit report from anyone other than a financial institution;

(7) The exchange, in the regular course of business, of information showing the outstanding balance of a mortgage loan account in connection with a sale, refinancing, or foreclosure of real property in a transaction to which the state entity is a party; or the disclosure, in the regular course of business, of information on a mortgage or deed of trust on a subject property to a state entity as holder of any subordinate mortgage, deed of trust or security interest;

(8) The disclosure to the Department of Human Services, upon written request, of an individual's financial records which the department determines are necessary to verify or confirm the individual's eligibility or ineligibility for public assistance;

(9) The disclosure of an individual's financial records in response to a written request by the

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Department of Human Services, as authorized by the federal parent locator service of the United States Department of Health and Human Services;

(10) The examination or audit of financial records relating to preneed funeral trust accounts pursuant to §47-14-1 *et seq*. of this code;

(11) The disclosure of financial records relating to unclaimed property pursuant to §36-8-1 *et seq*. of this code, including the examination of financial records by the State Treasurer or his or her agent to determine compliance with the handling and reporting of unclaimed property as provided by, and subject to, the limitations set forth in §36-8-20 of this code;

(12) The presentation to appropriate local, state, or federal law-enforcement authorities of a certificate under oath by an authorized representative of a financial institution drawee that declares the dishonor of the check, draft, or order by the drawee, the lack of an account with the drawee at the time of utterance or the insufficiency of the drawer's funds at the time of presentation and utterance in connection with any criminal action for obtaining property or services by a worthless check, draft, or order;

(13) The notification to appropriate local, state, or federal law-enforcement authorities or regulatory agencies that the financial institution, its officers, employees or agents thereof have information which may be relevant to a possible violation of any statute or regulation: *Provided*, That nothing in this subdivision permits disclosure of protected financial information in violation of §31A-2B-1 *et seq*. of this code. The disclosure of any information pursuant to this subdivision may only include the name or other identifying information concerning any individual, corporation, or account involved in and the nature of any suspected illegal activity;

(14) The disclosure of information or records by a financial institution to any court or other appropriate state entity which is incidental to recording a lien, perfecting a security interest, proving a claim in bankruptcy, or otherwise collecting on a debt owing either to the financial institution itself or in its role as a fiduciary;

(15) The disclosure of information or records by a financial institution which is incidental to processing an application for assistance to a customer in the form of a government loan, loan guaranty, or loan insurance agreement, or which is incidental to processing a default on, or administering, a government guaranteed or insured loan or to initiating contact with an appropriate state entity for the purpose of providing any financial record necessary to permit such authority to carry out its responsibilities under a loan, loan guaranty, or loan insurance agreement;

(16) The disclosure of information incidental to a transaction in the normal course of business of the financial institution where there is no reasonable cause to believe that the information is intended to be used by the state entity in connection with an investigation of the customer;

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(17) The preparation, review, handling, or maintenance of financial records in the ordinary course of business by any officer, employee, or agent of a financial institution having custody of the records; or

(18) The disclosure to appropriate law-enforcement officials of the financial records of any officer, director, employee, or controlling shareholder of a financial institution by a financial institution or by any state or federal regulatory agency having authority to regulate the financial institution, if there is reason to believe that the financial record is relevant to a possible violation by such person of any law relating to a crime against the financial institution or any such state or federal regulatory agency. No state or federal regulatory agency which discloses any information pursuant to this subdivision shall be deemed to have waived any privilege applicable to that record under law.

(b) Nothing in this article shall preclude a state entity from obtaining information that is public record without regard to this article although the information may have been derived from financial records.

(c) Nothing in this article shall preclude a state entity from obtaining information or financial records voluntarily submitted to it by others in an attempt to seek governmental assistance or redress of a grievance, including legislative change: *Provided*, That the financial record or information was not solicited by the state entity in an effort to evade the requirements of this article or submitted by a financial institution in contravention of §31A-2A-7 of this code.

(d) Notwithstanding the exceptions set forth in this section, a financial institution may not disclose financial records to a state entity and a state entity may not compel disclosure of financial records in a manner that singles out or discriminates against any person based on activity protected by the Second Amendment to the United States Constitution or Section 22, Article III of the West Virginia Constitution.

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§31A-2A-5. Subpoena and notice requirements.

(a) A financial institution may disclose or produce financial records to a state entity in compliance with a subpoena served upon it if the subpoena contains a certification that: (1) A copy of the subpoena has been served on the customer whose records are sought by the state entity seeking disclosure or production of the records at least ten days prior to the date on which disclosure or production is sought; or (2) that service on the customer has been waived for good cause by the circuit court of Kanawha County or other circuit court of competent jurisdiction.

(b) Any person whose financial records are to be disclosed pursuant to a subpoena served under the provisions of subdivision (1), subsection (a) of this section may challenge the subpoena by filing a motion to quash in a court of competent jurisdiction at any time prior to the disclosure of the records. After the filing and service of the motion upon the financial institution and the state entity requesting the issuance of the subpoena, the production of financial records shall be stayed, without liability to the financial institution, until the court holds a hearing on the motion and an order is entered sustaining, modifying or quashing the subpoena.

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§31A-2A-6. Subpoena issued by grand jury.

(a) Notwithstanding the provisions of section five of this article, a financial institution may disclose or produce financial records upon being served with a subpoena issued under authority of a grand jury without notice or service upon the customer.

(b) Financial records obtained pursuant to a subpoena issued under the authority of a grand jury:

(1) Shall be returned and actually presented to the grand jury;

(2) Shall be used only: (A) For the purpose of considering whether to issue an indictment or presentment by that grand jury; (B) for the purpose of prosecuting a crime for which that indictment or presentment is issued; or (C) for any other purpose authorized by the West Virginia rules of criminal procedure; and

(3) Shall be destroyed or returned to the financial institution if not used for one of the purposes specified in subdivision (2) of this subsection.

(c) Financial records obtained pursuant to a subpoena issued under the authority of a grand jury and any descriptions of the contents of such financial records must be maintained in sealed records of the grand jury unless such financial records or descriptions thereof have been used in the prosecution of a crime for which the grand jury issued an indictment or presentment or for any other purpose authorized by the West Virginia rules of criminal procedure.

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§31A-2A-7. Penalties.

(a) Any state, county or local government official or employee who knowingly and willfully discloses financial records with intent to violate this article, or who knowingly and willfully induces or attempts to induce an officer, employee, agent or director of a financial institution to disclose financial records to a state entity with intent to violate this article, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000.

(b) Any customer whose financial records or the information contained therein has been negligently disclosed by a state entity or a financial institution in violation of this article may file an action in any circuit court of this state against the state entity or financial institution and, if the customer proves that the state entity or financial institution negligently disclosed the customer's financial records or the information contained therein, may recover from the state entity or financial institution an amount equal to the sum of:

(1) Up to $1,000 in civil damages, as penalty, without regard to the volume of records involved or lack of actual damages;

(2) Any actual damages sustained by the customer as a result of the disclosure; and

(3) The costs of the action, including reasonable attorney's fees, as may be allowed by the court.

(c) No financial institution or person shall be held liable, notwithstanding subsection (a) or (b) of this section, for the disclosure of financial records pursuant to a subpoena, summons, warrant, court order or administrative order which on its face appears to have been issued upon lawful authority. No financial institution or agent or employee thereof who discloses financial records pursuant to this article: (i) In good faith reliance upon a certificate by any state entity that this article has been complied with; or (ii) pursuant to the provisions of subdivision (13), subsection (a), section four of this article shall be liable under this article or any other law or rule of this state or any political subdivision hereof.

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§31A-2A-8. Statute of limitations; tolling of statute.

(a) An action to enforce any provision of this article may be brought in any circuit court of competent jurisdiction in this state within three years from the date on which the violation occurs or the date of discovery of such violation, whichever is later.

(b) If any customer files a motion or application under this article which has the effect of delaying the access of a state entity to financial records pertaining to such customer, any applicable statute of limitations shall be tolled for the period extending from the date such motion or application was filed until the date an order is entered pursuant thereto.

WV Legislature

§31A-2A-9. Injunctive relief; recovery of attorney fees.

In addition to any other remedy contained in this article, injunctive relief shall be available to require compliance with any procedure established in this article. Any customer awarded injunctive relief pursuant to this section may recover costs and reasonable attorney's fees as determined by the court.

WV Legislature

§31A-2A-10. Exclusive remedies.

The remedies provided in this article are exclusive for any violations or alleged violations of this article.

WV Legislature

§31A-2B-1. Short title.

This article shall be known and may be cited as the "Second Amendment Financial Privacy Act."

WV Legislature

§31A-2B-2. Findings and intent.

(a) The Legislature finds that:

(1) The Second Amendment to the United States Constitution guarantees the people the right to keep and bear arms;

(2) Section 22, Article III of the West Virginia Constitution provides that "[a] person has the right to keep and bear arms for the defense of self, family, home and state, and for lawful hunting and recreational use";

(3) In September of 2022, the International Organization for Standardization, based in Switzerland, approved a unique Merchant Category Code for firearm and ammunition retailers;

(4) Later in September of 2022, the world's three largest payment card networks publicly announced they would assign the new Merchant Category Code to firearms retailers accepting payment cards for purchases, after 28 members of Congress sent a public letter to networks, pressuring them to adopt the new code;

(5) In the letter to payment card networks, federal lawmakers stated that the new Merchant Category Code for firearms retailers would be "[. . .] the first step towards facilitating the collection of valuable financial data that could help law enforcement in countering the financing of terrorism efforts", expressing a clear government expectation that networks will utilize the new Merchant Category Code to conduct mass surveillance of constitutionally protected firearms, firearm accessories or components, and ammunition purchases in cooperation with law enforcement;

(6) The new Merchant Category Code will allow the banks, payment card networks, acquirers, and other entities involved in payment card processing to identify and separately track lawful payment card purchases at firearms retailers in West Virginia, paving the way for both unprecedented surveillance of Second Amendment activity and unprecedented information sharing between financial institutions and the government;

(7) This potential for cooperative surveillance and tracking of lawful firearms, firearm accessories or components, and ammunition purchases will have a significant chilling effect on citizens wishing to exercise their federal and state constitutional rights to keep and bear arms in West Virginia;

(8) While federal law requires some financial institutions to report transactions that are highly indicative of money laundering or other unlawful activities, there is no federal or state law authorizing financial institutions to surveil and track lawful activities by customers in cooperation with law enforcement; in fact, both the federal Right to Financial Privacy Act and West Virginia's Maxwell Governmental Access to Financial Records Act prohibit financial institutions from disclosing a customer's financial records except in limited

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circumstances; and

(9) This article should be construed as a generally applicable consumer financial protection law that does not prevent or significantly interfere with the duly authorized powers of any bank, nor does this article directly or indirectly discriminate against any bank based on its charter or structure.

(b) Based on the above-stated findings, it is the intent of the Legislature to prohibit the misuse of payment card processing systems to surveil, report, or otherwise discourage constitutionally protected firearm, firearm accessories or components, and ammunition purchases and sales within West Virginia's jurisdiction.

WV Legislature

§31A-2B-3. Definitions.

(a) The terms used in this article shall have the same meaning provided in §31A-2A-1 of this code, unless otherwise specified in this section.

(b) For the purposes of this article, the following terms have the following meanings:

(1) “Ammunition” means ammunition or cartridge cases, primers, bullets, or propellant powder designed for use in any firearm.

(2) "Assign" or "assignment" refers to a financial institution policy, process, or practice that labels, links, or otherwise associates a firearms code with a merchant or payment card transaction in a manner that allows the financial institution or any other entity facilitating or processing the payment card transaction to identify whether a merchant is a firearms retailer or whether a transaction involves the sale of firearms, firearm accessories or components, or ammunition.

(3) "Customer", in addition to the definition provided in §31A-2A-1(a) of this code, includes any person who presents a payment card to a merchant for the purchase of goods or services.

(4) "Disclosure" means the transfer, publication, or distribution of protected financial information to another person for any purpose other than to process or facilitate a payment card transaction.

(5) "Financial institution", in addition to the definition provided in §31A-2A-1(b) of this code, includes an entity other than a merchant involved in facilitating or processing a payment card transaction, including, but not limited to, a bank, acquirer, gateway, payment card network, or payment card issuer.

(6) "Financial record", in addition to the definition provided in §31A-2A-1(c) of this code, includes a financial record held by a financial institution related to a payment card transaction that the financial institution has processed or facilitated.

(7) “Firearm” has the same meaning as that term is defined in §61-7-2 of this code and includes antique firearms.

(8) “Firearm accessories or components” means:

(A) Any device specifically adapted to enable the wearing or carrying about one’s person or the storage or mounting in or on any conveyance of a firearm and any attachment or device specifically adapted to be inserted into or affixed onto any firearm to enable, alter, or improve the functioning or capabilities of the firearm;

(B) Any item that is used in conjunction with or mounted upon a firearm, including but not limited to telescopic or laser sights, magazines, flash or sound suppressors, folding or

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aftermarket stocks and grips, speedloaders, braces, ammunition carriers, and lights for target illumination; and

(C) Any component for making ammunition, reloading materials and equipment, machinery, and tools for manufacturing ammunition.

(9) "Firearms code" means any code or other indicator a financial institution assigns to a merchant or to a payment card transaction that identifies whether a merchant is a firearms retailer or whether the payment card transaction involves the purchase of a firearm, firearm accessories or components, or ammunition. The term includes, but is not limited to, a Merchant Category Code assigned to a retailer by a payment card network or other financial institution.

(10) "Firearms retailer" means any person engaged in the lawful business of selling or trading firearms or antique firearms, as those terms are defined in §61-7-2 of this code, firearm accessories or components, or ammunition to be used in firearms or antique firearms.

(11) "Government entity" means any state or local government agency or instrumentality thereof, located in West Virginia.

(12) “Merchant” means a person or entity that accepts payment cards from customers for the purchase of goods or services. The term includes a firearms retailer that accepts payment cards for the lawful purchase of firearms, firearm accessories or components, or ammunition.

(13) “Payment card” means a credit card, charge card, debit card, or any other card that is issued to an authorized card user and that allows the user to purchase goods or services from a merchant.

(14) "Protected financial information" means any record of a sale, purchase, return, or refund involving a payment card that is retrieved, characterized, generated, labeled, sorted, or grouped based on the assignment of a firearms code. A "customer’s protected financial information" refers to protected financial information appearing in a financial institution’s records pertaining to a customer.

WV Legislature

§31A-2B-4. Protected financial information.

A financial institution is prohibited from disclosing a customer's protected financial information to a government entity and a government entity is prohibited from accessing or obtaining said information unless:

(1) Disclosure is expressly permitted by §31A-2A-4 of this code and the protected financial information is not singled out, segregated, or disclosed based on the assignment of a firearms code;

(2) Disclosure is made pursuant to a valid warrant issued in a criminal investigation, stating the grounds or probable cause for its issuance, and otherwise meeting the requirements of §62-1A-3 of this code;

(3) The customer has provided written authorization for disclosure, according to the requirements of §31A-2B-5 of this code;

(4) Disclosure is made pursuant to a subpoena meeting the requirements of §31A-2A-5 and §31A-2B-6 of this code or to a grand jury subpoena meeting the requirements of §31A-2A-6 of this code; or

(5) The financial institution discloses only the following information:

(A) That the financial institution is not in possession of the protected financial information; and

(B) The identity of the entity that is in possession of the requested protected financial information.

WV Legislature

§31A-2B-5. Written authorization for disclosure.

(a) Notwithstanding §31A-2B-4 of this code, a financial institution may disclose a customer's protected financial information to a government entity if the customer provides the financial institution with written authorization for said disclosure. The written authorization described by this section must contain the following:

(1) A statement that the customer consents to the disclosure of the protected financial information, along with the definition provided in §31A-2B-3(14) of this code, for a specific period;

(2) A statement that the customer has the right to refuse to consent to disclosure;

(3) A statement that the customer understands his or her right to revoke said consent at any time before the protected financial information is disclosed;

(4) A description of the financial records authorized to be disclosed;

(5) The purpose for which disclosure of the protected financial information is authorized;

(6) The recipient or recipients of the disclosure; and

(7) The customer's signature.

(b) The written authorization described in this section may not be required as a condition of doing business or transacting with any financial institution.

(c) The written authorization required by this section must be executed distinctly and separately from other agreements or instruments entered into between the customer and financial institution.

WV Legislature

§31A-2B-6. Additional requirements for subpoenas.

A subpoena issued by a government entity that specifically requires disclosure of protected financial information must meet the following requirements, in addition to the requirements of §31A-2A-5 of this code:

(1) The subpoena must state that protected financial information is being sought, along with the definition provided in §31A-2B-3(14) of this code;

(2) A copy of the subpoena must be served upon the customer according to the procedure provided in §31A-2A-5 of this code and the subpoena must contain a certification that said service was executed; and

(3) A copy of the subpoena must be served by the government entity upon the Consumer Protection Division of the West Virginia Attorney General's Office on the same day the subpoena is served upon the customer whose protected financial data is being sought and the subpoena must contain a certification that said service was executed.

WV Legislature

§31A-2B-7. Use of protected financial information for discriminatory purpose.

A financial institution may not use a firearms code to engage in the following discriminatory conduct:

(1) Declining a lawful payment card transaction based on the assignment of a firearms code to the merchant or transaction;

(2) Limiting or declining to do business with a customer, potential customer, or merchant based on the assignment of a firearms code to previous lawful transactions involving the customer, potential customer, or merchant;

(3) Charging a higher transaction or interchange fee to any merchant or for a lawful transaction, as compared to the fee charged to a similarly situated merchant or for a similar transaction, based on the assignment of a firearms code; or

(4) Otherwise taking any action against a customer or merchant that is intended to suppress lawful commerce involving firearms, firearm accessories or components, or ammunition.

WV Legislature

§31A-2B-8. Civil remedies.

(a) Subject to subsection (c) of this section, a customer may bring a civil action for damages, injunctive relief, or both damages and injunctive relief against any financial institution or government entity that causes the customer's protected financial information to be disclosed in violation of this article. For each violation, the individual may recover:

(1) Against any person who negligently or recklessly violates this article, liquidated damages of $10,000 or actual damages, whichever is greater; or

(2) Against any person who intentionally violates this article, liquidated damages of $25,000 for each or actual damages, whichever is greater.

(b) Subject to subsection (c) of this section, a customer or merchant aggrieved by a violation of §31A-2B-7 of this code may bring a civil action for damages, injunctive relief, or both damages and injunctive relief. Said person may recover liquidated damages of $50,000 or actual damages, whichever is greater.

(c) Right to cure. – Prior to an aggrieved party bringing a civil action pursuant to this section, a financial institution shall have the right to cure an alleged violation of this section, according to the procedures, restrictions, and requirements set forth in §46A-5-108(a) of this code: *Provided*, That both parties must follow the procedures set forth therein.

(d) Attorney's fees. – If a court finds that a violation of this article has occurred as the result of a civil action brought pursuant to subsection (a) or subsection (b) of this section, the court shall award reasonable attorney's fees to the aggrieved party. An award of attorney's fees is subject to the same limitations set forth in §46A-5-108(f) of this code.

(e) Statute of Limitations. – Any action under this article is barred unless the action is commenced within five years after the aggrieved party knows or reasonably should know of the violation. The statute of limitations provided herein is tolled for the 45-day period set forth in §46A-5-108(a) of this code or for the period the effectuation of the cure offer is being performed, whichever is longer.

(f) The remedies provided in this article are the exclusive civil remedies available to an aggrieved party for violations of this article.

WV Legislature

§31A-2B-9. Enforcement; contractual authority of the State.

(a) Notwithstanding any other provisions of this chapter, the Commissioner of Banking is authorized to administratively enforce the requirements of this article consistent with §31A-2-4 of this code.

(b) The Attorney General is authorized to investigate compliance with this article and may bring a civil action for injunctive relief to judicially enforce this article: *Provided*, That with regard to a national bank, the Attorney General is authorized to conduct investigations and take judicial enforcement action only to the extent permitted by 12 U.S.C. §25b(i). Upon awarding an injunction against a financial institution as the result of a judicial enforcement action pursuant to this subsection, a court may award the Attorney General reasonable attorney's fees.

(c) In selecting a financial institution to provide a financial service or product to the state related to payment card processing, the State Treasurer may disqualify a financial institution from the competitive bidding process or from any other official selection process if:

(1) During the past five years, a court of competent jurisdiction has entered an order or opinion finding that the financial institution violated this article;

(2) During the past five years, the Commissioner of Banking or the Attorney General, as the result of an investigation, has determined that a financial institution has violated this article;

(3) During the past five years, the financial institution has admitted to violating this article in the records of a court or other official proceeding; or

(4) The financial institution has publicly stated that it has adopted or intends to adopt policies or practices that violate this article.

WV Legislature

§31A-2B-10. Scope and Severability.

(a) Nothing in this article may be construed or applied in a manner that violates or conflicts with superseding federal law.

