

Received April 13 #5

ENROLLED BILL

(EXTRAORDINARY SESSION, 1933)

House Bill No. 5

(By Mr. Hiner (Mr. Speaker))

Passed April 12, 1933

In Effect from Passage

Originated in the..... Takes effect..... Passage

Clerk of the House of Delegates.

CORRECTLY ENROLLED

Clerk.

Chairman Senate Committee.

Chairman House Committee.

ENROLLED BILL

(H. B. No. 5)

[Passed April 12, 1933; in effect from passage.]

AN ACT to amend article eight, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, by adding thereto a section to be designated section forty-three, relating to the appointment of conservators for, and the reorganization of, banking institutions.

Be it enacted by the Legislature of West Virginia:

That article eight, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, be amended by adding the following section thereto, to be designated as section forty-three.

ARTICLE 8

Section 43. Whenever the commissioner of banking shall deem it necessary, in order to conserve the assets of any banking institution for the benefit of the depositors and other credi-

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James A. Hays

Chairman Senate Committee.

James E. Smith

Chairman House Committee.

4 tors thereof, he may appoint a conservator for such banking
5 institution. The conservator may be an employee of the depart-
6 ment of banking, and may be required to give such bond and
7 security as the commissioner deems proper.

8 The conservator, under the direction of the commissioner of
9 banking, shall take possession of the papers, books, records and
10 assets of every description of such banking institution, and
11 take such action as may be necessary to conserve such assets
12 pending further disposition of the business of such institu-
13 tion.

14 The conservator shall have all the rights, powers and privi-
15 leges now possessed by or hereafter given receivers of insolvent
16 banking institutions and shall be subject to all the liabilities,
17 obligations and penalties, not inconsistent with the provisions
18 of this article, to which receivers are now or may hereafter be-
19 come subject.

20 During the period that such conservator remains in posses-
21 sion of such banking institution, the legal relations of all
22 parties with respect thereto shall, subject to the other pro-
23 visions of this section, be the same as if a receiver had been ap-
24 pointed therefor.

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James L. Smith
Chairman House Committee.
H. B. No. 5

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25 All expenses of any such conservatorship shall be paid out
26 of the assets of such banking institution and shall be a lien
27 thereon, which shall be prior to any other lien. The con-
28 servator shall receive a reasonable compensation for his serv-
29 ices to be fixed by the commissioner of banking, but in no event
30 shall such compensation exceed that paid to employees of the
31 department of banking for similar services.

32 (a) Immediately upon taking charge of such banking insti-
33 tution, the conservator, in conjunction with a representative
34 of the bank designated by the directors thereof, shall make in
35 duplicate a complete inventory of all assets and an itemized
36 list of all liabilities of such institution. The original and copy
37 of such list shall be subscribed and sworn to by the persons
38 making the same and the original shall be filed with the depart-
39 ment of banking as soon as practicable, and the copy shall be
40 retained by the conservator.

41 (b) If the commissioner of banking becomes satisfied that
42 such a course of action may be pursued safely and that it will
43 be in the public interest, he may, in his discretion, terminate the
44 conservatorship and permit such banking institution to resume

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Chairman Senate Committee.

James L. Smith

Chairman House Committee.

45 the transaction of its business subject to such terms, conditions,
46 restrictions, and limitations as he may prescribe.

47 (c) While such banking institution is in the hands of the
48 conservator, the commissioner of banking may require such
49 conservator to set aside and make available for withdrawal by
50 depositors and payment to other creditors, on a ratable basis,
51 such amounts as in the opinion of the commissioner may be used
52 safely for this purpose, subject to such priorities and prefer-
53 ences as are provided by law. The commissioner may, in his
54 discretion, permit the conservator to receive deposits. Such de-
55 posits shall not be subject to any limitation as to payment or
56 withdrawal. The deposits shall be segregated and shall not be
57 used either to liquidate any indebtedness of such banking in-
58 stitution existing at the time that a conservator was appointed
59 for it or any subsequent indebtedness incurred for the purpose
60 of liquidating any indebtedness of such banking institution ex-
61 isting at the time such conservator was appointed.