(b) The sections and provisions of this article are severable. If any section or provision of this article is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect the other sections and provisions of this article, which shall remain in full force and effect.

WV Legislature

§31A-2C-1. Short title.

This article may be cited as Banking and Financial Services Provider Protections for Eligible Adults from Financial Exploitation.

WV Legislature

§31A-2C-2. Legislative findings, purpose, and intent.

(a) The Legislature recognizes that depository institutions have duties imposed by law and by contract to conduct customer-directed transactions in a timely manner, and in accordance with their customers' instructions.

(b) The Legislature recognizes that customers are increasingly being induced to authorize transactions that are not in their interest.

(c) It is the intent of the Legislature to:

(1) Ensure that eligible adults have ready access to their funds;

(2) Provide depository institutions with the tools and protections to intervene in customer-directed transactions when, in their discretion, the transaction presents a potential significant risk of harm to the customer; and

(3) Provide designated state agencies with the tools and information to investigate potential financial exploitation.

(d) The Legislature does not intend to create a duty for depository institutions to contravene the valid instructions of their customers, and nothing in this article creates such a duty.

WV Legislature

§31A-2C-3. Definitions.

The terms and phrases used in this article have the following meanings:

"Account" means a contract deposit of funds between the depositor and a depository institution that is one of the following:

(A) A consumer account owned by an eligible adult, whether individually or with one or more other persons;

(B) A conservatorship or guardianship account of which the eligible adult is a beneficiary; or

(C) A line of credit owned by an eligible adult, whether individually or with one or more other persons.

"Associated third-party" means an individual that:

(A) An eligible adult has previously designated as an emergency contact for the depository institution to contact in writing, or who is the parent, spouse, adult child, sibling, or other close family member of the eligible adult;

(B) Is a co-owner, additional authorized signatory, or beneficiary on an eligible adult's account or an agent under a power of attorney; or

(C) Is an attorney, trustee, conservator, guardian, or other fiduciary whom a court or a government agency selects to manage some or all of the financial affairs of the eligible adult.

"Depository institution" has the same meaning as defined in §31-17A-2 of this code.

"Designated state agency" means the entity responsible for receiving reports of alleged or suspected maltreatment or financial exploitation of an eligible adult, including the West Virginia Department of Human Services Bureau for Social Services and the West Virginia Attorney General.

"Eligible adult" means:

(A) A person 65 years of age or older or a person subject to §9-6-1 *et seq*. of this code; or

(B) A person 18 years or older who:

(i) Has a substantial mental or functional impairment that significantly interferes with his or her ability to make financial decisions, or for whom a guardian has been appointed under state law; and

(ii) The depository institution has actual knowledge that the person has a substantial mental or functional impairment or that a guardian has been appointed under state law.

WV Legislature

"Financial exploitation" means:

(A) The wrongful or unauthorized taking, withholding, appropriation, expenditure, or use of money, assets, or property owned by an eligible adult; or

(B) An act or omission taken by a person, including through the use of a power of attorney, guardianship, trustee, or conservatorship of an eligible adult, to:

(i) Obtain control, through deception, intimidation, or undue influence, over the eligible adult's money, assets, or property to deprive the eligible adult of the ownership, use, benefit, or possession of the eligible adult's money, assets, or property; or

(ii) Convert money, assets, or property of the eligible adult to deprive the eligible adult of the ownership, use, benefit, or possession of the eligible adult's money, assets, or property.

WV Legislature

§31A-2C-4. Government disclosures.

Any depository institution or its employees, or both, who believe that financial exploitation of an eligible adult has occurred, may have been attempted, or is being attempted, shall promptly notify a designated state agency.

WV Legislature

§31A-2C-5. Authority to delay, refuse, or prevent certain activities.

(a) When, based on personal observation or information received from a governmental agency or law-enforcement agency, a depository institution or its employees believe that financial exploitation of an eligible adult may have occurred, has been attempted, is occurring, or is being attempted, the depository institution or its employees may, but are not required to:

(1) Delay or refuse one or more transactions with or involving the eligible adult;

(2) Delay or refuse to permit the withdrawal or disbursement of funds contained in the eligible adult's account;

(3) Prevent a change in ownership of the eligible adult's account;

(4) Prevent a transfer of funds from the eligible adult's account to an account owned wholly or partially by another person;

(5) Refuse to comply with instructions given to the depository institution by an agent or a person acting for or with an agent under a power of attorney signed or purported to have been signed by the eligible adult; or

(6) Prevent the designation or change the designation of beneficiaries to receive any property, benefit, or contract rights for an eligible adult at death.

(b) A depository institution or its employees are not required to act under subsection (a) of this section when provided with information alleging that financial exploitation may have occurred, may have been attempted, is occurring, or is being attempted, but may use their sole discretion to determine whether or not to act under subsection (a) of this section based on the information available to them at the time.

(c) The authority to delay and/or refuse a transaction set forth in subsection (a) of this section expires upon the sooner of:

(1) Fifteen business days after the date on which the depository institution first acted under subsection (a) of this section, unless the designated state agency is conducting an investigation and requests an extension, in which case it may be extended for an additional 30 days;

(2) When the depository institution is satisfied in its sole discretion that the transaction or act will not likely result in financial exploitation of the eligible adult; or

(3) Upon an order of a court of competent jurisdiction directing the release of funds.

(d) Notwithstanding any other law to the contrary, the refusal to engage in a transaction as authorized under subsection (a) of this section may not constitute the wrongful dishonor of

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an item under §46-4-1 *et seq*. of this code.

(e) A reasonable belief that payment of a check will facilitate the financial exploitation of an eligible adult constitutes reasonable grounds to doubt the collectability of the item for purposes of the federal Check Clearing for the 21st Century Act, 12 U.S.C. § 5001 *et seq*., the federal Expedited Funds Availability Act, 12 U.S.C. § 4001 *et seq*., and 12 C.F.R. part 229. Nothing herein, however, requires depository institutions or their employees to review the checks of eligible adults.

(f) A delay or refusal to complete a funds transfer request as authorized under subsection (a) of this section does not violate §46-4A-101 *et seq*. of this code: *Provided*, That if a transaction is delayed under subsection (a) of this section, the payment order is not considered as received until the hold is removed and the depository institution submits the payment order for processing. Funds transfer and payment order have the same meanings as defined in §46-4A-101 *et seq*. of this code.

(g) The depository institution shall maintain internal records of any delay and/or refusal of a transaction as set forth in subsection (a) of this section.

WV Legislature

§31A-2C-6. Third-party notifications.

(a) A depository institution or its employees may notify an associated third party, if any, if the depository institution or its employees believe that the financial exploitation of the eligible adult is occurring, has or may have occurred, is being attempted, or has been or may have been attempted.

(b) A depository institution or its employees may choose not to notify an associated third party as described in subsection (a) of this section if the depository institution or its employees believe that the third party is, may be, or may have been engaged in the financial exploitation of the eligible adult.

(c) When providing information under subsection (a) of this section, a depository institution or its employees may limit the information provided to disclose their suspicion that the eligible adult may be a victim or target of financial exploitation.

(d) Any disclosure under subsection (a) of this section is exempt from coverage by state privacy laws and requirements.

WV Legislature

§31A-2C-7 Immunities.

If the determinations and actions of a depository institution or an employee of a depository institution are made in good faith and in accordance with the provisions of this article, then the depository institution or employee shall be immune from criminal, civil, or administrative liability for the following:

(1) A depository institution or its employees who makes, or chooses not to make a disclosure pursuant to §31A-2C-4 of this code, notify an associated third-party pursuant to §31A-2C-6 of this code, or participate in a judicial proceeding, administrative proceeding, or investigation arising from a notification or report;

(2) A depository institution or its employees that delays, refuses, or prevents a transaction pursuant to §31A-2C-5 of this code, or decides not to delay, refuse, or prevent a transaction pursuant to §31A-2C-5 of this code; or

(3) A depository institution or its employees who accept from the eligible adult the designation of an associated third-party the information provided by the eligible adult regarding the associated third-party.

WV Legislature

§31A-3-1. Board continued; appointment, qualifications, terms, oath, etc., of members; quorum; meetings; when members disqualified from participation; compensation; records; office space; personnel; continuation.

(a) The West Virginia Board of Banking and Financial Institutions is continued and shall consist of six members and the commissioner, who shall be chairman. The six members shall be appointed by the Governor, by and with the advice and consent of the Senate. Three of the members shall be executive officers of state banking institutions. When a vacancy occurs among the executive officers of state banking institutions, the commissioner shall list all state banking institutions according to each bank's asset size and then divide the list into three groups so that there is an equal number of banking institutions in each group. The vacancy shall then be filled from the appropriate group to ensure that each group has a representative on the board. One member shall be an executive officer of a financial institution other than a banking institution. Two members shall represent the public, neither of whom shall be an employee, officer, trustee, director or owner of five percent or more of the outstanding shares of any financial institution. A member shall not hold any other office, employment or position with the United States, any state, county, municipality or other governmental entity or any of their instrumentalities or agencies or with any political party.

(b) The members of the board shall be appointed for overlapping terms of six years and in every instance shall serve until their respective successors have been appointed and qualified. Any member appointed for a full six-year term may not be reappointed until two years after the expiration of that term. Any member appointed for less than a full six-year term is eligible for reappointment for a full term. Before entering upon the performance of his or her duties, each member shall take and subscribe to the oath required by section five, article IV of the Constitution of this state. The Governor shall, within sixty days following the occurrence of a vacancy on the board, fill the vacancy by appointing a person for the unexpired term of, and meeting the same requirements for membership as, the person vacating the office. The Governor may remove any member in case of incompetency, neglect of duty, gross immorality or malfeasance in office.

(c) A majority of the members of the board constitutes a quorum. The board shall meet at least once in each calendar quarter on a date fixed by the board. The commissioner may, upon his or her own motion, or shall upon the written request of three members of the board, call additional meetings of the board upon at least twenty-four hours' notice. A member shall not participate in a proceeding before the board to which a corporation, partnership or unincorporated association is a party and of which he or she is, or was at any time in the preceding twelve months, a director, officer, owner, partner, employee, member or stockholder. A member may disqualify himself or herself from participation in a proceeding for any other cause determined by him or her to be sufficient. Each member shall receive compensation in an amount equal to that authorized by section five, article two-a, chapter four of this code for members of the Legislature for interim duties for each day or portion of a day spent in attending meetings of the board and shall be reimbursed for all reasonable and necessary actual expenses incurred incident to his or her duties as a member

of the board as determined in accordance with regulations and policies issued by the travel management unit of the state Purchasing Division.

(d) The board shall keep an accurate record of all its proceedings and make certificates thereupon as may be required by law. The commissioner shall make available necessary office space and secretarial and other assistance required by the board.

WV Legislature

§31A-3-2. General powers and duties.

(a) In addition to other powers conferred by this chapter, the board has the power to:

(1) Regulate its own procedure and practice;

(2) Promulgate reasonable rules to implement any provision of this article in accordance with the provisions of article three, chapter twenty-nine-a of this code;

(3) Advise the Commissioner in all matters within his or her jurisdiction;

(4) Study the organization, programs and services of financial institutions and the laws relating thereto in this state and in other jurisdictions and to report and recommend to the Governor and the Legislature all such changes and amendments in laws, policies and procedures relating thereto as it considers proper;

(5) Grant permission and authority to a financial institution:

(A) To participate in a public agency hereafter created under the laws of this state or of the United States, the purpose of which is to afford advantages or safeguards to financial institutions or to depositors therein and to comply with all lawful requirements and conditions imposed upon those participants; and

(B) To pay interest on demand deposits of the United States or any agency thereof, if the payment of interest is permitted under any applicable federal law, rule or regulation; and

(6) Seek judicial enforcement to compel compliance with any of its orders and to seek and obtain civil penalties as set forth under this chapter.

(b) The Board also has the power, by entering appropriate orders, to:

(1) Restrict the withdrawal of deposits from any financial institution when, in the judgment of the board, extraordinary circumstances make the restrictions necessary for the protection of creditors of and depositors in the affected institution;

(2) Compel the holder of shares in any corporate financial institution to refrain from voting the shares on any matter when, in the judgment of the board, the order is necessary to protect the institution against reckless, incompetent or careless management, to safeguard funds of depositors in the institution or to prevent willful violation of any applicable law or of any rule and regulation or order issued thereunder. In such a case the shares of the holder may not be counted in determining the existence of a quorum or a percentage of the outstanding shares necessary to take any corporate action;

(3) Approve or disapprove applications to incorporate and organize state banking institutions in accordance with the provisions of sections six and seven, article four of this chapter;

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(4) Approve or disapprove applications to incorporate and organize state-chartered bankers' banks in accordance with the provisions of sections six and seven, article four of this chapter;

(5) Exempt a bankers' bank from any provision of this chapter if the board finds that the provision is inconsistent with the purpose for which a bankers' bank is incorporated and organized and that the welfare of the public or any banking institution or other financial institution would not be jeopardized thereby;

(6) Revoke the certificate of authority, permit, certificate or license of any state banking institution to engage in business in this state if that institution fails or refuses to comply with any order of the Commissioner entered pursuant to the provisions of paragraph (A) or (B), subdivision (15), subsection (c), section four, article two of this chapter, or at the board's election to direct the Commissioner to apply to any court having jurisdiction for a prohibitory or mandatory injunction or other appropriate remedy to compel obedience to such order;

(7) Suspend or remove a director, officer or employee of any financial institution who is or becomes ineligible to hold that position under any provision of law or rule and regulation or order, or who willfully disregards or fails to comply with any order of the board or Commissioner made and entered in accordance with the provisions of this chapter or who is dishonest or grossly incompetent in the conduct of financial institution business and prohibit that director, officer or employee from participating in the affairs of any other financial institution until further order of the board;

(8) To receive from state banking institutions applications to establish branch banks by the purchase of the business and assets and assumption of the liabilities of, or merger or consolidation with, another banking institution or by the construction, lease or acquisition of branch bank facilities in an unbanked area; examine and investigate such applications, to hold hearings thereon and to approve or disapprove such applications, all in accordance with section twelve, article eight of this chapter;

(9) Approve or disapprove the application of any state bank to purchase the business and assets and assume the liabilities of, or merge or consolidate with, another state banking institution in accordance with the provisions of section seven, article seven of this chapter;

(10) Approve or disapprove the application of any state bank to purchase the business and assets and assume the liabilities of a national banking association, or merge or consolidate with a national banking association to form a resulting state bank in accordance with the provisions of section seven, article seven of this chapter; and

(11) In addition to any authority granted pursuant to section twelve, article eight of this chapter, incident to the approval of an application pursuant to subdivisions (7) or (8) of this subsection, permit the bank the application of which is so approved to operate its banking business under its name from the premises of the bank the business and assets of which

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have been purchased and the liabilities of which have been assumed by such applicant bank or with which the applicant bank has merged or consolidated: Provided, That this permission may be granted only if the board has made the findings required by subsection (f), section three of this article and such applicant bank has no common directors or officers nor common ownership of stock exceeding ten percent of total outstanding voting stock with the bank whose business and assets are being purchased and liabilities assumed, or with whom the applicant bank is being merged; and

(12) To receive an appeal from any party who is adversely affected by an order of the Commissioner issued pursuant to section twelve-d, article eight of this chapter and hold hearings in accordance with the provisions of article five, chapter twenty-nine-a of this code.

(c) A provision of this section may not be construed to alter, reduce or modify the rights of shareholders, or obligations of a banking institution in regard to its shareholders, as set forth in section one hundred seventeen, article one, chapter thirty-one of this code and section seven, article seven of this chapter, and other applicable provisions of this code.

(d) Any order entered by the West Virginia Board of Banking and Financial Institutions pursuant to this section is a matter of public record.

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§31A-3-3. Hearings and orders; entry of order without notice and hearing.

(a) Subject to the provisions of subsections (e), (f), (g) and (h) of this section and to the provisions of subsection (j), section twelve, article eight of this chapter, notice and hearing shall be provided in advance of the entry of any order by the board.

(1) Such notice shall be given to the financial institution or person with respect to whom the hearing is to be conducted in accordance with the provisions of section two, article seven, chapter twenty-nine-a of this code, and such hearing and the administrative procedures in connection therewith shall be governed by all of the provisions of article five, chapter twenty-nine-a of this code, and shall be held at a time and place set by the board, but shall not be held less than ten or more than thirty days after such notice is given. A hearing may be continued by the board on its own motion or for good cause shown.

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

(b) After any such hearing and consideration of all of the testimony and evidence, the board shall make and enter an order deciding the matters with respect to which such hearing was conducted, 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 such order and accompanying findings and conclusions shall be served upon all parties to such hearing, and their attorneys of record, if any.

(c) In the case of an application for the board's approval to incorporate and organize a banking institution in this state, as provided in subdivision (3), subsection (b), section two of this article, the board shall, upon receipt of any such application, provide notice to all banking institutions, which in the manner hereinafter provided, have requested notice of any such action. The request by any such banking institution to receive such notice shall be in writing and shall request the board to notify it of the receipt by the board of any application to incorporate and organize a banking institution in this state. A banking institution may, within ten days after receipt of such notice, file a petition to intervene and shall, if it so files such petition, thereupon become a party to any hearing relating thereto before the board.

(d) The board shall have the power and authority to issue subpoenas and subpoenas duces tecum, administer oaths and examine any person under oath in connection with any subject relating to duties imposed upon or powers vested in the board.

(e) Whenever the board shall find that extraordinary circumstances exist which require immediate action, it may forthwith without notice or hearing enter an order taking any action permitted by subdivisions (1), (2), (4) and (5), subsection (b), section two of this article. Immediately upon the entry of such order, certified copies thereof shall be served upon all persons affected thereby and upon demand such persons shall be entitled to a hearing thereon at the earliest practicable time.

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(f) Whenever the board shall find that the financial condition of a state banking institution or a national banking association constitutes an imminent peril to its depositors, savings account holders, other customers or creditors, it may forthwith without notice or hearing enter an order taking any action permitted by subdivisions (7) and (8), subsection (b), section two of this article. Immediately upon entry of such order, certified copies thereof shall be served upon all persons affected thereby and upon demand such persons shall be entitled to a hearing thereon at the earliest practicable time.

(g) Whenever the board shall find that the financial condition of a state banking institution or national banking association constitutes an imminent peril to its depositors, savings account holders, other customers or creditors, it may forthwith without compliance with the provisions of section six or seven, article four of this chapter and without notice or hearing enter an order approving or disapproving an application to incorporate a state banking institution which is being formed to purchase the business and assets or assume the liabilities of, or both, or merge or consolidate with, such state banking institution or national banking institution the financial condition of which constitutes an imminent peril to its depositors, savings account holders, other customers or creditors. Immediately upon the entry of such order, certified copies thereof shall be served upon all persons affected thereby and upon demand such persons shall be entitled to a hearing thereon at the earliest practicable time.

(h) Whenever the board shall find that the financial condition of a state banking institution, national association or bank holding company constitutes an imminent peril to its depositors, savings account holders, other customers or creditors, it may forthwith without compliance with the provisions of section five or six, article eight-a of this chapter and without notice of hearing enter an order approving or disapproving an application by an existing bank holding company or by an organizing bank holding company to acquire in whole or in part, directly or indirectly, such state banking institution, national association or bank holding company. Immediately upon the entry of such order, certified copies thereof shall be served upon all persons affected thereby at the earliest practicable time.

(i) Definitions:

(1) The term "imminent peril" means that, because the banking institution or bank holding company is insolvent or about to be insolvent, or there is a probability that the banking institution will not be able to pay its debts when they become due.

(2) A banking institution or bank holding company is "about to be insolvent" when it would be unable to meet the demands of its depositors or is clearly unable, without impairment of capital, by sale of assets or lawful borrowings or otherwise, to realize sufficient liquid assets to pay such debts for which payment is likely, in the immediate future, to be due and demanded in the ordinary course of business.

(3) A banking institution or bank holding company is "insolvent" when it is unable to pay its debts to its depositors and other creditors in the ordinary and usual course of business.

§31A-3-4. Judicial review; appeals to Supreme Court of Appeals.

(a) Any party to a hearing before the board adversely affected by any order of the board made and entered after a hearing as provided in section three, article three of this chapter 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 such party 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.

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§31A-3-5.

Repealed.

Acts, 2010 Reg. Sess., Ch. 32.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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§31A-4-4. Majority of stock to be paid in full before engaging in business; sale of additional stock; organizational expense fund; affidavit of incorporators; penalties; stockholder preemptive rights.

(a) The majority of the capital stock of every banking institution, chartered under the laws of this state, shall be paid in full in cash and issued to the ultimate subscribers, not an agent or broker acting on behalf of the organizers, before it shall be authorized to engage in business, except such business as is incidental and necessary preliminary to its organization. Authorized but unissued stock may be issued from time to time to employees of the bank pursuant to a stock option or stock purchase plan approved by the commissioner or may be issued for such other purposes and consideration as may be approved by the board of directors of said bank. The commissioner shall establish the minimum amount of authorized capital stock which shall be paid in full in cash and issued prior to opening the bank for business.

(b) Each subscriber at the time he or she subscribes to the stock of a proposed banking institution shall pay in cash a sum at least equal to five percent of the par value of such stock into a fund to be used to defray the expenses of organization of said institution. No organizational expenses shall be paid out of any other funds of the bank. The amount of any organizational expenses which are accumulated and recorded on the newly organized bank's accounting records as an asset to be amortized over a period of time according to generally accepted accounting principles shall be added to the capital requirement for incorporation of the bank as determined by the West Virginia board of banking and financial institutions pursuant to subsection (a), section three, article four of this chapter. Upon the grant of a charter to the institution any unexpended balance in the organizational expense fund shall be transferred to undivided profits of the institution. If the charter application is finally denied, any unexpended balance in said fund shall be distributed among the contributors in proportion to their respective payments.

(c) A majority of the incorporators shall file with the West Virginia board of banking and financial institutions at the time of filing of the charter application an affidavit: (1) Setting forth all expenses incurred or to be incurred in connection with the organization of the institution, subscriptions for its shares and sale of its shares, and (2) stating that no fee, compensation or commission prohibited by this section has been or will be paid or incurred. The board may disapprove the charter application on account of any violation of this section and order the incorporators to restore any sum expended for other than proper organizational expense. In addition, violations hereof shall constitute a misdemeanor offense punishable as prescribed in section fifteen, article eight of this chapter.

(d) Unless otherwise provided in the charter, whenever additional stock is offered for sale, stockholders of record on the date of the offer shall have the right to subscribe to such proportion of the shares as the stock held by them bears to the total of the outstanding stock. This right shall be transferable but shall terminate if not exercised within sixty days of the offer. If the right be not exercised, the stock shall not be offered for sale to others at a lower price without the stockholders again being accorded a preemptive right to subscribe.

No banking institution shall sell its shares of stock at less than par, but may sell its shares at such price above par as may be set by the board of directors. The preemptive rights of the stockholders, as provided in this paragraph, shall not apply to any stock issued by a banking institution, to another bank or financial institution or the stockholders thereof, pursuant to a merger or consolidation with such other bank or financial institution, or to authorized but unissued stock authorized by the charter of the banking institution.

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

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

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

(1) The name of the proposed bank;

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

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

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

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

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

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

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

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will be eligible for federal deposit insurance.

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

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

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

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

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

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

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

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

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

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

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

(3) The proposed capital structure is adequate;

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

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

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

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

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appropriate action on and making proper disposition of the application.

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

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

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

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

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

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

any crime involving personal dishonesty.

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

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

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

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

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

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§31A-4-10. List of stockholders.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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§31A-4-11. Liability of stockholders.

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

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

WV Legislature

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

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

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

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

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

WV Legislature

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

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

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

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

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

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

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

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

the value of the property.

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

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

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

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

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

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

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

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

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

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

WV Legislature

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

WV Legislature

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

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

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

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

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

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

WV Legislature

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

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

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

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

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

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

WV Legislature

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

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

WV Legislature

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

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

WV Legislature

§31A-4-17. Oath as fiduciary.

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

WV Legislature

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

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

WV Legislature

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

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

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

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

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

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

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

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

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

WV Legislature

§31A-4-19. Reports.

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

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

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

WV Legislature

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

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

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

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

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

WV Legislature

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

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

WV Legislature

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

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

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

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

amended prior to January 31, 1981.

WV Legislature

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) For the purposes of this subsection:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) For purposes of this subsection:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Banking institutions are authorized:

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

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

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

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

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

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

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

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

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

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

(a) The Legislature hereby finds and declares that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

WV Legislature

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

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

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

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

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

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

WV Legislature

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

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

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

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

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

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

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

WV Legislature

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

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

WV Legislature

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

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

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

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

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

records.

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

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

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

WV Legislature

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

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

WV Legislature

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

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

WV Legislature

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

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

WV Legislature

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

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

WV Legislature

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

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

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

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

WV Legislature

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

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

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

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

WV Legislature

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

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

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

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

WV Legislature

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

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

WV Legislature

§31A-4-44. Employment information.

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

WV Legislature

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

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

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

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

WV Legislature

§31A-4A-1. Conversion of bank, thrift or credit union into state bank authorized.

Any bank, thrift or credit union organized under the laws of the United States or any other state may, by a majority vote of its directors or other governing body, convert into a state bank with any name approved by the board of Banking and Financial Institutions in accordance with this article.

WV Legislature

§31A-4A-2. Procedure for conversion of national bank into state bank.

(a) A converting institution shall file an application with the division on a form prescribed by the commissioner along with articles of incorporation, bylaws for the proposed state bank and a check for $2,500. The application shall declare that a majority of the converting institution's board of directors or other governing body has authorized the representatives of the converting institutions to make such application and to convert into a state bank.

(b) The application to convert to a West Virginia state bank shall be subject to the same requirements and procedures as established for a newly organizing state bank at sections five, six and seven, article four of this chapter.

(c) The examination and investigation by the board of Banking and Financial Institutions pursuant to section six, article four of this chapter shall include an examination of the safety and soundness of the applicant. The scope of the examination shall be determined at the discretion of the commissioner.

WV Legislature

§31A-4A-3. Effect of conversion into state bank.

(a) When the board of Banking and Financial Institutions has provided the converting institution an order that this article has been complied with, the converting institution and all its stockholders or members, officers and employees shall have the same powers and privileges and duties, liabilities and regulations as shall have been prescribed for banks originally organized under the laws of West Virginia.

(b) At the time when such conversion into a state bank becomes effective, all the property of the converting institution, including all its rights, title and interest in and to all property of whatsoever kind, whether real, personal or mixed, and things in action, and every right, privilege, interest and asset of any conceivable value or benefit then existing, belonging to it or which would inure to it, shall immediately, by act of law and without any conveyance or transfer and without any further act or deed, become the property of the state bank, which shall have in its own right as fully and to the same extent as if the same were possessed, held and enjoyed by the converting institution.

(c) Upon such conversion becoming effective, the state bank shall be considered to be a continuation of the entity and of the identity of the converting institution and all the rights, obligations and relations of the converting institution to or in respect to any person, estate, creditor, depositor, trustee or beneficiary of any trust shall remain unimpaired. The state bank, as of the time the conversion takes place, shall succeed to all such rights, obligations, relations and trusts and the duties and liabilities connected therewith and shall execute and perform each and every trust or relation in the same manner as if the state bank had itself originally assumed the trust or relation, including the obligations and liabilities connected therewith.

(d) Any reference to the converting institution in any contract, will or document shall be considered a reference to the state bank unless expressly provided to the contrary in the contract, will or document.

WV Legislature

§31A-4A-4. Filing of incorporation or organization.

After the board of Banking and Financial Institutions issues an order granting a state charter to the converting institution, the bank shall file in the office of the Secretary of State a certificate of incorporation in compliance with chapter thirty-one-d of this code or articles of organization in compliance with chapter thirty-one-b of this code as applicable under section five, article four of this chapter.

WV Legislature

§31A-5-1. Definitions.

For the purposes of this article: "bank services," means services such as check and deposit sorting and posting, computation and posting of interest and other credits and charges, preparation and mailing of checks, statements, notices and similar items, or any other clerical, bookkeeping, accounting, statistical, or similar functions performed for a state bank or a national banking association and the sale of the services, use and products of machines and equipment as permitted by section thirty-seven, article four of this chapter; "bank service corporation" means a corporation organized under the laws of this state to perform bank services for two or more banking institutions, each of which owns part of the capital stock of such corporation, and the sale of the services, use and products of machines and equipment as permitted by section thirty-seven, article four of this chapter; and "invest" means any advance of funds to a bank service corporation, whether by the purchase of stock, the making of a loan, or otherwise, except the payment for rent earned, goods sold and delivered, or services rendered prior to the making of such payment.

WV Legislature

§31A-5-2. Authority of state banks to invest in bank service corporations.

Notwithstanding any other provision of law, any state bank is hereby authorized to invest not more than ten percent of its paid-in and unimpaired capital and unimpaired surplus in a bank service corporation. If stock in a bank service corporation has been held by two state banks, or by one such bank and one national banking association and one state bank or such association ceases to utilize the services of the corporation and ceases to hold stock in it, and leaves a state bank as the sole stockholder, the bank service corporation may nevertheless continue to function as such and such state bank may continue to hold stock in such corporation.

WV Legislature

§31A-5-3. Extension of bank services to competing banking institutions and associations.

Whenever a state bank or a national banking association applies for bank services for itself (hereinafter referred to in this section as "an applying bank") from a bank service corporation which supplies the same type of bank services to one or more other state banks or national banking associations, or both, and the applying bank is competitive with any state bank or national banking association which holds stock in such corporation (referred to in this section as a "stockholding bank"), the corporation must offer to supply such services by either:

(a) Issuing stock to the applying bank and furnishing bank services to it on the same basis as to the stockholding banks, or

(b) Furnishing bank services to the applying bank at rates no higher than necessary to reflect fairly the cost of such services, including the reasonable cost of the capital provided to the corporation by the stockholding banks, at the corporation's option, unless comparable services at competitive overall costs are available to the applying bank from another source, or unless the furnishing of the services sought by the applying bank would be beyond the practical capacity of the bank service corporation. In any action or proceeding to enforce the duty imposed by this section or for damages for the breach thereof, the burden shall be upon the bank service corporation to show the availability of such comparable services or that the furnishing of such services would be beyond the practical capacity of the bank service corporation.

WV Legislature

§31A-5-4. Bank service corporation activities limited.

No bank service corporation may engage in any activity other than the performance of bank services.

WV Legislature

§31A-5-5. Regulation and examination of performance of bank services.

No state bank may cause to be performed, by contract or otherwise, any bank services for itself, whether on or off its premises, unless written assurances satisfactory to the commissioner of banking are furnished to him by both the state bank and the party performing such services that the performance thereof will be subject to regulation and examination by the commissioner and any federal supervisory agency to the same extent as if such services were being performed by the state bank on its own premises.

WV Legislature

§31A-6-1. Procedures for nominee registration of securities.

Any bank, nonbanking subsidiary of a bank holding company, nonbanking subsidiary of a banking institution, or entity jointly owned by federally insured depository institutions authorized to exercise trust powers under section fourteen, article four of this chapter, which holds in a fiduciary capacity any stock, bond, debenture, note, warrant, certificate or other security evidencing ownership or interest, either whole or fractional, in fully paid and nonassessable intangible personal property, may cause the security or evidence of ownership, to be registered and held in the name of a nominee or nominees of the trust institution, or in its own name, without disclosing the fiduciary relationship, but, where the trust institution is acting jointly with some other individual or individuals, it must first secure the written consent of the individual fiduciary or fiduciaries thereto, which consent the individual fiduciary or fiduciaries are hereby authorized to give.

The placing of property in the name of a nominee, nominees or in the name of the trust institution, without disclosure of the fiduciary capacity, shall be deemed to be nominee registration under this article and every such registration shall ipso facto constitute a declaration of trust upon the part of the registered owner so far as the fiduciary and the beneficiaries of the fiduciary status are concerned.

For purposes of this article, the term "trust institution" means a bank, nonbanking subsidiary of a bank holding company, nonbanking subsidiary of a banking institution or entity jointly owned by federally insured depository institutions authorized to exercise trust powers under section fourteen, article four of this chapter.

WV Legislature

§31A-6-2. Duties of trust institutions making use of nominee registration.

Every trust institution making use of nominee registration as provided in this article shall:

(a) At all times maintain such records as may be necessary to show the actual beneficial ownership of the property so held;

(b) At all times retain possession and control of securities or other evidences of ownership which must be kept separate and apart from the assets of such trust institution and assets held in other fiduciary capacities;

(c) Secure from the nominee or nominees the endorsements, assignments or other writings as may be necessary to effect retransfer of the securities or other evidences of ownership without notice and such endorsements, assignments or other writings shall be valid and effective as of the date of delivery thereof whether the nominee die before transfer is perfected, or not;

(d) Enter into such contracts or agreements with its nominee or nominees as may be necessary to afford full protection to the ownership of its fiduciary account and the beneficiaries thereof;

(e) Clearly show in all of its reports and accounts the form of registration under which such securities or evidences of ownership are held.

WV Legislature

§31A-6-3. Civil liabilities and criminal penalties.

Any trust institution which places property in nominee registration under this article is absolutely liable in civil actions or suits for any or all loss or damage to its fiduciary account or the beneficiaries thereof occasioned by the acts of any of its nominees, or any of its agents, employees, or other persons acting for it with respect to such property, including reasonable attorney fees.

Any trust institution or its officers, employees, nominees or agents placing property in nominee registration in violation of any of the provisions of this article is guilty of a misdemeanor and, in addition to civil liability for restitution, shall be punished by a fine of not less than $50 nor more than $1,000.

WV Legislature

§31A-6-4. Limitations on liability in transfers and changes of registration.

No liability for any loss caused by the acts of the nominee of a trust institution may attach to any transfer agent, registrar, corporation, officer or agent of a corporation, or other person, who, in compliance with the directions of any trust institution acting under the provisions of this article, transfers or changes the registration of any property. The certification of the trust institution that it has complied with the provisions of this article is prima facie evidence of its compliance so far as any transfer agent, registrar, corporation, officer or agent of a corporation, or other person, is concerned.

WV Legislature

§31A-6-5. Registration of property to evade taxes prohibited.

No trust institution acting under the provisions of this article may cause or permit the use of its name or the name of its nominee or nominees for the purpose of registering property to evade, avoid or relieve itself or any other person, firm or corporation, or the property, from taxation.

WV Legislature

§31A-7-1. Purpose; construction.

(a) The purpose of this article is to:

(1) To the maximum extent possible, protect and preserve the assets of depositors, shareholders and other creditors in the financial institutions of this state;

(2) Maintain the financial integrity, stability and accountability of the financial institutions of this state;

(3) Strengthen and make more effective the authority of the state commissioner of banking to protect and preserve such assets and maintain such integrity, stability and accountability;

(4) Permit the federal deposit insurance corporation in all appropriate cases to act as receiver for a failing financial institution; and

(5) Make more practical and more flexible the conservatorship and receivership provisions of this article dealing with financial institutions that are substantially impaired, have failed or appear to be about to fail.

(b) The provisions of this article are intended to be remedial and protective, and they shall be liberally construed to carry out such intent and the purpose of this article.

WV Legislature

§31A-7-2. Definitions.

As used in this article:

(a) "Commissioner" means the commissioner of banking of West Virginia and any authorized deputy or employee thereof;

(b) "Federal law" means all the provisions of Title XII of the United States Code and all rules and regulations promulgated pursuant thereto;

(c) "Financial institution" means any bank, building and loan association, industrial bank, regulated consumer lender, credit union and any other person, firm or corporation doing business under the jurisdiction and supervision of the commissioner of banking of West Virginia;

(d) A financial institution is "about to be insolvent" when it would be unable to meet the demands of its depositors or to make adequate provision for the timely payment of its depositors if it were immediately closed for the purpose of liquidation;

(e) A financial institution is "insolvent" when it is unable to pay its debts to its depositors and other creditors in the ordinary and usual course of business or when it is in a state of balance sheet insolvency; and

(f) "Balance sheet insolvency" exists when the assets of a financial institution are less than its liabilities, exclusive of capital. For the purposes of ascertaining balance sheet insolvency, assets shall be valued at their book value, unless the commissioner of banking determines that the assets are insufficient to meet liabilities within a reasonable time making probable the liquidation of assets; and if any such determination is made, the assets shall be valued at fair market value.

WV Legislature

§31A-7-3. Conservatorship; reorganization.

(a) Whenever the commissioner considers it necessary in order to protect or preserve the assets of any financial institution in this state for the benefit of the depositors and other creditors thereof, he may appoint a conservator for such financial institution. The conservator may be an employee of the state department of banking and shall give such bond and security as the commissioner considers proper.

(b) The conservator, under the direction of the commissioner, shall take possession of the papers, books, records and assets of every description of such financial institution and take such other action as is necessary to conserve such assets pending further disposition of the business of the institution. Immediately upon taking charge of the financial institution, the conservator, in conjunction with a representative of the institution designated by the directors thereof, shall make in triplicate a complete inventory of all assets of the institution and an itemized list of all its liabilities. The original and two copies of the list shall be subscribed and sworn to by the persons making them. The original shall be filed with the commissioner as soon as practicable. One such copy shall be furnished to the institution, and the other copy shall be retained by the conservator.

(c) A conservator has all the rights, powers, duties, responsibilities and privileges that receivers have under this article and is subject to all obligations to which such receivers are subject.

(d) During the period that a conservator remains in possession of a financial institution, the legal relations of all parties with respect thereto shall, subject to the other provisions of this section, be the same as if a receiver had been appointed therefor under other pertinent provisions of this article.

(e) All reasonable and necessary expenses actually incurred in the course of any such conservatorship shall be paid out of the assets of the financial institution and are a lien on such assets, which lien has priority over any other lien. The conservator shall be paid a reasonable compensation, to be fixed by the commissioner, for his services but such compensation must not exceed the amount that would be paid to employees of the state department of banking for similar services.

(f) If the commissioner becomes satisfied that such a course of action may be pursued safely and that it is in the public interest, he may, in his discretion, terminate the conservatorship and permit the financial institution to resume the transaction of its business subject to such terms, conditions, restrictions and limitations as he imposes or the commissioner may appoint a receiver pursuant to section four of this article to take over the property and affairs of the institution.

(g) While a financial institution is in the hands of a conservator, the commissioner may require the conservator to set aside and make available for withdrawal by depositors and payment to other creditors, on a ratable basis, such amounts as in the opinion of the

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commissioner may be used safely for such purpose, subject to such priorities and preferences as are provided by law. The commissioner may, in his discretion, permit the conservator to receive deposits, and such deposits are not subject to any limitation as to payment or withdrawal. Such deposits shall be segregated and shall not be used either to liquidate any indebtedness of the financial institution existing at the time that the conservator was appointed for it or any subsequent indebtedness incurred for the purpose of liquidating any indebtedness of such institution existing at the time the conservator was appointed.

(h) Deposits received while a financial institution is in the hands of a conservator shall: (1) Be kept on hand in cash or (2) be deposited with a federal reserve bank or deposited with such financial institution as the commissioner in his discretion designates or (3) be invested in direct obligations of the United States or the State of West Virginia or in funded obligations of any political subdivision of this state approved by the commissioner.

(i) In any reorganization of any financial institution under a plan of a kind that by its own terms or under existing law requires the consent, as the case may be, of depositors and other creditors, or of stockholders, or of both depositors and other creditors and stockholders, such reorganization shall become effective only when the commissioner is satisfied that the plan of reorganization is fair and equitable to all depositors, other creditors and stockholders and that it is in the public interest and has approved the plan subject to such conditions, restrictions and limitations as he imposes, and when, after reasonable notice of such reorganization, as the case may be, depositors and other creditors of such financial institution representing at least seventy-five percent in amount of its total deposits and other liabilities; or stockholders owning at least two thirds in amount of its outstanding capital stock; or both depositors and other creditors representing at least seventy-five percent in amount of the total deposits and other liabilities and stockholders owning at least two thirds in amount of its outstanding capital stock have consented in writing to the plan of reorganization. Claims of depositors or other creditors which will be satisfied in full under the plan of reorganization shall not be included among the total deposits and other liabilities of the financial institution in determining the seventy-five percent thereof as above provided.

(j) When any such reorganization becomes effective, all books, records, and assets of the financial institution shall be disposed of in accordance with the provisions of the plan and the affairs of the financial institution shall be conducted by its board of directors in the manner provided by the plan and under such conditions, restrictions and limitations that have been imposed by the commissioner. In any such reorganization that has been approved and has become effective as provided herein, all depositors and other creditors and stockholders of the financial institution, whether or not they have consented to the plan of reorganization, are fully and in all respects subject to and bound by its provisions, and the claims of all depositors and other creditors shall be treated as if they had consented to such plan of reorganization.

(k) Fifteen days after the affairs of the financial institution have been returned to its board of directors by the conservator, either with or without a reorganization as provided in

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subsection (i) of this section, the provisions of subsections (g) and (h) of this section shall no longer be effective. Before the conservator returns the affairs of the institution to its board of directors, he shall publish a notice, in such form as the commissioner approves, stating the date on which the affairs of the financial institution will be returned to its board of directors and that the provisions of subsections (g) and (h) of this section will not be effective fifteen days after such date. The notice shall be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which the financial institution is located. On the date of the publication of such notice, the conservator shall send a copy of such notice by registered mail to the last known address of every person who is a depositor as shown by the records of the institution. The conservator shall send a similar notice in like manner to every person making a deposit in such institution under said subsection (g) after the date of such newspaper publication and before the time when the affairs of the institution are returned to its directors.