62 Deposits received while the banking institution is in the
63 hands of a conservator shall: (1) Be kept on hand in cash or,
64 (2) be deposited with a federal reserve bank or deposited with
65 such banking institution organized under the United States

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James D. Hays

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66 National Bank Act, or the law of this state as the commissioner
67 of banking may, in his discretion, designate or, (3) be invested
68 in the direct obligations of the United States or the State of
69 West Virginia or the funded obligations of any political sub-
70 division of this state approved by the commissioner of banking.

71 (d) In any reorganization of any banking institution under
72 a plan of a kind which, by its own terms or under existing law,
73 requires the consent, as the case may be, (a) of depositors and
74 other creditors, or (b) of stockholders or (c) of both depositors
75 and other creditors and stockholders, such reorganization shall
76 become effective only (1) when the commissioner of banking
77 shall be satisfied that the plan of reorganization is fair and
78 equitable to all depositors, other creditors and stockholders,
79 and that the plan is in the public interest and when he shall
80 have approved the plan subject to such conditions, restrictions
81 and limitations as he may prescribe; and (2) when, after
82 reasonable notice of such reorganization, as the case may re-
83 quire, (a) depositors and other creditors of such banking in-
84 stitution representing at least seventy-five per cent in amount
85 of its total deposits and other liabilities, or (b) stockholders
86 owning at least two-thirds in amount of its outstanding capital

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James L. Smith
D. Higgins

Chairman House Committee.

Chairman Senate Committee.

87 stock, or (c) both depositors and other creditors representing
88 at least seventy-five per cent in amount of the total deposits
89 and other liabilities and stockholders owning at least two-thirds
90 in amount of its outstanding capital stock, shall, as the plan
91 may require, have consented in writing to the plan of reorgani-
92 zation. Claims of depositors or other creditors which will be
93 satisfied in full under the plan of reorganization shall not be
94 included among the total deposits and other liabilities of said
95 banking institution in determining the seventy-five per cent
96 thereof as above provided, or with the outstanding stock in de-
97 termining the two-thirds thereof as above provided. The plan
98 of reorganization shall not affect or impair the rights of any
99 creditor or stockholder not consenting thereto.

100 (e) Fifteen days after the affairs of a banking institution
101 shall have been turned back to its board of directors by the
102 conservator, either with or without a reorganization as pro-
103 vided in subsection (d) hereof, the provisions of subsection
104 (c) hereof shall no longer be effective. Before the conservator
105 shall turn back the affairs of the institution to its board of di-
106 rectors he shall publish in a newspaper published in the munici-
107 pality or county in which such bank is located, and if no news-

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Chairman House Committee.
Wm. D. Byrnes
Chairman Senate Committee.

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108 paper is so published, then in a newspaper of general circulation
109 in the county in which the bank is located, a notice in form ap-
110 proved by the commissioner, stating the date on which the af-
111 fairs of the banking institution will be returned to its board
112 of directors and that the said provisions of subsection (c) will
113 not be effective fifteen days after such date. On the date of the
114 publication of such notice the conservator shall send a copy of
115 such notice by registered mail to the last known address of
116 every person who is a depositor as shown by the records of the
117 institution. The conservator shall send similar notice in like
118 manner to every person making deposit in such institution
119 under subsection (c) after the date of such newspaper publi-
120 cation and before the time when the affairs of the bank are re-
121 turned to its directors.

122 (f) Nothing in this section shall be construed to impair in
123 any manner any powers of the governor or the commissioner
124 of banking.

125 (g) The commissioner of banking is hereby authorized to
126 prescribe such rules and regulations as he may deem necessary
127 in order to carry out the provisions of this section.

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[Signature]
 Chairman Senate Committee.

[Signature]
 Speaker of the House of Delegates.

[Signature]
 Clerk of the House of Delegates.

[Signature]
 President of the Senate.

[Signature]
 Clerk of the Senate.

[Signature]
 Chairman House Committee.

The within is..... *approved*

this... *14* ... day of... *April* ..., 1933.

[Signature]
 Governor.

Filed in the office of the Secretary of State
 of West Virginia. **APR 14 1933**
 Wm. S. O'BRIEN,
 Secretary of State