(l) The provisions of this section shall not under any circumstances be construed to impair in any way any powers of the Governor or the commissioner provided elsewhere by law with respect to any matter covered by this section.

(m) The commissioner may prescribe such rules and regulations, not inconsistent with the provisions of this article, as he considers necessary or convenient to carry out the provisions of this section.

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§31A-7-4. Receivership.

(a) If the commissioner ascertains from any source that the capital of any financial institution is substantially impaired and such institution, after receiving notice from the commissioner, does not promptly make good such impairment to the satisfaction of the commissioner, or if the commissioner ascertains from any source that any financial institution is insolvent or reasonably appears about to be insolvent, the commissioner shall appoint a receiver to take full and exclusive possession and control of and title to the books, records, papers, moneys, assets, business and all other things of the financial institution. Such title shall pass to and vest in the receiver by operation of law without the execution of any instruments of conveyance, assignment, transfer or endorsement. The commissioner shall give the receiver a certificate of appointment. Immediately upon taking such possession and control, the receiver shall establish and maintain such books, records and procedures for accountability as the commissioner prescribes and may exercise all the powers, duties and authority provided for in this article.

Immediately upon taking charge of the financial institution, the receiver, in conjunction with a representative of the institution designated by the directors thereof, shall make in triplicate a complete inventory of all assets of the institution and an itemized list of all its liabilities. The original and two copies of the list shall be subscribed and sworn to by the persons making them. The original shall be filed with the commissioner as soon as practicable. One such copy shall be furnished to the institution, and the other copy shall be retained by the receiver.

(b) In any case where a receiver is to be appointed pursuant to subsection (a) of this section, if the involved financial institution has deposits insured by the federal deposit insurance corporation and if such corporation is required or otherwise willing to be receiver for the institution, the commissioner shall appoint the federal deposit insurance corporation as receiver for that financial institution.

(c) A receiver appointed under any provision of this article has the following general powers, duties and responsibilities:

(1) To take full and exclusive possession and control of and title to the papers, books, records, moneys, assets, business and all other things of every description and location of the financial institution and to collect all debts, dues and claims belonging to the financial institution;

(2) To sue upon and defend all rights, actions, issues, questions, claims and other matters involving the financial institution;

(3) To exercise all fiduciary functions of the financial institution as of the date of the commencement of the receivership;

(4) To borrow such sums of money as are reasonable and necessary in aiding any liquidation

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of the financial institution and, in connection therewith, to secure any such borrowing by the pledge, hypothecation or mortgage of the assets of the institution;

(5) Subject to the approval of the circuit court of the county in which the principal office of the financial institution is located in any case where the federal deposit insurance corporation is the receiver and subject to the approval of the commissioner in every other case, to sell any real, personal or mixed property of the financial institution and to compromise and settle any bad or doubtful debts due to or from the financial institution;

(6) In any case where the federal deposit insurance corporation is the receiver, to do all acts and undertakings permitted or required by federal law;

(7) To take all necessary or convenient actions, including the bringing of any administrative action before the commissioner or a hearing examiner or any action in any court of competent jurisdiction, to ascertain any matter concerning the depositors or creditors of the financial institution relative to the receivership of the institution or to proceed against any officer, director or stockholder of the institution to ascertain or enforce any liability thereof or for the determination or adjudication of any other matter involving the institution; and

(8) To do all other acts and undertakings, not inconsistent with the provisions of this article, necessary or convenient to carry out the provisions of this article or to effectively accomplish the intent and purpose of this article.

(d) In any case where the federal deposit insurance corporation is not the receiver, if the assets of an insolvent financial institution are not sufficient to pay in full all its depositors and creditors, without waiting to administer the assets of the institution and without delaying for any other cause but only after having first obtained the approval of the commissioner therefor, the receiver shall immediately institute all civil actions necessary for the benefit of the depositors and creditors to collect from the stockholders of the financial institution all amounts for which the stockholders are jointly or severally liable to the institution. According to the direction of the commissioner, any such action may be instituted and maintained in the name of the receiver, the financial institution or the commissioner.

(e) Before entering upon the discharge of any function under this article, each receiver other than the federal deposit insurance corporation shall enter into a bond in favor of the State of West Virginia in an amount and penalty fixed by the commissioner, with corporate surety authorized to do business in this state and approved by the commissioner, conditioned upon the faithful discharge of his duties as receiver and upon his fully accounting for and handing over as required by law all properties, moneys, funds and other things that come into the possession or control, or both, of the receiver and his agents, attorneys and other representatives. Such bond and the certificate of appointment shall be recorded in the office of the clerk of the county commission of the county in which the principal office of the financial institution is located.

(f) The provisions of section three of this article do not in any way inhibit or proscribe the

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appointment of a receiver under this section, and, whenever a receiver is appointed under this section, any conservatorship theretofore appointed for the same financial institution shall by operation of law immediately terminate.

(g) On a temporary emergency basis, when the commissioner has ascertained that the capital of a financial institution has become substantially impaired and the institution has failed, refused or neglected to make good such impairment to the commissioner's satisfaction or when the commissioner has ascertained that a financial institution is insolvent or reasonably appears about to be insolvent, the commissioner may immediately give written or oral notice of such finding to the involved financial institution and shall immediately thereupon take and retain full and exclusive possession and control of the business and property of the institution and close such institution until a receiver has been appointed for the institution in accordance with the provisions of subsection (a) of this section or until the institution has been permitted by the commissioner to resume its regular business, one or the other of which must be done by the commissioner within thirty days of the actual taking of such possession and control. When the commissioner closes an institution, he shall place an appropriate sign to that effect at the main entrance of the financial institution. Effective as of the closing of the institution a judgment lien, attachment lien or any voluntary or involuntary lien of any kind shall not attach in any way to any asset or other property of the institution and the directors, officers and agents of the institution shall not have any authority to act in any way on behalf of the institution or to convey, transfer, assign, pledge, mortgage or encumber any asset or other property thereof. Any attempt by any director, officer or agent of the financial institution to convey, transfer, assign, pledge, mortgage or encumber or otherwise establish any lien upon any asset or other property of the financial institution or in any manner to prefer any depositor, creditor, shareholder, director, officer, agent or any other person, firm or corporation after the posting of such notice or in contemplation thereof is void.

(h) In any case where a financial institution is insolvent or reasonably appears about to be insolvent and where the commissioner has failed, refused or neglected to act under the provisions of this section, any stockholder, depositor or creditor of the financial institution may petition the circuit court of the county in which the principal office of the institution is located to order the commissioner to proceed in accordance with the other pertinent provisions of this section, and the court shall expeditiously hear and decide such matter and assume jurisdiction and render a prompt decision with respect to such matter. Any such petitioner shall give notice of the contents of the petition and day, time and place of the hearing by personal service upon the commissioner in the manner prescribed by the West Virginia rules of civil procedure not less than five days before the hearing date. Upon such hearing, if the court finds that the condition of the involved financial institution is that it is insolvent or reasonably appears about to be insolvent and that the commissioner has unreasonably failed, refused or neglected to act thereupon, then the court shall order the commissioner to proceed in accordance with the other pertinent provisions of this section. If the commissioner fails, refuses or neglects to comply with such court order and such order has become final, such failure, refusal or neglect constitutes grounds for the commissioner's

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removal from office.

(i) Any finding made pursuant to this section by the commissioner that a financial institution is insolvent or reasonably appears about to be insolvent is conclusive as to all parties affected by such finding, including any court considering the matter.

(j) With the consent of the commissioner or by court order, as necessary, a financial institution may voluntarily submit itself to receivership or conservatorship under the provisions of this article.

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§31A-7-5. Provisions applicable to federal deposit insurance corporation only.

(a) The provisions of this section apply only to those cases in which the commissioner has appointed the federal deposit insurance corporation (hereinafter referred to as the "corporation") as receiver for a financial institution.

(b) When it has been appointed by the commissioner as the receiver for a financial institution pursuant to the provisions of section four of this article, the corporation shall immediately take full and exclusive possession and control of and title to the books, records, papers, moneys, assets, business and all other things of the financial institution. Immediately upon taking charge of the financial institution, the corporation, in conjunction with a representative of the institution designated by the directors thereof, shall make in triplicate a complete inventory of all assets of the institution and an itemized list of all its liabilities. The original and two copies of the list shall be subscribed and sworn to by the persons making them. The original shall be filed with the commissioner as soon as practicable. One such copy shall be furnished to the institution, and the other copy shall be retained by the corporation. Such title shall pass to and vest in the corporation by operation of law without the execution of any instruments of conveyance, assignment, transfer or endorsement. The commissioner shall file a certificate of the corporation's appointment and acceptance as soon thereafter as possible and have such certificate recorded with the clerk of the county commission of the county in which the principal office of the financial institution is located. There shall not be any bond required of the corporation. Upon the filing of such certificate, the commissioner is forever and fully relieved from all responsibility and liability with respect to the affairs of the financial institution.

(c) As receiver the corporation may liquidate and otherwise handle the affairs of the financial institution in accordance with this section and the other pertinent provisions of this article and shall have all the powers, duties and authority given a receiver under all pertinent provisions of this article.

(d) When the affairs of a financial institution have come under the possession and control of the corporation as receiver for purposes of liquidation, with the consent of the circuit court of the county in which the principal office of the financial institution is located and without approval of the stockholders of the institution, the corporation may sell all or any part of the institution's assets, real and personal, to another financial institution, a national bank, the corporation or any successor institution or the corporation may borrow from itself, to the extent permitted by federal law, any amount necessary to facilitate the assumption of deposit liabilities by a newly chartered or existing financial institution, assigning any part or all of the assets of the financial institution as security for such loan.

(e) Whenever the corporation pays or makes available for payment the insured deposit liabilities of a closed financial institution or a financial institution under receivership, the corporation is subrogated to all of the rights of the owners of the deposits against the financial institution in the same manner and to the same extent as subrogation of the corporation is provided for in sections 1811 through 1832, inclusive, of Title XII of the

United States Code and all rules and regulations promulgated pursuant thereto.

(f) Where the corporation has become receiver of a financial institution and is proceeding under other pertinent provisions of this article, the commissioner does not have any jurisdiction or authority with respect to the corporation and the corporation may resolve all doubts, difficulties and other matters concerning its receivership and obtain all convenient or necessary approvals and other determinations from the circuit court of the county in which the principal office of the financial institution is located.

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§31A-7-6. Borrowing powers of receiver.

With the written consent of the commissioner, any receiver of a financial institution appointed under the provisions of this article may borrow money from and contract for loans with any finance or lending agency of the United States government or any other responsible agency or person for the purpose of furnishing immediate relief to or aiding in the reorganization, liquidation or reopening of such financial institution, protecting and preserving the assets in charge of the receiver, expediting the making of distributions and the payment of dividends to depositors and other creditors of the institution, providing for the expenses of administration and liquidation or its merger or consolidation with another financial institution, and paying the claims of secured creditors where the security is deemed by the receiver and the commissioner to be of a value in excess of the debt so secured and to be for the preservation of the assets of such institution; and to pledge, hypothecate, assign or transfer to any such responsible agency or person any assets or securities belonging to the institution as collateral security for the payment of all such loans, subject to such reasonable terms and conditions imposed by and agreed upon between the parties.

All acts of the receiver or the commissioner under this section are valid, binding and effective to transfer to any such responsible agency or person, and any successors and assigns thereof, assets and securities in accordance with the terms of any such contract of pledge, transfer or assignment.

The commissioner and receiver are not under any circumstances under any personal obligation to repay any such loan and may take any action necessary or convenient to consummate such loan and to provide for the repayment thereof and to give bond, with sufficient corporate surety authorized to do business in this state, the amount of bond to be set by and the surety to be approved by the commissioner, for the faithful performance of all undertakings in connection therewith. The authority herein conferred upon a receiver for the procuring and obtaining of such loans includes the authority to renew them from time to time, with the written consent of the commissioner.

An accurate record of all securities and exact copies of all notes withdrawn from the files of the financial institution to be pledged as collateral for borrowed money under the provisions of this section shall be kept in the files of such institution at all times.

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§31A-7-7. Reorganization, purchase, merger or consolidation of and by financial institutions; conversion of national bank to state bank; obligations remain effective.

Subject to the other provisions of this section, in any voluntary or involuntary proceeding to liquidate a financial institution for which a receiver has been appointed under this article, such institution, with the written consent of the commissioner, may reorganize, reclaim possession of its assets and continue in business.

Any financial institution may at any time, but only with the approval of the West Virginia board of banking and financial institutions in the case of a state banking institution and with the approval of the commissioner in the case of all other financial institutions, purchase the business and assets and assume the liabilities of or merge or consolidate with another like financial institution. With the approval of the West Virginia board of banking and financial institutions and in compliance with all applicable laws of this state and the United States, any state banking institution may purchase the business and assets and assume the liabilities of a national banking association or merge or consolidate with a national banking association to form a resulting state bank, the terms and conditions of any such assumption, purchase, merger or consolidation to be first approved by the board. With the approval of the West Virginia board of banking and financial institutions and in compliance with all applicable laws of this state and the United States, a national banking association may convert into a state bank. After any such purchase, merger or consolidation, no other association or corporation may take or use the name of any financial institution participating in such purchase, merger or consolidation.

Unless in conflict with a law of the United States of America, at the completion of any purchase, merger or consolidation permitted by this section and whether such financial institution is organized under the laws of this state or of the United States, the purchasing, merged or consolidated institution is substituted by operation of law in the place and stead of each of the participating financial institutions in all fiduciary relationships, titles, properties, offices, appointments, rights, powers, duties, obligations and liabilities of each participating financial institution as trustee, agent, executor, administrator, guardian, depository, registrar, transfer agent or other fiduciary and every other capacity, office or position of each of the participating financial institutions is by operation of law vested in and devolved upon the purchasing, merged or consolidated institution. Such purchasing, merged or consolidated institution shall take, receive, accept, hold, administer and discharge all grants, gifts, bequests, devises, conveyances, trusts, powers and appointments made by deed, deed of trust, will, agreement, order of court or otherwise to, in favor of or in the name of any such participating institution, whether made, executed or entered before or after such purchase, merger or consolidation and whether to vest or become effective before or after such purchase, merger or consolidation, as fully and to the same effect as if the purchasing, merged or consolidated institution had been named in such deed, deed of trust, will, agreement, order or other instrument instead of such participating institution. All acts taken or performed in its own name or in the name of or in behalf of any financial institution participating in any such purchase, merger or consolidation by any purchasing, merged or

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consolidated institution as trustee, agent, executor, administrator, guardian, depository, registrar, transfer agent or other fiduciary are as good, valid and effective as if this section had been applicable thereto at the time of such taking or performance.

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§31A-7-8. Voluntary liquidation by financial institution.

Any financial institution may, after thirty days' notice to the commissioner, cease to transact business and go into voluntary liquidation and convert its assets into money and pay the money to the persons entitled thereto.

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§31A-7-9. Involuntary liquidation of financial institution after revocation of certificate of authority, permit or license.

If the commissioner revokes the certificate of authority, permit or license of any financial institution other than a state bank or if the West Virginia board of banking and financial institutions revokes the certificate, permit or license of a state bank and such financial institution within a reasonable time does not comply with the laws of the state and the requirements of the commissioner or board and thereby fails to secure a new certificate, permit or license to continue in business, the commissioner shall compel such financial institution to go into liquidation, wind up its affairs and surrender its charter. In any such case, the state Attorney General, at the request of the commissioner, shall institute an action in the circuit court of the county in which the principal office of such financial institution is located, in the name of the State of West Virginia, to liquidate, wind up the affairs of and dissolve such financial institution, and such court shall either by itself or through the commissioner or a receiver appointed by the commissioner, fully liquidate, wind up the affairs of and dissolve the financial institution.

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§31A-7-10. Executory contracts and leases; assumption or rejection; court approval for assignments.

(a) Within the six-month period immediately following the recordation of his certificate of appointment with the county clerk, the receiver may assume or reject any executory contract or any unexpired lease of the involved financial institution. Notice of the receiver's rejection of any such contract or lease shall be given to the other party to such contract or lease not later than fifteen days before the day the termination takes effect. Sufficient notice is given when the other party to the contract or lease or any authorized agent or representative thereof is actually given in person written or oral notice of such rejection or when the receiver has mailed notice of such rejection to the other party at his last known mailing address by certified or registered mail, return receipt requested. As of the date any such termination takes effect, any claim of the other party to the contract or lease is limited to the contract payment or rent accrued up to the time of rejection plus an amount equal to six months of contract payment or rent if such payment or rent would have otherwise been due under the contract or lease had it not been terminated. If the receiver assumes any such contract or lease, he shall do so at the contract or rent amount and upon all terms set forth in the contract or lease and shall cure any default in the contract or lease.

(b) With the approval of the circuit court of the county in which the principal office of the involved financial institution is located, the receiver may assign to any new financial institution created to carry on the business of the involved financial institution any executory contract or unexpired lease not in default or the default of which has been cured. In any such case, before the court approves any such assignment, the receiver must prove to the court and the court must find that the proposed assignment involves a risk no greater to the new financial institution than that undertaken by the involved financial institution at the time the contract or lease was originally executed.

(c) Notwithstanding any provision in any executory contract or unexpired lease to the contrary, an executory contract or unexpired lease of a financial institution for which a receiver has been appointed under the provisions of this article may not be terminated or modified in any way after the appointment of the receiver solely because of a provision in such contract or lease that is conditioned upon the appointment of a receiver or conservator for the institution or upon the insolvency or financial condition of the institution at any time before a distribution of its proceeds pursuant to section twelve of this article.

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§31A-7-11. General subrogation rights of Federal Deposit Insurance Corporation.

In all cases where the federal deposit insurance corporation pays or makes available for payment the insured deposit liabilities of a closed financial institution or a financial institution under receivership, the federal deposit insurance corporation, whether or not it is receiver of such institution, is subrogated to all of the rights of the owners of the deposits against the financial institution in the same manner and to the same extent as subrogation of the corporation is provided for in sections 1811 through 1832, inclusive, of Title XII of the United States Code in the closing of a national banking association.

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§31A-7-12. Payment of expenses and debts; order of priority; rights of secured creditors.

(a) Each receiver shall pay the expenses and just debts of the involved financial institution in the manner specified by this section. The receiver shall divide all claims against the institution into the general classes set forth in this section with the highest priority being given to the first listed class and then to each subsequent class as it is ranked. All such payments must be approved by the commissioner and shall be made from the following general classes in accordance with the following order of priority:

(1) First, the commissioner's costs of administration, including, but not limited to, all expenses actually incurred by the receiver in the course of the receivership; all expenses actually incurred by the commissioner pursuant to any provision of this article; all costs actually incurred in the determination of any contested claim or other contested case under this article; the payment of reasonable compensation to any receiver, conservator, hearing examiner, attorney, accountant or other person duly appointed or employed for the purpose of carrying out any provision of this article; and all other expenses expressly authorized by other provisions of this article;

(2) Second, wage claims for all wages due and owing employees of the financial institution for the ninety-day period immediately preceding the date of appointment of the receiver up to an amount not to exceed $1,500 per employee;

(3) Third, all depositors of the financial institution;

(4) Fourth, all state, federal and local taxes due for the period during which the financial institution carried on its business;

(5) Fifth, excluding all claims of shareholders of the financial institution, all claims of creditors of the financial institution, whether by contract, judgment or otherwise; and

(6) Sixth, all the remaining proceeds to the shareholders of the financial institution.

(b) Before the receiver makes any payment under subsection (a) of this section, he shall receive and approve or reject all claims against the financial institution in the manner provided for in section thirteen of this article. All approved claims shall be paid according to the order of priority set in subsection (a) of this section. With respect to subsection (a) of this section, payment in full of all costs provided for in subdivision (1) must be made before any payment can be made in any other subdivision; next, payment in full of all wage claims provided for in subdivision (2) must be made before any payment can be made in any following subdivision; next, payment in full of all depositors provided for in subdivision (3) must be made before any payment can be made in any following subdivision; next, payment in full of all taxes provided for in subdivision (4) must be made before any payment can be made in any following subdivision; next, all creditors' claims provided for in subdivision (5) must be made before any shareholders can be paid anything; and, last, all remaining

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proceeds shall be paid to the shareholders. If at any time a situation develops in which proceeds are available to be paid within a particular subdivision but such proceeds are not sufficient to fully pay the creditors in that class, then the receiver shall pay each creditor in that class his pro rata share of the proceeds.

(c) The provisions of this section shall not be construed or applied so as to take away or modify in any way the rights of a secured creditor who has properly filed and perfected a security interest in any property of the financial institution in compliance with other applicable law, except that the receiver may postpone payment of a claim relating thereto to allow for orderly administration.

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§31A-7-13. Claims procedure.

(a) Within a reasonable time after taking possession and control of the property and business of the financial institution, the receiver shall require all parties who may have claims against the financial institution to present their claims and provide satisfactory proof thereof within such reasonable time, not to be more than sixty days from the date of receipt of any mailed notice and not to be more than sixty days from the date of publication of any published notice, as the receiver specifies.

(b) Notice shall be given by mailing to each known stockholder, depositor, creditor and other possible claimant of the institution at his last known mailing address, as shown on the books of the financial institution, by certified or registered mail, return receipt requested, a written notice form and proof of claim form, each of which shall be prescribed by the commissioner and must be uniform for all involved parties and must clearly state in plain language that, due to the precarious condition of the financial institution, the receiver has been appointed by the commissioner to preserve and protect the assets thereof and to pay the expenses and just debts thereof and that each involved party must present his claim against the institution along with satisfactory proof thereof, which may be done by returning to the receiver the properly filled out proof of claim form accompanied by a true copy of such proof, within the specified time or he will lose all rights to payment upon the claim. If he does not know the mailing address of an involved party or if any mailed notice is returned undeliverable, the receiver shall make a reasonably diligent effort to ascertain the mailing address and whereabouts of such party and, if it is ascertained, shall mail the notice form and proof of claim form to such party at such address in the manner herein before provided. If the receiver is not able to ascertain the mailing address and whereabouts of any such party, for each such party, and all heirs and assignees thereof, and also for all unknown and unascertainable parties, and all heirs and assignees thereof, who may have claims against the institution, notice shall be given by publication of the prescribed notice form and proof of claim form as a Class III- O legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which the principal office of the involved financial institution is located. Any such legal publication and any mailed notice shall contain such additional information and statements concerning the receivership and the financial institution as the commissioner requires or as the receiver, with the consent of the commissioner, considers necessary or advisable.

(c) In the case of all deliverable mailed notices, within sixty days following the date set for submission of such claims and, in the case of all parties for whom notice by publication has been given, within sixty days following the date set for submission of such claims, the receiver shall approve or reject, in whole or in part, the claims submitted to him Any party not submitting a claim to the receiver within the prescribed time loses all rights to payment upon the claim. The receiver shall notify in writing each party whose claim has been wholly or partly rejected of such rejection and the reasons therefor not later than fifteen days after the rejection. Within ten days after receipt of such rejection notice, such party may contest the rejection and obtain a fair hearing thereupon in the manner provided for in section

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fourteen of this article. With the consent of the commissioner, the receiver shall pay all valid claims in the manner provided for in this article.

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§31A-7-14. Hearings; judicial review.

Except to the extent another provision of this article expressly authorizes a person to directly take action in a court of competent jurisdiction, any person who is adversely affected by any whole or partial rejection of a claim provided for in section thirteen of this article or by any other order, demand, action, refusal, failure to act, denial or requirement of the receiver under the provisions of this article for the financial institution with which such person is involved and 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 any rules and regulations, which shall be done in accordance with the pertinent provisions of chapter twenty-nine-a of this code) under the provisions of this article is entitled to a hearing thereupon before a hearing examiner appointed by the commissioner for such purpose. Any such hearing shall be conducted and decided by the hearing examiner in the time and manner provided for the hearing of contested cases in article five, chapter twenty-nine-a of this code, and judicial review of the hearing examiner's decision may be had in the time and manner provided for judicial review of contested cases in section four of said article five and in article six of said chapter twenty-nine-a. Each hearing examiner appointed under this section shall be qualified to act as such by reason of his training, education or experience, but a stockholder, creditor, depositor or other person affiliated in any way, directly or indirectly, with the involved financial institution may not be a hearing examiner. All costs and expenses of any such hearing and any judicial review thereof shall be paid as part of the expenses of administration of a receivership as provided for in section twelve of this article.

WV Legislature

§31A-7-15. Exclusivity of powers and procedures of article.

The provisions of this article provide full and exclusive powers and procedures for the conservatorship, receivership and liquidation of a financial institution, and a receiver or conservator for a financial institution shall not under any circumstances be appointed nor shall a conservatorship, receivership or liquidation of a financial institution under any circumstances be conducted except in the manner provided for in this article.

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.

WV Legislature

§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

WV Legislature

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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

(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.

WV Legislature

(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;

WV Legislature

(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.

WV Legislature

§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.

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§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§31A-8A-1. Definitions.

For purposes of this article:

(a) "Acquire" means:

(1) For a company to merge or consolidate with a bank holding company;

(2) For a company to assume direct or indirect ownership or control of:

(i) More than twenty-five percent of any class of voting shares of a bank holding company or a bank, if the acquiring company was not a bank holding company prior to such acquisition;

(ii) More than five percent of any class of voting shares of a bank holding company or a bank, if the acquiring company was a bank holding company prior to such acquisition; or

(iii) All or substantially all of the assets of a bank holding company or a bank; or

(3) For a company to take any other action that results in the direct or indirect acquisition of control by such company of a bank holding company or a bank.

(b) "Affiliate" means any company that controls, is controlled by, or is under common control with a bank or another company or otherwise meets the criteria set forth in Section 2(k) of the Bank Holding Company Act, 12 U.S.C. §1841(k).

(c) "Bank" means a corporation or association heretofore or hereafter chartered to conduct a banking business under the laws of the United States or any state, territory, district or possession thereof, which is authorized to accept deposits that the depositor has a legal right to withdraw on demand and is authorized to engage in the business of commercial lending and meets the criteria set forth in Section 2(c) of the Bank Holding Company Act, 12 U.S.C. §1841(c).

(d) "Bank holding company" means any company which has control over any bank or over any company that is or becomes a bank holding company as that term is set forth in Section 2(a) of the Bank Holding Company Act, 12 U.S.C. §1841(a), and, unless the context requires otherwise, includes a West Virginia bank holding company, an out-of-state bank holding company and a foreign bank holding company.

(e) "Bank Holding Company Act" means the federal Bank Holding Company Act of 1956, as amended, 12 U.S.C. §§1841 et seq.

(f) "Bank supervisory agency" means any of the following:

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

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(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.

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

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

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

(j) "Company" has the meaning set forth in Section 2(b) of the Bank Holding Company Act, 12 U.S.C. §1841(b), and includes a bank holding company.

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

(l) "Deposit" has the meaning set forth in 12 U.S.C. §1813(l) plus all deposits held by credit unions within this state.

(m) "Depository institution" means any institution included for any purpose within the definitions of "insured depository institution" as set forth in 12 U.S.C. §§1813(c)(2) and (3).

(n) "Foreign bank holding company" means a bank holding company that is organized under the laws of a country other than the United States (including any territory or possession thereof).

(o) "Home state regulator" means, with respect to an out-of-state bank holding company, the bank supervisory agency of the state in which such company maintains its principal place of business.

(p) "Out-of-state bank holding company" means:

(1) A bank holding company that is not a West Virginia bank holding company; and

(2) Unless the context requires otherwise, includes a foreign bank holding company.

(q) "Principal place of business" of a bank holding company means the state in which the total deposits of its bank subsidiaries were the greatest on the later of July 1, 1966, or the date on which such company became a bank holding company.

(r) "State" means any state, territory or other possession of the United States, including the District of Columbia.

(s) "Subsidiary" has the meaning set forth in Section 2(d) of the Bank Holding Company Act,

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12 U.S.C. §1841(d).

(t) "West Virginia bank" means a bank that is:

(1) Organized under the laws of the State of West Virginia; or

(2) Organized under federal law and has its main office in this state.

(u) "West Virginia bank holding company" means a bank holding company that:

(1) Had its principal place of business in this state on July 1, 1966, or the date on which it became a bank holding company, whichever is later; and

(2) Is not controlled by a bank holding company other than a West Virginia bank holding company.

(v) "West Virginia state bank" means a bank organized under the laws of the State of West Virginia.

WV Legislature

§31A-8A-2. Scope and statement of legislative intent.

This article sets forth the conditions under which a company may acquire a West Virginia state bank may form or acquire a West Virginia bank holding company, or may acquire an out-of-state bank or out-of-state bank holding company. This article is intended not to discriminate against out-of-state bank holding companies or against foreign bank holding companies in any manner that would violate Section 3(d) of the Bank Holding Company Act, 12 U.S.C. §1842(d), as amended, effective September 29, 1995, by Section 101 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Public Law No. 103-328.

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§31A-8A-3. Permitted acquisitions.

(a) Except as otherwise expressly permitted by federal law, a company may not form a West Virginia bank holding company or acquire a West Virginia state bank or a bank holding company controlling a West Virginia state bank without the prior application and approval upon order of the board. A West Virginia state bank or West Virginia state bank holding company which controls, directly or indirectly, a West Virginia state bank may not acquire an out-of-state bank or out-of-state bank holding company without first filing with the commissioner a copy of the application it files with the appropriate federal regulator unless the acquisition involves a merger and establishment of branches pursuant to article eight-d of this chapter.

(b) The prohibition in subsection (a) of this section shall not apply where the acquisition is made:

(1) Solely for the purpose of facilitating an acquisition otherwise permitted under this article;

(2) In a transaction arranged by the commissioner with the consent of the West Virginia board of banking and financial institutions with another state or federal bank supervisory agency to prevent the insolvency or closing of the acquired bank; or

(3) In a transaction in which a national bank or out-of-state state bank forms its own bank holding company, if the ownership rights of the former bank shareholders are substantially similar to those of the shareholders of the new bank holding company.

(c) In any transaction involving the acquisition or change in control of a West Virginia bank, West Virginia bank holding company, bank branch located in West Virginia by a bank holding company, the formation of a West Virginia bank holding company or the acquisition of a thrift institution in West Virginia by a bank holding company for which an application to the board for approval is not initially required under subsection (a) of this section, the party seeking the action shall give written notice to the commissioner at the time the application or notice is filed with the responsible federal bank supervisory agency and at least forty-five days before the effective date of the acquisition, unless a shorter period of notice is required under applicable federal law. In addition, the parties shall give the commissioner copies of all final federal and state applications filed in connection with the transaction together with a $250 filing fee. Unless preempted by federal law, the commissioner has thirty days from receipt of the written notice to object to any proposed transaction, require an application 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.

(d) To the extent that any acquisition under this section involves the merger of a bank with and into a West Virginia state bank, the merger transaction remains subject to the

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jurisdiction and approval of the board pursuant to section seven, article seven of this chapter or article eight-d of this chapter, as applicable.

(e) An acquisition shall not be permitted under this article or otherwise if upon consummation of the transaction, the resulting bank or bank holding company, including any depository institutions affiliated with the applicant, would assume sufficient additional deposits to cause it to control deposits in this state in excess of that allowed by section twelve-a, article two of this chapter: Provided, That the commissioner may by rule adopt a procedure whereby the 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 the deposit information filed with state or federal authorities.

WV Legislature

§31A-8A-4. Required application.

(a) A company that proposes to make an acquisition under this article shall:

(1) File with the commissioner a copy of the application that such company has filed with the responsible federal bank supervisory agency, together with such additional information as the commissioner may prescribe; and

(2) Pay to the commissioner a $4,500 application fee.

(b) To the extent consistent with the effective discharge of the commissioner's responsibilities, the forms established under this article for application and reporting shall conform to those established by the board of Governors of the federal reserve system under the Bank Holding Company Act.

(c) In connection with an application received under this article, the commissioner shall:

(1) Require that prior notice of the application be published once in a daily newspaper of general circulation and provide an opportunity for public comment; and

(2) Make the application available for public inspection to the extent required or permitted under applicable state law.

(d) If the applicant is an out-of-state bank holding company that is not incorporated under the laws of this state, it shall submit with the application proof that the applicant has complied with applicable requirements of West Virginia law requiring foreign corporations to qualify to do business in the State of West Virginia.

WV Legislature

§31A-8A-5. Standards for approval.

(a) In deciding whether to approve an application for a proposed acquisition under this article, the board shall consider whether the acquisition may:

(1) Be detrimental to the safety and soundness of the West Virginia state bank or the West Virginia bank holding company to be acquired which controls a West Virginia state bank, or be contrary to the best interests of the customers or shareholders of the bank whose shares are affected by the action, taking into consideration the financial and managerial resources and further prospects of the company or companies and the banks concerned;

(2) Result in a substantial reduction of competition in any section of this state, or result in a monopoly, or would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any section of this state;

(3) Have a significantly adverse effect on the convenience and needs of the community or communities in this state that are served by the West Virginia state bank or the West Virginia bank holding company to be acquired; or

(4) Violate the acquisition deposit limitation set forth in section three of this article.

(b) The board shall not approve an application for, nor shall the commissioner consent to, an acquisition under this article unless the West Virginia bank to be acquired, or all West Virginia bank subsidiaries of the bank holding company to be acquired, have as of the proposed date of acquisition been in existence and in continuous operation for more than two years: Provided, That this limitation shall not apply to acquisitions made on or after May 31, 1997.

(c) The board may approve an application which may lessen competition if 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.

(d) In deciding whether to approve an application for an acquisition under this article, the board shall consider the applicant's record of compliance with all applicable state(s) and federal community reinvestment laws.

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§31A-8A-6. Procedures relating to applications.

(a) The board shall decide whether to approve an acquisition under this article within one hundred twenty days after receipt of a completed application: Provided, That if the board or commissioner requests additional information from the applicant following receipt of a completed application, the time limit for decision by the board shall be the later of:

(i) The date set forth above in this subsection; or

(ii) Thirty days after the board's or commissioner's receipt, whichever is applicable, of the requested additional information.

(b) The board shall, in accordance with its rules, hold a public hearing in connection with an application and determine any significant issue of law or fact raised with respect to the proposed acquisition relevant and necessary for proper disposition of the application.

(c) If the board holds a full public hearing under the provisions set forth in article five, chapter twenty-nine-a of this code in connection with an application, the time limit specified in subsection (a) of this section shall be extended to the later of thirty days after the conclusion of the public hearing or thirty days after submission of all documents and materials necessary for proper adjudication of the matter, including transcripts.

(d) An application shall be deemed approved if the board takes no action on the application within the time limits specified in this section.

WV Legislature

§31A-8A-7. Reports; examinations.

(a) To the extent specified by the commissioner by rule, order or written request, each bank holding company that directly or indirectly controls a West Virginia bank, bank branch in West Virginia or a West Virginia bank holding company shall submit to the commissioner an annual report specifying for each bank and branch (excluding automated teller machines) in this state controlled by the bank holding company:

(i) The location of each office, including county and, where applicable, municipality;

(ii) The amount of deposits held by each office as of the end of the preceding calendar year; and

(iii) The amount of loans outstanding by each office at the end of the preceding calendar year.

The foregoing report shall be based upon each bank's allocation of its deposit base and loan portfolio among its main office and branches. The report shall be filed with the commissioner on or before February 15 of each year on forms prescribed by the commissioner.

(b) A parent bank holding company controlling a bank or bank holding company having, or through a subsidiary having, a place of business in this state shall, on or before the thirty-first day of March of each year, register with the commissioner on forms provided or prescribed by said office which shall include such information with respect to the financial condition, operation, management and intercompany relationships of the parent bank holding company and its subsidiaries and related matters as the commissioner may consider necessary or appropriate to carry out the purposes of this article. The information required herein may be supplied by submission of copies of other similar federal or state regulatory filings or forms containing the information unless otherwise required by order or rule.

(c) The commissioner may enter into cooperative agreements with any other bank supervisory agencies to facilitate the examination of any bank holding company that: (i) Has acquired or has an application pending to acquire a West Virginia bank or West Virginia bank holding company pursuant to this article; or (ii) operates a subsidiary doing business in this state which is subject to the jurisdiction or supervision of the commissioner. The commissioner may accept reports of examinations and other records from other authorities in lieu of conducting his or her own examination of the bank holding companies or their subsidiaries. The commissioner may take any action jointly with other regulatory agencies having concurrent jurisdiction over the bank holding companies or subsidiaries or may take action independently in order to carry out his or her responsibilities under this chapter.

(d) When the commissioner considers it necessary, he or she may require any bank holding company that has acquired a West Virginia bank, bank branch in West Virginia or West Virginia bank holding company to submit the reports to the commissioner as he or she determines to be necessary or appropriate for the purpose of carrying out his or her

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responsibilities.

(e) When the commissioner of banking considers it necessary or appropriate, he or she may examine any bank holding company that has acquired or has an application pending to acquire a West Virginia bank, bank branch in West Virginia or West Virginia bank holding company. The cost of an examination in connection with an application, if in excess of the initial fee, shall be assessed against and paid by the bank holding company examined. The commissioner may request the bank holding company to be examined pursuant to this subsection to advance the estimated cost of the examination. The cost of an examination for a bank holding company controlling a West Virginia bank or West Virginia bank holding company regarding compliance with the law of this state or safe and sound banking practices shall be assessed against and paid by the bank holding company examined.

(f) Any parent bank holding company or bank holding company having, or through a subsidiary having, a place of business in this state, shall provide the commissioner with notice of any filing it makes with the board of Governors of the federal reserve to declare its intent to become a financial holding company. The notice required herein may be met by filing copies of the federal filings or forms containing the information filed with the board of Governors of the federal reserve and shall be filed with the commissioner no later than two weeks after the date the declaration of intent is filed with the federal reserve.

WV Legislature

§31A-8A-8. Authority to issue rules; cooperative agreements; fees.

In order to carry out the purposes of this article, the Commissioner may:

(1) Propose rules and issue orders;

(2) Enter into cooperative, coordinating or information-sharing agreements with any other bank supervisory agency or any organization affiliated with or representing one or more bank supervisory agencies;

(3) Accept any report of examination or investigation by another bank supervisory agency having concurrent jurisdiction over a West Virginia bank or a bank holding company that controls a West Virginia state bank in lieu of conducting the Commissioner's own examination or investigation of the bank holding company or bank;

(4) Enter into contracts with any bank supervisory agency having concurrent jurisdiction over a West Virginia state bank or a bank holding company that controls a West Virginia state bank to engage the services of the agency's examiners at a reasonable rate of compensation, or to provide the services of the Commissioner's examiners to any bank supervisory agency at a reasonable rate of compensation: Provided, That any contract for examiners shall be excluded from the requirements of article three, chapter five-a of this code;

(5) Enter into joint examinations or joint enforcement actions with any other bank supervisory agency having concurrent jurisdiction over any West Virginia state bank or any bank holding company that controls a West Virginia state bank: Provided, That the Commissioner may take any such action independently if he or she determines that the action is necessary to carry out the responsibilities set forth in this article to enforce compliance with the laws of this state: Provided, however, That in the case of an out-of-state bank holding company, 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; and

(6) Assess supervisory and examination fees that shall be payable by any bank holding company operating a bank or bank branch in West Virginia in connection with the Commissioner's performance of his or her duties under this article. The Commissioner shall charge and collect from each bank holding company and pay into a special revenue account in the state Treasury for the Department of Banking an annual assessment payable on January 15, computed on total deposits in this state of the bank holding company as of June 30 of the previous year as is set out in section eight, article two of this chapter. The payment of the assessment fee shall be accompanied by the report prescribed by the Commissioner under subsection (a), section seven of this article. Examination fees may be shared with other bank supervisory agencies or organizations affiliated with or representing one or more bank supervisory agencies in accordance with agreements between them and the Commissioner.

WV Legislature

§31A-8A-9. Authority to conduct banking business; credit card processing.

(a) Except as authorized in this article or articles eight-d, eight-e or eight-f of this chapter, no banking institution incorporated under the laws of any other state or having its principal place of business in any other state may receive deposits or transact any banking business of any kind in this state other than the lending of money.

(b) A bank holding company with its principal place of business in another state or foreign country may establish electronic data processing facilities and credit card processing facilities in West Virginia. Such facilities are those established solely for the purpose of processing accounts and/or processing transactions relating to the issuance of credit cards.

WV Legislature

§31A-8A-10. Penalties.

(a) The commissioner or board may enforce the provisions of this article by any appropriate action in the circuit court of Kanawha County or other court having proper jurisdiction, including an action for civil money penalties or injunctive relief: Provided, That the commissioner shall promptly give notice to the home state regulator of any enforcement action initiated against an out-of-state bank holding company and, to the extent practicable, shall consult and cooperate with the home state regulator in pursuing and resolving said enforcement action.

(b) Any violation of any provision of this article shall constitute a misdemeanor offense, which, upon conviction thereof, shall be punishable by applicable penalties as provided in section fifteen, article eight of this chapter.

WV Legislature

§31A-8B-1. Short title.

This article may be cited as the "West Virginia Community Reinvestment Act."

WV Legislature

§31A-8B-2. Legislative findings and purpose.

(a) The Legislature finds that:

(1) Banking institutions are required by law to demonstrate that their deposit facilities serve the convenience and needs of the communities in which they are chartered to do business;

(2) The convenience and needs of communities include the need for credit services as well as deposit services; and

(3) Banking institutions have a continuing and affirmative obligation to help meet the credit needs of the local communities in which they are chartered.

(b) It is the purpose of this article to require the commissioner and the board to use their authority when examining or investigating banking institutions or their bank holding companies, to encourage such institutions to help meet the credit needs of the local communities in which they are chartered consistent with the safe and sound operation of such institutions.

WV Legislature

§31A-8B-3. Application for a deposit facility; definition.

The term "application for a deposit facility" means an application to the commissioner or board for:

(a) A charter for a state bank;

(b) The relocation of the principal office or a branch of a state bank;

(c) The establishment of a branch bank in an unbanked area requiring approval under section twelve, article eight of this chapter;

(d) The merger or consolidation with, or the acquisition of the assets, or the assumption of the liabilities of a banking institution requiring approval under section seven, article seven of this chapter; or, the merger or consolidation with, or the acquisition of the assets, or the assumption of the liabilities of a banking institution requiring approval under section twelve, article eight of this chapter.

(e) The acquisition of shares in, or the assets of, a state banking institution requiring approval under article eight-a of this chapter.

WV Legislature

§31A-8B-4. Assessment of the institution's reinvestment in the community.

In connection with its examination or investigation of a banking institution or bank holding company, the commissioner or board shall:

(a) Assess the institution's record of meeting the credit needs of its entire community, including low-and moderate-income neighborhoods, consistent with the safe and sound operation of such institution; and

(b) Take such record into account in its evaluation of an application for a deposit facility or for permission to engage in financially related services by such institution.

WV Legislature

§31A-8B-5. Rules and regulations.

Regulations to carry out the purposes of this article shall be promulgated by the commissioner.

WV Legislature

§31A-8C-1. Financially related defined.

The term "financially related" includes:

(a) All products, services and activities offered or engaged in by national banks or by any federally chartered thrift institution or West Virginia state or federally chartered credit union or a bank chartered by any other state; except those excluded by subsection (f) of this section;

(b) Equity investments in real estate development activities, products and services;

(c) Securities underwriting and brokerage activities, products and services, except those excluded by subsection (f) of this section;

(d) Financial consulting activities, products and services; and

(e) Any and all other activities, products and services engaged in or offered by other providers of financial products or services which may be deemed by the Commissioner of Banking pursuant to this article to be financially related, except those excluded by subsection (f) of this section.

(f) The term "financially related" excludes products, services or activities offered or engaged in by any real estate agent, agency or broker, which products, services or activities are regulated by the state Real Estate Commission pursuant to chapter forty-seven of this code except for such activities, products and services permitted, engaged in or offered by a West Virginia state-chartered banking institution prior to the effective date of this section or permitted pursuant to subdivision (b) of this section.

WV Legislature

§31A-8C-2. Banks and bank holding companies permitted to offer financially related services.

(a) Subject to the prior approval of the Commissioner of Financial Institutions, any West Virginia state-chartered banking institution or any bank holding company headquartered in this state may, either through equity investment in other entities or through a wholly owned subsidiary or subsidiaries, or by contract or agreement with others to provide such products or services, engage in any activity, exercise any power or offer any product or service that is financially related. A state-chartered banking institution may engage in a financially related activity directly and not through an operating subsidiary, financial subsidiary or affiliate if it is permissible for a national or state bank, federal or state thrift, federal credit union, or other financial service provider operating pursuant to federal law or regulation or the laws of other states to engage in the financially related activity directly. The commissioner shall grant or deny any request under this section within sixty days of receipt unless additional information is required.

(b) In determining whether an activity is financially related, the commissioner shall consider:

(1) The ability of financial institutions to exercise any additional powers in a safe and sound manner;

(2) The authority of national or state banks, federal or state thrifts, federal credit unions and other financial service providers operating pursuant to federal law or regulation or the laws of other states to provide the financially related service; and

(3) Any specific limitations on financial institution operations or powers contained in this chapter.

(c) If a state-chartered banking institution or bank holding company must make prior application to a federal bank regulatory agency for approval to engage in a financially related activity, the banking institution or bank holding company shall file with the commissioner a copy of the application submitted to the federal agency.

(d) The commissioner shall include a list of every financially related activity authorized pursuant to this section during the previous twelve months in his or her annual report to the Legislature.

WV Legislature

§31A-8C-3. Limitation on permitted investment in entities offering financially related services.

No West Virginia state-chartered banking institution or bank holding company may invest or otherwise expend more, in the aggregate of the amount of its capital and surplus, on a consolidated basis, in the conduct of financially-related activities than would be allowed to a national bank.

WV Legislature

§31A-8C-4. Promulgation of rules.

The commissioner of banking, pursuant to chapter twenty-nine-a of this code, shall promulgate rules governing the provision of financially-related products and services by West Virginia state-chartered banking institutions and by any bank holding company conducting business in this state. These rules shall include the procedures applicable in connection with application to engage in financially-related activities and offer financially-related products and services and the conduct of such activities.

WV Legislature

§31A-8C-5. Construction, conflicting provisions.

This article shall be construed liberally to permit banks and bank holding companies to offer financially related products and services and to enable West Virginia state-chartered banking institutions and bank holding companies to compete fairly with other financial institutions and other entities providing financial services under the laws of the United States or any other state. No other provision of this code shall be deemed to prohibit such activity: Provided, That in the provision of such products and services, banks and bank holding companies are subject to the same state and federal regulation and licensing requirements as are other providers of such products and services.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

(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.

WV Legislature

§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.

WVLegislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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

WV Legislature

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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

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.

WV Legislature

§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:

WV Legislature

(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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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

WV Legislature

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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§31A-8F-1. Legislative purpose.

(a) This article shall be known and may be cited as the "West Virginia International Banking Act".

(b) This article is intended generally to provide for state regulation of the participation by foreign banks in certain financial markets of this state.

(c) This article is intended:

(1) To authorize banking activities and operations in West Virginia by foreign banks having separately capitalized and domestically chartered banks in the United States through branches of such domestic banks in this state;

(2) To authorize agency and representative offices in this state of foreign banks; and

(3) To ensure that the banking laws and rules of this state otherwise apply to foreign banks, and to West Virginia and out-of-state banks and bank holding companies that are owned or controlled by foreign banks, in a manner consistent with the laws and policies of the United States governing the operations in this country of foreign banks.

WV Legislature

§31A-8F-2. Definitions.

For purposes of this article:

(a) The term "agency office" or "direct agency office" means an office of a foreign bank that is exercising the powers set forth and authorized by sections seven and eleven of this article.

(b) The term "bank supervisory agency" means:

(1) 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;

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

(3) Any agency of a country (including any colonies, dependencies, possessions or political subdivisions thereof) other than the United States with primary responsibility for supervising banks.

(c) The term "federal agency" means an agency of a foreign bank that is licensed by the comptroller of the currency pursuant to the provisions of Section 4 of the federal International Banking Act, 12 U.S.C. §3102.

(d) The term "foreign bank" means any company organized under the laws of a foreign country that engages directly in the business of banking. The term includes foreign commercial banks, foreign merchant banks and other foreign institutions that engage in banking activities usually in connection with the business of banking in the countries where such foreign institutions are organized or operating.

(e) The term "federal branch" means a branch of a foreign bank that is licensed by the comptroller of the currency pursuant to the provisions of Section 4 of the federal International Banking Act, 12 U.S.C. §3102.

(f) The term "federal International Banking Act" means the federal International Banking Act of 1978, as amended, 12 U.S.C. §§3101 et seq.

(g) The term "foreign person" means a natural or juridical person who is a citizen or national of one or more countries (including any colonies, dependencies or possessions of such countries) other than the United States.

(h) The term "Interstate Banking and Branching Efficiency Act" means the federal Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Public Law No. 103-328, 108 Stat. 2338-2381 (September 29, 1994) (codified at various sections of Title 12, U.S.C.).

(i) The term "interstate branch" means a branch of a bank or a branch of a foreign bank, as the context may require, which is established after September 29, 1994, pursuant to the

WV Legislature

authority contained in the Interstate Banking and Branching Efficiency Act, outside the home state of the bank or foreign bank. In the case of a foreign bank, the term shall not include a limited branch.

(j) The term "limited branch" means a branch of a foreign bank that accepts only such deposits as would be permissible for a corporation organized under Section 25a of the federal Reserve Act in accordance with the provisions of Section 5 (a)(7) of the federal International Banking Act, 12 U.S.C. §3103(a)(7).

(k) The term "out-of-state bank" means a bank organized under the laws of the United States having its main office in a state other than West Virginia or organized under the laws of a state other than West Virginia, which is authorized to engage in the business of banking including the taking of insured retail deposits. For purposes of this definition "state" shall include the District of Columbia and any territory of the United States, Puerto Rico, Guam, the Virgin Islands and American Samoa.

(l) The term "representative office" shall have the same meaning as is set forth in Section 1(b)(15) of the federal International Banking Act, 12 U.S.C. §3101(15), and the term "West Virginia representative office" shall mean any such office that is located in this state.

WV Legislature

§31A-8F-3. General regulation authority; language; U.S. general accounting principles.

(a) The commissioner is authorized and empowered to issue such rules and orders to perform his or her duties and functions under this article and to administer and carry out the provisions and purposes of this article and to prevent evasions thereof.

(b) It shall be required that all banks, including foreign banks, operating offices in this state use or make available on request the English language version of any customer contract or agreement when the customer is a United States corporation, citizen or resident. Upon demand of the commissioner of banking any bank or financial affiliate in West Virginia under the jurisdiction of the commissioner of banking shall provide at their own expense the translation of any document or record it holds into the English language. Unless otherwise provided for West Virginia licensed domestic banking institutions, all foreign banking offices licensed under the provisions of this article shall abide by U.S. general accounting principles in the maintenance of their financial records.

WV Legislature

§31A-8F-4. Operations in this state of banks owned or controlled by foreign banks and other foreign persons.

(a) The laws and rules of this state governing the acquisition or ownership of controlling or other interests in West Virginia banks or in out-of-state banks seeking to establish and maintain one or more interstate branches in this state shall not generally prohibit ownership of such institutions by, or otherwise discriminate against, foreign banks or other foreign persons.

(b) Notwithstanding the provisions of subsection (a) of this section, the commissioner is authorized to apply any standards or requirements of the laws and rules of this state governing the ownership, control or operations of West Virginia banks, including residency requirements for directors of West Virginia state-chartered banks, even if applicable specifically or exclusively to foreign banks or other foreign persons, to the extent such standards or requirements are determined by the commissioner to be either:

(1) Substantially equivalent to, or consistent with, the standards or requirements governing the ownership, control or operations of state or national banks in West Virginia by foreign banks or other foreign persons under applicable United States federal laws or regulations; or

(2) Otherwise consistent with the laws and policies of the United States, including its international agreements governing financial services.

WV Legislature

§31A-8F-5. Branches by domestic subsidiary banks owned by a foreign bank.

An out-of-state bank which is a domestic subsidiary of, or controlled by a foreign bank, may establish branches in this state through merger, de novo entry or the acquisition of branches on the same terms as any other bank sharing that same home state pursuant to articles eight-d and eight-e of this chapter.

WV Legislature

§31A-8F-6. Authority of affiliated bank or branch to act as agent for a foreign bank.

(a) A West Virginia bank or branch of any out-of-state bank owned or controlled by a foreign bank may at its main or branch offices in West Virginia receive deposits, renew time deposits, close loans, service loans and receive payments on loans and other obligations as an agent for any depository institution affiliate of such foreign bank, including branch, agency and other offices of that same foreign bank located in other states, generally in accordance with the same terms, conditions, procedures and requirements that are applicable under the laws and rules of this state to such agency activities that may be conducted by West Virginia state banks.

(b) Notwithstanding any other provision of the laws or rules of this state no foreign controlled bank, branch or agency office shall be authorized by this article to accept retail deposits on behalf of a foreign bank or branch which is not authorized to take federally insured deposits, nor to act as agent on behalf of any affiliated foreign bank other than its controlling foreign bank or one which has been licensed to transact business in this state pursuant to this article.

(c) A bank or branch of any bank owned or controlled by a foreign bank may not at its main or branch offices in West Virginia:

(1) Conduct any activity as an agent under this section which such office is prohibited from conducting as a principal under any applicable federal or state law, including, but not limited to, the acceptance of impermissible deposits; or

(2) As a principal, have an agent conduct any activity under this section which such office is prohibited from conducting under any applicable federal or state law, including but not limited to the acceptance of impermissible deposits.

(d) Any agency relationship permitted under this section involving a depository institution affiliate or other affiliate of such foreign bank shall in any event be on terms that are consistent with safe and sound banking practices and all applicable rules and orders of the commissioner.

WV Legislature

§31A-8F-7. Direct agency offices of foreign banks; necessity of licensure.

(a) A foreign bank may directly transact certain banking business in this state as permitted under this article upon obtaining a license to establish and maintain a West Virginia state agency office.

(b) Subsection (a) of this section does not prohibit:

(1) Any foreign bank which establishes and maintains a federal agency or federal branch in this state from transacting at such federal agency or federal branch such banking business as it may be authorized to transact under applicable federal laws and rules; or

(2) Any foreign bank which does not maintain a branch or agency office in West Virginia from making or enforcing loans in this state including loans secured by liens on real or personal property located in this state, as long as such lending is not conducted from an office in this state, and the loan, if a consumer loan, is governed by West Virginia law.

WV Legislature

§31A-8F-8. Application to establish and maintain an agency office; contents.

A foreign bank seeking to establish and maintain a West Virginia state agency office shall submit an application to the West Virginia board of banking and financial institutions. Such application shall contain:

(a) The same information as required by the board of Governors of the federal reserve system for an application to establish an agency in the United States;

(b) An instrument irrevocably appointing the West Virginia Secretary of State or his or her successors in office to be such foreign bank's agent, representative and attorney to receive service of any lawful judicial and administrative process; and

(c) Such additional information as the board or commissioner may require.

WV Legislature

§31A-8F-9. Application to establish and maintain an agency office; manner of filing and determination.

(a) A foreign bank making an application under this article for a license to establish and maintain a West Virginia state agency shall deliver to the West Virginia board of banking and financial institutions:

(1) At least two duplicate originals of the foreign bank's application on the form prescribed by the board;

(2) At least two copies of its charter or articles of incorporation and all amendments thereto, duly authenticated by the proper officer of the country of such foreign bank's organization together with translation of such documents if they are in a language other than English, which translation is attested to for accuracy before a notary public or other verifying official;

(3) A letter or resolution from its governing body or chief executive officer guaranteeing that the foreign bank's entire capital and surplus is and shall be available for all liabilities and obligations of its agency office doing business in this state;

(4) An application fee of $1,000 payable by check or money order to the West Virginia board of banking and financial institutions;

(5) A document granting power of attorney in favor of the person designated to be in charge of the business and affairs of the proposed office; and

(6) Proof of fidelity bond coverage for active officers and employees, and the oath of the managing officer of the West Virginia office(s) to obey state banking laws as would be required were the institution a bank incorporated in this state.

(b) The board may approve issuance of a license to a foreign bank to establish and maintain a West Virginia state agency office if it finds:

(1) That the foreign bank is of sound financial standing;

(2) That the management of the foreign bank and the proposed management of the West Virginia state agency office are adequate and are of good reputation and character;

(3) That the convenience and needs of persons to be served by the proposed West Virginia state agency office will be promoted;

(4) That the foreign bank has committed to allocate and assign to its agency office within this state a capital equivalency deposit of not less than the greater of $500,000 or five percent of the total liabilities of the agency, excluding accrued expenses, intercompany liabilities and any amounts due the foreign bank: Provided, That the board may in its discretion require a higher deposit amount or rate to ensure the agency office's financial safety or soundness;

WV Legislature

(5) That the proposed office is not being formed for other than legitimate motives and purposes;

(6) That the bank supervisory agency of the foreign bank's country of organization does not object to the application;

(7) That the applicant has submitted a legal opinion indicating that the proposed agency office will be permissible under both the laws of the foreign bank's country of organization and the United States; and

(8) That the foreign bank has complied with this section and satisfies such other standards as the board may establish by rule.

(c) If the board after investigation, notice and hearing determines to issue a license to a foreign bank to establish and maintain a West Virginia state agency office, it shall issue a written order granting the application and authorize the commissioner of banking on its behalf upon payment of all fees required under this article to:

(1) Endorse on each document filed as part of the application the word "Filed", and the date of the filing thereof and return to the foreign bank a copy of each document so endorsed;

(2) File in the office of the commissioner of banking one of the duplicate originals of the application and copies of the charter or articles of incorporation and amendments thereto; and

(3) Issue a license to establish and maintain a West Virginia state agency office to such foreign bank.

(d) Each license issued to a foreign bank to establish and maintain a West Virginia state agency shall state fully the name of the foreign bank to which such license is issued, the place of business for the licensee's office and all such other information as the commissioner may require.

(e) The board may, by rule or order, prescribe abbreviated application procedures and standards applicable to applications by foreign banks that have already established an initial West Virginia state agency office, subsequently to establish additional intrastate West Virginia state agency offices, as the case may be.

(f) Each licensee must register with the West Virginia Secretary of State as a foreign corporation qualified to do business in this state and provide proof of such registration to the commissioner of banking prior to conducting business under its license.

WV Legislature

§31A-8F-10. No concurrent maintenance of federal branches or agencies.

(a) No foreign bank which is licensed under this article to establish and maintain a West Virginia state agency shall concurrently maintain a federal branch or federal agency office in this state.

(b) No foreign bank which maintains a federal branch or federal agency office in this state shall concurrently be licensed under this article to maintain a West Virginia state agency office.

WV Legislature

§31A-8F-11. Powers of a foreign bank agency office.

(a) A West Virginia state agency office of a foreign bank established under this article may engage in the business of making loans and guaranteeing obligations for the financing of the international movement of goods and services and for all operational needs including working capital and short-term operating needs and for the acquisition of fixed assets. In addition, such agency may also:

(1) Borrow funds from banks and other financial institutions;

(2) Buy and sell foreign exchange;

(3) Receive checks, bills, drafts, acceptances, notes, bonds, coupons and other securities for collection abroad and collect such instruments in the United States for customers abroad;

(4) Hold securities for safekeeping for, or buy and sell securities upon the order and for the risk of, customers abroad;

(5) Act as paying agent for securities issued by foreign governments or other organizations organized under foreign law and not qualified under the laws of the United States, or any state or the District of Columbia to do business in the United States;

(6) In order to prevent the loss on debts previously contracted, an agency may acquire shares in a corporation: Provided, That the shares are disposed of as soon as practicable, but in no event later than two years from the date of acquisition;

(7) Issue letters of credit and create acceptances; and

(8) Conduct activities which are necessary and incidental to the above-enumerated power: Provided, That the commissioner maintains the authority to determine whether the power or activity sought or undertaken is necessary and incidental.

(b) No West Virginia state agency office may take deposits on behalf of any affiliated bank or other depository institution.

(c) Any loan limitation or restriction based on the capital stock and surplus of a bank shall be deemed to refer, as applied to a West Virginia state agency, to the United States dollar equivalent of the capital and stock surplus of the parent foreign bank, and not to the capital equivalency deposit in section twenty-eight of this article.

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§31A-8F-12. Representative office of foreign banks; necessity of licensure.

(a) No foreign bank shall establish or maintain a West Virginia state representative office unless the foreign bank is licensed by the commissioner to maintain a West Virginia representative office.

(b) Nothing in subsection (a) of this section shall be deemed to prohibit a foreign bank which maintains a federal agency or federal branch in this state from establishing or maintaining one or more West Virginia representative offices.

WV Legislature

§31A-8F-13. Representative office; application.

(a) The application for a license to establish and maintain a West Virginia representative office shall be in writing under oath and shall be in such form and contain such information as the commissioner may require by regulation or order. The application shall be accompanied by a fee of $250.

(b) Each application to establish and maintain a West Virginia representative office shall include an instrument irrevocably appointing the West Virginia Secretary of State or his or her successors in office to be such foreign bank's agent, representative and attorney to receive service of any lawful judicial and administrative process.

WV Legislature

§31A-8F-14. Representative office; factors for approval of application.

(a) A foreign bank making an application for a license to establish and maintain a West Virginia representative office shall deliver to the commissioner two (or more as the commissioner may require in writing) duplicate originals of the foreign bank's application.

(b) The commissioner may issue a license to a foreign bank to establish and maintain a West Virginia representative office if he or she finds:

(1) That the foreign bank is of sound financial standing;

(2) That the management of the foreign bank and the proposed management of the West Virginia representative office are adequate and are of good reputation and character;

(3) That the proposed office is not being formed for other than legitimate motives and purposes; and

(4) That the convenience and needs of persons to be served by the proposed West Virginia representative office will be promoted.

(c) If the commissioner determines to issue a license to a foreign bank to establish and maintain a West Virginia representative office, he or she shall, when all fees have been paid as required under this article:

(1) Endorse on each duplicate original of the application the word "Filed", and the date of the filing thereof and return to the foreign bank one such duplicate original so endorsed;

(2) File in his or her office one of such duplicate originals of the application; and

(3) Issue a license to establish and maintain a West Virginia representative office to such foreign bank.

(d) Each license issued to a foreign bank to establish and maintain a West Virginia representative office shall state fully the name of the foreign bank to which such license is issued, the address or addresses at which the West Virginia representative office is to be located and all other information as the commissioner may require.

WV Legislature

§31A-8F-15. Representative office; permissible activities.

(a) A foreign bank which is licensed to establish and maintain a West Virginia representative office may, subject to such rules as the commissioner may prescribe, engage in the following activities:

(1) Solicitation for loans and in connection therewith the assembling of credit information, making of property inspections and appraisals, securing of title information, preparing of applications for loans including making recommendations with respect to action thereon, soliciting of investors to purchase loans from the foreign bank and searching for such investors to contract with the foreign bank for servicing of such loans;

(2) The solicitation of new business;

(3) The conduct of research; and

(4) Back office administrative functions as may be more specifically defined in rules issued by the commissioner.

(b) Any other activity which the foreign bank seeks to conduct at such office shall be subject to the prior written approval of the commissioner upon finding that the character of such other business is such that the granting of the authority would not facilitate evasions of this article or chapter or the rules or orders lawfully made hereunder.

WV Legislature

§31A-8F-16. Posting of license.

Each foreign bank which is licensed to establish and maintain a West Virginia state agency or West Virginia representative office shall post its license in a conspicuous place at the office.

WV Legislature

§31A-8F-17. Licenses not transferable.

No license issued by the commissioner in accordance with this article shall be transferable or assignable.

WV Legislature

§31A-8F-18. Amended license to establish and maintain a direct agency office or representative office.

(a) A foreign bank which is licensed to establish and maintain a West Virginia state agency or West Virginia representative office must secure an amended license if it changes its corporate name, changes corporate control, changes the duration of its corporate existence or desires to pursue in this state other or additional purposes than those set forth in its prior application under this article for a license, by making application therefor to the commissioner.

(b) The requirements with respect to the form and contents of an application under subsection (a) of this section, the manner of its execution, the filing of duplicate originals thereof with the commissioner, the issuance of an amended license and the effect thereof shall be the same as in the case of an initial application for a license to establish and maintain a West Virginia state agency or West Virginia representative office, except as may be provided by the commissioner in the case of a change of control which results merely from a corporate reorganization.

WV Legislature

§31A-8F-19. Change of control of foreign bank.

A foreign bank which is licensed to establish and maintain a West Virginia state agency or West Virginia representative office shall file with the commissioner a written notice and request an amended license under section eighteen of this article no later than fourteen calendar days after the foreign bank becomes aware of any acquisition of control of the foreign bank or the bank merges with another foreign or domestic bank.

WV Legislature

§31A-8F-20. Relocation of office; written notice necessary.

No foreign bank which is licensed to establish and maintain a West Virginia state agency or West Virginia representative office shall relocate any office unless the foreign bank provides prior written notice to the commissioner and the commissioner has approved such relocation in writing.

WV Legislature

§31A-8F-21. Examination; payment of fees.

(a) A West Virginia state agency or West Virginia representative office shall be subject to examination by the commissioner at intervals and in a manner as he or she shall establish by rule or order. Unless otherwise provided by rule or order the examinations may be conducted annually.

(b) In conducting an examination pursuant to this section, the commissioner shall:

(1) Have full access to the offices, books, accounts and records of each office located in this state as well as all of the books, accounts and records maintained in this state of any office not located in this state of such foreign bank; and

(2) Have authority to require the attendance of and to examine under oath all persons whose testimony may be required relative to the activities of such office.

(c) A foreign bank which is licensed to establish and maintain a West Virginia state agency or West Virginia representative office shall be assessed a reasonable fee for the expenses incurred by the commissioner in making an examination of the office.

(d) A foreign bank which is licensed to establish and maintain a West Virginia state agency or West Virginia representative office shall be subject to all reasonable fees and expenses in such amounts as the commissioner may require by rule or order.

(e) The commissioner may require a West Virginia state agency or West Virginia representative office to be audited by an independent accountant licensed to practice by the State of West Virginia. The accountant must have knowledge and experience with respect to auditing books of international corporations. The audit must be based on generally accepted accounting standards without limitation on its scope. The cost of the audits must be paid by the foreign bank.

WV Legislature

§31A-8F-22. Supervision and enforcement.

(a) The commissioner shall have all of the powers granted to him or her by the laws of this state to the extent appropriate to enable him or her to supervise each West Virginia state agency or West Virginia representative office.

(b) If, after notice and a hearing, the commissioner finds that any person has violated any provision of this article or any regulation or order issued under this article, he or she may, in addition to any other remedy or action available to the commissioner under the laws of this state, seek a civil penalty in an amount in accordance with this chapter and rules thereunder.

(c) In order to carry out the purposes under this article, the commissioner may:

(1) Enter into cooperative, coordinating or information-sharing agreements with any other bank supervisory agency or any organization affiliated or representing one or more bank supervisory agencies;

(2) With respect to periodic examination or other supervision of a foreign bank that maintains a West Virginia state agency or West Virginia representative office, accept reports of examinations performed by, and reports submitted to, other bank supervisory agencies in lieu of conducting examinations, or of receiving reports, as might otherwise be required under this article;

(3) Enter into joint examinations or joint enforcement actions with any other bank supervisory agency having concurrent jurisdiction over any foreign bank: Provided, That the commissioner may at any time take any actions independently if the commissioner determines that the actions are necessary or appropriate to carry out his or her responsibilities under this article and to ensure compliance with the laws of this state;

(4) Enter into contracts with any bank supervisory agency having concurrent regulatory or supervisory jurisdiction over a foreign bank maintaining a West Virginia state agency or West Virginia representative office, to engage the services of such agency's examiners at a reasonable rate of compensation or provide the services of the commissioner's examiners 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; and

(5) Assess supervisory and examination fees that shall be payable by foreign banks maintaining a West Virginia state agency or West Virginia representative office in connection with the commissioner's performance of his or her duties under this article and in accordance with rules adopted by the commissioner.

(d) Supervisory or examination fees assessed by the commissioner in accordance with the provisions of this article may be shared with other bank supervisory agencies or any organizations affiliated with or representing one or more bank supervisory agencies in

WV Legislature

accordance with agreements between the commissioner and such agencies or organizations.

WV Legislature

§31A-8F-23. Reports.

(a) Each foreign bank which is licensed to establish and maintain a West Virginia state agency or West Virginia representative office shall file with the commissioner such reports as and when the commissioner may require.

(b) Each report filed with the commissioner under this article or any rule or order issued under this article shall be in such form and contain such information, shall be signed in such manner, and shall be verified in such manner, as the commissioner may reasonably require.

WV Legislature

§31A-8F-24. Confidentiality of examination reports.

All reports of examinations and other records relating to the financial condition of any foreign bank, branch, agency office or representative office shall be confidential and subject to subpoena in the same manner as those examinations and records of other financial institutions pursuant to section four, article two of this chapter.

WV Legislature

§31A-8F-25. Books, accounts and records.

Each foreign bank which is licensed to establish and maintain a West Virginia state agency or West Virginia representative office shall maintain or make available at any such office appropriate books, accounts and records in the English language reflecting: (i) All transactions effected by or on behalf of such office; and (ii) all actions taken in this state by employees of the foreign banking corporation located in this state to effect transactions on behalf of any office of the foreign bank located outside this state.

WV Legislature

§31A-8F-26. Separate assets.

(a) Each foreign bank which is licensed to establish and maintain a West Virginia state agency in this state shall keep the assets of its business in this state separate and apart from the assets of its business outside this state as though the West Virginia office was conducted as a separate and distinct entity.

(b) The creditors of a foreign bank arising out of transactions with, and recorded on the books of, its West Virginia state agency shall be entitled to absolute preference and priority over the creditors of the foreign bank's offices located outside this state with respect to the assets of the foreign bank in this state.

WV Legislature

§31A-8F-27. Disclosure of lack of federal deposit insurance.

Each foreign bank which is licensed to establish and maintain a West Virginia state agency shall clearly and conspicuously disclose that moneys held by or credit balances in such office are not insured by the federal deposit insurance corporation.

WV Legislature

§31A-8F-28. Capital equivalency deposit.

(a) Each foreign bank which is licensed to establish and maintain a West Virginia state agency office shall keep on deposit with an unaffiliated West Virginia bank(s) as the foreign bank may designate and the commissioner may approve, the capital equivalency deposit required by section nine of this article in the form of interest-bearing stocks and bonds, notes, debentures or other obligations of the United States or any agency or instrumentality thereof, or guaranteed by the United States, or of this state, or of a city, county, town, village, school district, or instrumentality of this state or guaranteed by this state, or dollar deposits or obligations of the international bank for reconstruction and development, or obligations issued by the Interamerican development bank, or obligations of the Asian development bank, or obligations issued by the African development bank, or other assets as the commissioner may by rule or order permit, based upon principal amount or market value, whichever is lower, in the case of the above-described securities, and subject to the limitations as he or she shall prescribe.

(b) The West Virginia bank designated to hold the assets in deposit shall issue a written receipt addressed and delivered to the commissioner reciting that the deposit is being held for the sole benefit of the United States domiciled creditors of the foreign bank's West Virginia state agency office and that the deposit is subject to the commissioner's order without offset for the payment of the creditors. For the purpose of this subsection, the term "creditor" shall not include any other offices, branches, subsidiaries or affiliates of the foreign bank.

(c) So long as it shall continue business in the ordinary course, such foreign bank shall be permitted to collect interest on the securities deposited under this section and from time to time exchange, examine and compare such securities.

(d) The commissioner in his or her discretion may require additional capital equivalency deposits if: (I) The financial condition of either the office(s) or the foreign bank warrants such additional protection; or (ii) other circumstances exist which may impair the office(s) or foreign bank's safety or soundness.

(e) West Virginia state agency offices must maintain a capital equivalency ledger showing the amount of net liabilities requiring capital equivalency coverage for each business day. On the last day of business of each month the average daily balance shall be computed, and based upon this computation, an increase in the deposit, if necessary to maintain the deposit at the level required by this section, shall be made. Any such required increase must be made within the first two business days of the following month. For foreign banks having more than one agency office in this state, the deposit required shall be determined on an aggregate basis for all such agency offices in this state. If securities comprise all or part of the deposit, and interest rate changes or a decline in credit quality of the security results in the depreciation of its market value, the security shall be replaced with an instrument that qualifies under subsection (a) of this section or other appropriate action shall be taken to ensure the capital equivalency deposit is adequately maintained.

WV Legislature

§31A-8F-29. Voluntary closure of agency or representative office; application.

(a) No foreign bank which is licensed to establish and maintain a West Virginia state agency or West Virginia representative office shall close the office without filing an application with, and obtaining the prior approval of, the commissioner. The failure of an agency or representative office to remain open to the public for business at least six hours per day four days per week (excluding legal holidays) shall, unless previous approval for lesser hours has been granted by the commissioner, constitute a closing, and may result in a suspension or revocation of license.

(b) If the commissioner finds, with respect to an application by a foreign bank under this section, that the closing of the office will not be substantially detrimental to the public convenience and advantage, the commissioner shall approve the application. If the commissioner finds otherwise, he or she shall deny the application.

(c) Whenever an application by a foreign bank under this section has been approved and all conditions precedent to the closing have been fulfilled, such foreign bank may close the office and shall promptly thereafter surrender to the commissioner the license which authorized the foreign bank to maintain the office.

WV Legislature

§31A-8G-1. The West Virginia FinTech Regulatory Sandbox Program.

This article shall be known as the West Virginia FinTech Regulatory Sandbox Act.

WV Legislature

§31A-8G-2. Definitions.

As used in this article:

"Applicable agency" means a department or agency of the state that by law regulates certain types of business activity in the state and persons engaged in such business activity, including the issuance of licenses or other types of authorization, which the department determines would otherwise regulate a regulatory sandbox participant.

"Applicant" means an individual or entity that is applying to participate in the regulatory sandbox program.

"Consumer" means a person that purchases or otherwise enters into a transaction or agreement to receive an innovative product or service that is being tested by a regulatory sandbox participant.

"Distributed ledger" means the use of a digital database containing records of financial transactions, including blockchain technology, which can be simultaneously used and shared within a decentralized, publicly accessible network and can record transactions between two parties in a verifiable and permanent way.

"Division of Financial Institutions" and "division" mean the West Virginia Division of Financial Institutions.

"Financial product or service" means:

(A) A financial product or financial service that requires state licensure or registration; or

(B) A financial product or financial service that includes a business model, delivery mechanism, or element that may require a license or other authorization to act as a financial institution, enterprise, or other entity that is regulated by the West Virginia Division of Financial Institutions under chapters 31, 31A, and 31C of this code, §32A-2-1 *et seq.* of this code, or other related provisions.

"Innovation" means the use or incorporation of a new or emerging technology or a new use of existing technology, including distributed ledger, to address a problem, provide a benefit, or otherwise offer a product, service, business model, or delivery mechanism that is not known by the Division of Financial Institutions to have a comparable widespread offering in the state.

"Innovative product or service" means a financial product or service that includes an innovation.

"Regulatory sandbox participant" means a person whose application to participate in the regulatory sandbox program is approved in accordance with the provisions of this article.

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"Regulatory sandbox program" means the West Virginia FinTech Regulatory Sandbox Program created by this article, which allows a person to temporarily test an innovative product or service on a limited basis without otherwise being licensed or authorized to act under the laws of the state.

"Regulatory sandbox testing period" means a 24-month period beginning on the date an applicant is admitted to the regulatory sandbox program.

"Test" means to provide an innovative product or service in accordance with the provisions of this chapter.

WV Legislature

§31A-8G-3. Regulatory Sandbox Program; administration; application requirements; fee; rulemaking.

(a) There is created in the Division of Financial Institutions the Regulatory Sandbox Program.

(b) In administering the regulatory sandbox program, the Division of Financial Institutions:

(1) Shall consult with the West Virginia Development Office relating to the economic development opportunities relating to the potential regulatory sandbox participant and may consult with any applicable agency which otherwise may have jurisdiction or authority relating to any activity proposed for the regulatory sandbox program for which the applicant is seeking to proceed without authorization or license;

(2) Shall have the authority to promulgate rules in accordance with §31A-2-4 and §29A-3-1 *et seq*. of this code for the purposes of administering the regulatory sandbox program;

(3) Shall establish a program permitting an individual or an entity to obtain limited access to the market in the state to test an innovative product or service without obtaining a license or other authorization that might otherwise be required;

(4) May enter into cooperative, coordinating, or information-sharing agreements with or follow the best practices of the federal Consumer Financial Protection Bureau or other states that are administering similar programs as well as other state and federal agencies to carry out the mandates of this article; and

(5) May enter into agreements with state, federal or foreign regulatory agencies to allow persons who make an innovative financial product or service available in West Virginia through the regulatory sandbox program to make their products or services available in other jurisdictions and to allow persons operating in similar regulatory sandboxes in other jurisdictions to make innovative financial products and services available in West Virginia under the standards of this article.

(c) An applicant for the regulatory sandbox program shall provide to the Division of Financial Institutions an application in a form prescribed by the Division of Financial Institutions that:

(1) Demonstrates that the applicant is subject to the jurisdiction of the state;

(2) Demonstrates that the applicant has established a physical location in the state; where all required records, documents, and data relating to any approved testing can be made available for examination and review by the Division of Financial Institutions and any other applicable agency with jurisdiction;

(3) Demonstrates that the applicant has attempted in good faith to establish a partnership with a bank operating within the State of West Virginia or another financial institution licensed by the State of West Virginia to implement the applicant’s proposed test of an

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innovative product or service within the regulatory sandbox program: *Provided*, That the applicant may not be excluded from participation in the regulatory sandbox program solely based on the applicant's ability to establish a partnership with a bank operating within the State of West Virginia or another financial institution licensed by the State of West Virginia;

(4) Contains relevant personal and contact information for the applicant, including legal names, addresses, telephone numbers, email addresses, website addresses, and other information required by the Division of Financial Institutions;

(5) Discloses any and all criminal convictions of the applicant or other participating personnel, if any, and submits to a criminal background investigation, including requiring fingerprints for submission to the Federal Bureau of Investigation or any governmental agency or entity authorized to receive such information for a state, national or international criminal history check;

(6) Demonstrates that the applicant has the necessary personnel, financial and technical expertise, access to capital, and a developed plan to test, monitor, and assess the innovative product or service;

(7) Contains a description of the innovative product or service to be tested, including statements regarding all of the following:

(A) How the innovative product or service is subject to licensing or other authorization requirements outside of the regulatory sandbox program;

(B) How the innovative product or service would benefit consumers;

(C) How the innovative product or service is different from other products or services available in the state;

(D) What risks may confront consumers that use or purchase the innovative product or service;

(E) What measures will be put into place to limit potential risks and harm to consumers and to resolve complaints during the regulatory sandbox testing period;

(F) How participating in the regulatory sandbox program would enable a successful test of the innovative product or service;

(G) A description of the proposed testing plan, including estimated time periods for beginning the test, ending the test, and obtaining necessary licensure or authorizations after the testing is complete;

(H) A description of how the applicant will perform ongoing duties after the test; and

(I) How the applicant will end the test and protect consumers if the test fails;

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(8) Sets forth whether the applicant has been provided any license or authorization by any state or federal agency; whether any state or federal agency has previously investigated, sanctioned, or pursued legal action against the applicant; and whether the applicant has had licensure or authorization denied or withdrawn by any state or federal agency;

(9) Demonstrates registration with the West Virginia Secretary of State;

(10) Demonstrates that the applicant has an exit plan to limit consumer harm at the conclusion of the regulatory sandbox testing period, including a plan to notify consumers and advise them of next steps; and

(11) Provides any other information as required by the Division of Financial Institutions.

(d) The Division of Financial Institutions may collect an application fee of not more than $1,500 from an applicant.

(e) An applicant shall file a separate application for each innovative product or service that the applicant wants to test.

(f) After an application is filed, the Division of Financial Institutions may seek additional information from the applicant as it deems necessary.

(g) Subject to subsection (h) of this section, not later than 90 days after the day on which a complete application is received by the Division of Financial Institutions, the division shall inform the applicant as to whether the application is approved for entry into the regulatory sandbox program.

(h) The Division of Financial Institutions and an applicant may mutually agree to extend the 90-day time period described in subsection (g) of this section in order for the Division to determine whether an application is approved for entry into the regulatory sandbox program.

(i)(1) In reviewing an application under this section, the Division of Financial Institutions may consult with, and seek the approval of, any applicable agency before admitting an applicant into the regulatory sandbox program.

(2) The consultation with an applicable agency may include but is not limited to seeking information about whether:

(A) The applicant could obtain a license or other authorization from the applicable agency after exiting the regulatory sandbox program; and

(B) Certain licensure or other regulations should not be waived even if the applicant is accepted into the regulatory sandbox program.

(j) In reviewing an application under this section, the Division of Financial Institutions shall

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consider whether a competitor to the applicant is or has been a regulatory sandbox participant and, if so, weigh that as a factor in favor of allowing the applicant to also become a regulatory sandbox participant.

(k) If the Division of Financial Institutions approves admitting an applicant into the regulatory sandbox program, an applicant may become a regulatory sandbox participant.

(I)(1) The Division of Financial Institutions may deny any application submitted under this section, for any reason, at the division's discretion.

(2) If the Division of Financial Institutions denies an application submitted under this section, the division shall provide to the applicant a written description of the reasons for the denial as a regulatory sandbox participant.

WV Legislature

§31A-8G-4. Scope; testing period; licenses; consumer protections.

(a) If the Division of Financial Institutions approves an application under §31A-8G-3 of this code, the regulatory sandbox participant has 24 months after the day on which the application was approved to test the innovative product or service described in the regulatory sandbox participant's application.

(b) An innovative product or service that is tested within the regulatory sandbox program is subject to the following:

(1) All consumers participating in the innovative product or service being tested shall be residents of the state;

(2) The Division of Financial Institutions may, on a case-by-case basis, specify the maximum number of consumers that may transact through or enter into an agreement to use the innovative product or service:

(A) For a regulatory sandbox participant testing a consumer loan, the Division of Financial Institutions may, on a case-by-case basis, specify the maximum amount of an individual loan that may be issued to an individual consumer and the maximum amount of aggregate loans that may be issued to an individual consumer; and

(B) For a regulatory sandbox participant testing an innovative product or service that would normally require a money transmission license pursuant to this code, the Division of Financial Institutions may, on a case-by-case basis, specify the maximum amount of a single transaction for an individual consumer and the maximum aggregate amount of transactions for an individual consumer.

(c) This section does not restrict a regulatory sandbox participant who holds a license or other authorization in another jurisdiction from acting in accordance with that license or other authorization.

(d) A regulatory sandbox participant is deemed to possess an appropriate license under the laws of this state for the purposes of any provision of federal law requiring state licensure or authorization.

(e) Except as otherwise provided in this chapter, including subsections (f), (g), and (h), a regulatory sandbox participant that is testing an innovative product or service is not subject to state laws that regulate financial products or services.

(f) Regulatory sandbox participants and the innovative products and services that they are testing in the regulatory sandbox program are subject to all applicable consumer protection laws, including, but not limited to those contained in chapter 46A of this code, the Collection Agency Act contained in chapter 47A of this code, and any limitations on interest rates, whether or not those interest rates would otherwise require licensure.

WV Legislature

(g)(1) The Division of Financial Institutions may determine that additional state laws that regulate a financial product or service apply to a regulatory sandbox participant if the Division of Financial Institutions, at its sole discretion, determines that an applicant's proposed testing plan or the innovative product or service to be tested poses significant risk to consumers or to the safety and soundness of other institutions within the financial services marketplace as to warrant the imposition of other applicable state laws.

(2) The Division of Financial Institutions shall determine the applicability of certain state laws to each innovative product or service prior to approval of any application to participate in the regulatory sandbox program and shall notify the regulatory sandbox participant of the specific regulatory provisions that shall apply to the innovative product or service throughout the duration of the regulatory sandbox testing period.

(3) If at any time during the regulatory sandbox testing period, the Division of Financial Institutions determines that the imposition of certain state laws is necessary to eliminate the risk of harm to consumers or the safety and soundness of other institutions operating within the financial services marketplace, the division may require that the regulatory sandbox participant come into compliance with such state laws within a reasonable time.

(h) Notwithstanding any other provision of this chapter, a regulatory sandbox participant does not have immunity related to any criminal offense committed during the regulatory sandbox participant's participation in the regulatory sandbox program.

(i) By written notice, the Division of Financial Institutions may end a regulatory sandbox participant's participation in the regulatory sandbox program at any time and for any reason, including if the Division of Financial Institutions determines a regulatory sandbox participant is not operating in good faith to bring an innovative product or service to market.

(j) The Division of Financial Institutions shall require a regulatory sandbox participant to post a consumer protection bond as security for potential losses suffered by consumers. The bond amount shall be determined by the commissioner in an amount not less than $5,000 and shall be commensurate with the risk profile of the innovative product or service. The commissioner may require that a bond be increased or decreased at any time based on risk profile and shall provide the regulatory sandbox participant with 30 days prior written notice of such increase or decrease. The aggregate liability of the surety in no event shall exceed the principal sum of the bond. The commissioner may use bond proceeds to offset losses suffered by consumers as a result of an innovative product or service. The bond shall expire two years after the date of the conclusion of the regulatory sandbox testing period. The commissioner may accept electronic bonds from any regulatory sandbox participant.

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§31A-8G-5. Additional consumer protections; disclosures.

(a) Before providing an innovative product or service to a consumer, a regulatory sandbox participant shall disclose the following to the consumer:

(1) The name and contact information of the regulatory sandbox participant;

(2) That the innovative product or service is authorized pursuant to the regulatory sandbox program and, if applicable, that the regulatory sandbox participant does not have a license or other authorization to provide a product or service under state laws that regulate products or services outside the regulatory sandbox program;

(3) That the innovative product or service is undergoing testing, may not function as intended, and may expose the consumer to financial risk;

(4) That the provider of the innovative product or service is not immune from civil liability for any losses or damages caused by the innovative product or service;

(5) That the state does not endorse or recommend the innovative product or service;

(6) That the innovative product or service is a temporary test that may be discontinued at the conclusion of the regulatory sandbox testing period;

(7) The expected end date of the regulatory sandbox testing period; and

(8) That a consumer may contact the Division of Financial Institutions to file a complaint regarding the innovative product or service being tested and provide the Division of Financial Institution’s telephone number and website address where a complaint may be filed.

(b) The disclosures required by subsection (a) of this section shall be provided to a consumer in a clear and conspicuous form and, for an internet or application-based innovative product or service, a consumer shall acknowledge receipt of the disclosure before a transaction may be completed.

(c) The Division of Financial Institutions may investigate all consumer complaints made against a regulatory sandbox participant pursuant to subsection (a) of this section: *Provided*, That the consumer making the complaint was directly provided the innovative product or service by the regulatory sandbox participant, and the innovative product or service was provided in the course of participation in the regulatory sandbox program.

(d) The Division of Financial Institutions may require that a regulatory sandbox participant make additional disclosures to a consumer.

WV Legislature

§31A-8G-6. Exiting requirements; extensions.

(a) At least 30 days before the conclusion of the regulatory sandbox testing period, a regulatory sandbox participant shall:

(1) Notify the Division of Financial Institutions that the regulatory sandbox participant will exit the regulatory sandbox program, discontinue the regulatory sandbox participant's test, and stop offering any innovative product or service in the regulatory sandbox program within 60 days after the day on which the regulatory sandbox testing period ends; or

(2) Seek an extension in accordance with §31A-8G-7 of this code.

(b) Subject to subsection (c) of this section, if the Division of Financial Institutions does not receive notification as required by subsection (a) of this section, the regulatory sandbox participant shall immediately stop offering each innovative product or service being tested at the conclusion of the regulatory sandbox testing period.

(c) If a test includes offering an innovative product or service that requires ongoing duties, such as servicing a loan, the regulatory sandbox participant shall continue to fulfill those duties or arrange for another person to fulfill those duties after the date on which the regulatory sandbox participant exits the regulatory sandbox program, and not less than 30 days before the conclusion of the regulatory sandbox testing period, notify, in writing, any consumer of the innovative product or service of the plan related to continuation or discontinuation of duties with respect to the innovative product or service.

WV Legislature

§31A-8G-7. Testing period extensions.

(a) Thirty days prior to the conclusion of the regulatory sandbox testing period, a regulatory sandbox participant may request an extension of the regulatory sandbox testing period for the purpose of obtaining a license or other authorization required by law.

(b) The Division of Financial Institutions shall grant or deny a request for an extension in accordance with subsection (a) of this section by the conclusion of the regulatory sandbox testing period.

(c) The Division of Financial Institutions may grant an extension in accordance with this section for not more than 12 months after the conclusion of the regulatory sandbox testing period.

(d) A regulatory sandbox participant that obtains an extension in accordance with this section shall provide the Division of Financial Institutions with a written report every three months that provides an update on efforts to obtain a license or other authorization required by law, including any submitted applications for licensure or other authorization, rejected applications, or issued licenses or other authorization.

WV Legislature

§31A-8G-8. Recordkeeping and reporting requirements; participant removal.

(a) A regulatory sandbox participant shall retain records, documents, and data produced in the ordinary course of business regarding an innovative product or service tested in the regulatory sandbox program, and shall maintain comprehensive records for not less than five years after the conclusion of the regulatory sandbox testing period.

(b) If an innovative product or service fails before the conclusion of a regulatory sandbox testing period, the regulatory sandbox participant shall notify the Division of Financial Institutions and report on actions taken by the regulatory sandbox participant to ensure consumers have not been harmed as a result of the failure.

(c) The Division of Financial Institutions will collaborate with a regulatory sandbox participant to establish periodic and reasonable reporting requirements for the regulatory sandbox participant.

(d) The Division of Financial Institutions may request records, documents, and data from a regulatory sandbox participant, and, upon the division's request, a regulatory sandbox participant shall make such records, documents, and data available for inspection by the division.

(e) If the Division of Financial Institutions determines that a regulatory sandbox participant has engaged in, is engaging in, or is about to engage in any practice or transaction that is in violation of this chapter or that constitutes a violation of a state or federal criminal law, the Division of Financial Institutions may remove a regulatory sandbox participant from the regulatory sandbox program and may refer suspected violations of law relating to this act to appropriate state or federal agencies for investigation, prosecution, civil penalties, and other appropriate enforcement actions.

(f) On or before December 1 of each year, the Division of Financial Institutions shall provide an annual written report to the Joint Committee on Government and Finance that provides information regarding each regulatory sandbox participant and that provides recommendations regarding the effectiveness of the regulatory sandbox program. This report shall be made publicly available on the division's website.

WV Legislature

§31A-9-1. Title.

This article may be cited as the Uniform Special Deposits Act.

WV Legislature

§31A-9-2. Definitions.

In this article:

(1) "Account agreement" means an agreement that:

(A) Is in a record between a bank and one or more depositors;

(B) May have one or more beneficiaries as additional parties; and

(C) States the intention of the parties to establish a special deposit governed by this article.

(2) "Bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, trust company, and a bank as defined in §31A-1-2 of this code. Each branch or separate office of a bank is a separate bank for the purpose of this article.

(3) "Beneficiary" means a person that:

(A) Is identified as a beneficiary in an account agreement; or

(B) If not identified as a beneficiary in an account agreement, may be entitled to payment from a special deposit:

(i) Under the account agreement; or

(ii) On termination of the special deposit.

(4) "Contingency" means an event or circumstance stated in an account agreement that is not certain to occur but must occur before the bank is obligated to pay a beneficiary.

(5) "Creditor process" means attachment, garnishment, levy, notice of lien, sequestration, or similar process issued by or on behalf of a creditor or other claimant.

(6) "Depositor" means a person that establishes or funds a special deposit.

(7) "Good faith" means honesty in fact and observance of reasonable commercial standards of fair dealing.

(8) "Knowledge" of a fact means:

(A) With respect to a beneficiary, actual knowledge of the fact; or

(B) With respect to a bank holding a special deposit:

(i) If the bank:

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(I) Has established a reasonable routine for communicating material information to an individual to whom the bank has assigned responsibility for the special deposit; and

(II) Maintains reasonable compliance with the routine, actual knowledge of the fact by that individual; or

(ii) If the bank has not established and maintained reasonable compliance with a routine described in subparagraph (i) of this paragraph or otherwise exercised due diligence, implied knowledge of the fact that would have come to the attention of an individual to whom the bank has assigned responsibility for the special deposit.

(9) "Obligated to pay a beneficiary" means a beneficiary is entitled under the account agreement to receive from the bank a payment when:

(A) A contingency has occurred; and

(B) The bank has knowledge the contingency has occurred.

(10) "Obligation to pay a beneficiary" has a corresponding meaning.

(11) "Permissible purpose" means a governmental, regulatory, commercial, charitable, or testamentary objective of the parties stated in an account agreement. The term includes an objective to:

(A) Hold funds:

(i) In escrow, including for a purchase and sale, lease, buyback, or other transaction;

(ii) As a security deposit of a tenant;

(iii) That may be distributed to a person as remuneration, retirement, or other benefit, or compensation under a judgment, consent decree, court order, or other decision of a tribunal; or

(iv) For distribution to a defined class of persons after identification of the class members and their interest in the funds;

(B) Provide assurance with respect to an obligation created by contract, such as earnest money to ensure a transaction closes;

(C) Settle an obligation that arises in the operation of a payment system, securities settlement system, or other financial market infrastructure;

(D) Provide assurance with respect to an obligation that arises in the operation of a payment system, securities settlement system, or other financial market infrastructure; or

(E) Hold margin, other cash collateral, or funds that support the orderly functioning of

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financial market infrastructure or the performance of an obligation with respect to the infrastructure.

(12) "Person" means an individual, estate, business or nonprofit entity, government or governmental subdivision, agency, or instrumentality, or other legal entity. The term includes a protected series, however denominated, of an entity if the protected series is established under law that limits, or limits if conditions specified under law are satisfied, the ability of a creditor of the entity or of any other protected series of the entity to satisfy a claim from assets of the protected series.

(13) "Record" means information:

(A) Inscribed on a tangible medium; or

(B) Stored in an electronic or other medium and retrievable in perceivable form.

(14) "Special deposit" means a deposit that satisfies §31A-9-5 of this code.

(15) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any other territory or possession subject to the jurisdiction of the United States. The term includes an agency or instrumentality of the state.

WV Legislature

§31A-9-3. Scope; choice of law; forum.

(a) This article applies to a special deposit under an account agreement that states the intention of the parties to establish a special deposit governed by this article, regardless of whether a party to the account agreement or a transaction related to the special deposit, or the special deposit itself, has a reasonable relation to this state.

(b) The parties to an account agreement may choose a forum in this state for settling a dispute arising out of the special deposit, regardless of whether a party to the account agreement or a transaction related to the special deposit, or the special deposit itself, has a reasonable relation to this state.

(c) This article does not affect:

(1) A right or obligation relating to a deposit other than a special deposit under this article; or

(2) The voidability of a deposit or transfer that is fraudulent or voidable under other law.

WV Legislature

§31A-9-4. Variation by agreement or amendment.

(a) The effect of §31A-9-2 through §31A-9-6, §31A-9-8 through §31A-9-11, and §31A-9-14 of this code may not be varied by agreement, except as provided in those sections. Subject to subsection (b) of this section, the effect of §31A-9-7, §31A-9-12, and §31A-9-13 of this code may be varied by agreement.

(b) A provision in an account agreement or other record that substantially excuses liability or substantially limits remedies for failure to perform an obligation under this article is not sufficient to vary the effect of a provision of this article.

(c) If a beneficiary is a party to an account agreement, the bank and the depositor may amend the agreement without the consent of the beneficiary only if the agreement expressly permits the amendment.

(d) If a beneficiary is not a party to an account agreement and the bank and the depositor know the beneficiary has knowledge of the agreement's terms, the bank and the depositor may amend the agreement without the consent of the beneficiary only if the amendment does not adversely and materially affect a payment right of the beneficiary.

(e) If a beneficiary is not a party to an account agreement and the bank and the depositor do not know whether the beneficiary has knowledge of the agreement's terms, the bank and the depositor may amend the agreement without the consent of the beneficiary only if the amendment is made in good faith.

WV Legislature

§31A-9-5. Requirements for special deposit.

A deposit is a special deposit if it is:

(1) A deposit of funds in a bank under an account agreement;

(2) For the benefit of at least two beneficiaries, one or more of which may be a depositor;

(3) Denominated in a medium of exchange that is currently authorized or adopted by a domestic or foreign government;

(4) For a permissible purpose stated in the account agreement; and

(5) Subject to a contingency.

WV Legislature

§31A-9-6. Permissible purpose.

(a) A special deposit must serve at least one permissible purpose stated in the account agreement from the time the special deposit is created in the account agreement until termination of the special deposit.

(b) If, before termination of the special deposit, the bank or a court determines the special deposit no longer satisfies subsection (a) of this section, the provisions of §31A-9-8 through §31A-9-11 of this code cease to apply to any funds deposited in the special deposit after the special deposit ceases to satisfy subsection (a) of this section.

(c) If, before termination of a special deposit, the bank determines the special deposit no longer satisfies subsection (a) of this section, the bank may take action it believes is necessary under the circumstances, including terminating the special deposit.

WV Legislature

§31A-9-7. Payment to beneficiary by bank.

(a) Unless the account agreement provides otherwise, the bank is obligated to pay a beneficiary if there are sufficient actually and finally collected funds in the balance of the special deposit.

(b) Except as provided in subsection (c) of this section, the obligation to pay the beneficiary is excused if the funds available in the special deposit are insufficient to cover such payment.

(c) Unless the account agreement provides otherwise, if the funds available in the special deposit are insufficient to cover an obligation to pay a beneficiary, a beneficiary may elect to be paid the funds that are available or, if there is more than one beneficiary, a pro rata share of the funds available. Payment to the beneficiary making the election under this subsection discharges the bank's obligation to pay a beneficiary and does not constitute an accord and satisfaction with respect to another person obligated to the beneficiary.

(d) Unless the account agreement provides otherwise, the obligation of the bank obligated to pay a beneficiary is immediately due and payable.

(e) The bank may discharge its obligation under this section by:

(1) Crediting another transaction account of the beneficiary; or

(2) Taking other action that:

(A) Is permitted under the account agreement for the bank to obtain a discharge; or

(B) Otherwise would constitute a discharge under law.

(f) If the bank obligated to pay a beneficiary has incurred an obligation to discharge the obligation of another person, the obligation of the other person is discharged if action by the bank under subsection (e) of this section would constitute a discharge of the obligation of the other person under law that determines whether an obligation is satisfied.

WV Legislature

§31A-9-8. Property interest of depositor or beneficiary.

(a) Neither a depositor nor a beneficiary has a property interest in a special deposit.

(b) Any property interest with respect to a special deposit is only in the right to receive payment if the bank is obligated to pay a beneficiary and not in the special deposit itself. Any property interest under this subsection is determined under other law.

WV Legislature

§31A-9-9. When creditor process enforceable against bank.

(a) Subject to subsection (b) of this section, creditor process with respect to a special deposit is not enforceable against the bank holding the special deposit.

(b) Creditor process is enforceable against the bank holding a special deposit with respect to an amount the bank is obligated to pay a beneficiary or a depositor if the process:

(1) Is served on the bank;

(2) Provides sufficient information to permit the bank to identify the depositor or the beneficiary from the bank's books and records; and

(3) Gives the bank a reasonable opportunity to act on the process.

(c) Creditor process served on a bank before it is enforceable against the bank under subsection (b) of this section does not create a right of the creditor against the bank or a duty of the bank to the creditor. Other law determines whether creditor process creates a lien enforceable against the beneficiary on a contingent interest of a beneficiary, including a depositor as a beneficiary, even if not enforceable against the bank.

WV Legislature

§31A-9-10. Injunction or similar relief.

A court may enjoin or grant similar relief that would have the effect of enjoining a bank from paying a depositor or beneficiary only if payment would constitute a material fraud or facilitate a material fraud with respect to a special deposit.

WV Legislature

§31A-9-11. Recoupment or set off.

(a) Except as provided in subsection (b) or subsection (c) of this section, a bank may not exercise a right of recoupment or set off against a special deposit.

(b) An account agreement may authorize the bank to debit the special deposit:

(1) When the bank becomes obligated to pay a beneficiary, in an amount that does not exceed the amount necessary to discharge the obligation;

(2) For a fee assessed by the bank that relates to an overdraft in the special deposit account;

(3) For costs incurred by the bank that relate directly to the special deposit; or

(4) To reverse an earlier credit posted by the bank to the balance of the special deposit account, if the reversal occurs under an event or circumstance warranted under other law of this state governing mistake and restitution.

(c) The bank holding a special deposit may exercise a right of recoupment or set off against an obligation to pay a beneficiary, even if the bank funds payment from the special deposit.

WV Legislature

§31A-9-12. Duties and liability of bank.

(a) A bank does not have a fiduciary duty to any person with respect to a special deposit.

(b) When the bank holding a special deposit becomes obligated to pay a beneficiary, a debtor-creditor relationship arises between the bank and beneficiary.

(c) The bank holding a special deposit has a duty to a beneficiary to comply with the account agreement and this article.

(d) If the bank holding a special deposit does not comply with the account agreement or this article, the bank is liable to a depositor or beneficiary only for damages proximately caused by the noncompliance. Except as provided by other law of this state, the bank is not liable for consequential, special, or punitive damages.

(e) The bank holding a special deposit may rely on records presented in compliance with the account agreement to determine whether the bank is obligated to pay a beneficiary.

(f) If the account agreement requires payment on presentation of a record, the bank shall determine within a reasonable time whether the record is sufficient to require payment. If the agreement requires action by the bank on presentation of a record, the bank is not liable for relying in good faith on the genuineness of the record if the record appears on its face to be genuine.

(g) Unless the account agreement provides otherwise, the bank is not required to determine whether a permissible purpose stated in the agreement continues to exist.

WV Legislature

§31A-9-13. Term and termination.

(a) Unless otherwise provided in the account agreement, a special deposit terminates five years after the date the special deposit was first funded.

(b) Unless otherwise provided in the account agreement, if the bank cannot identify or locate a beneficiary entitled to payment when the special deposit is terminated, and a balance remains in the special deposit, the bank shall pay the balance to the depositor or depositors as a beneficiary or beneficiaries.

(c) A bank that pays the remaining balance as provided under subsection (b) of this section has no further obligation with respect to the special deposit.

WV Legislature

§31A-9-14. Principles of law and equity.

The provisions of chapter 46 and chapter 46A of this code, law governing deposits generally, law related to escheat and abandoned or unclaimed property, and the principles of law and equity, including law related to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, and bankruptcy, supplement this article except to the extent inconsistent with this article.

WV Legislature

§31A-9-15. Uniformity of application and construction.

In applying and construing this uniform act, a court shall consider the promotion of uniformity of the law among jurisdictions that enact it.

WV Legislature

§31A-9-16. Transitional provision.

This article applies to:

(1) A special deposit made under an account agreement executed on or after the effective date of this article; and

(2) A deposit made under an agreement executed before enactment of this article, if:

(A) All parties entitled to amend the agreement agree to make the deposit a special deposit governed by this article; and

(B) The special deposit referenced in the amended agreement satisfies §31A-9-5 of this code.

WV Legislature