

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1935



ENROLLED

SENATE BILL No. 58

(By Mr. Belknap)



PASSED February 28, 1935

In Effect from Passage

58

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Senate Bill No. 58

(By MR. BELKNAP)

[Passed February 28, 1935; in effect from passage.]

AN ACT to amend and reenact chapter five, acts of the Legislature, first extraordinary session, one thousand nine hundred thirty-three, relating to the appointment of conservators for, and the reorganization of and rehabilitation of banking institutions under the supervision of the banking commissioner.

Be it enacted by the Legislature of West Virginia:

That chapter five, acts of the Legislature of West Virginia, first extraordinary session, one thousand nine hundred thirty-three, be amended and reenacted so as to read as follows:

ARTICLE VIII.

Section 43. Whenever the commissioner of banking shall

2 deem it necessary, in order to conserve the assets of any
3 banking institution for the benefit of the depositors and other
4 creditors thereof, he may appoint a conservator for such
5 banking institution. The conservator may be an employee of
6 the department of banking, and may be required to give such
7 bond and security as the commissioner deems proper.

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

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

20 During the period that such conservator remains in pos-
21 session 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
24 appointed therefor.

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 conserva-
28 tor shall receive a reasonable compensation for his services to
29 be fixed by the commissioner of banking, but in no event shall
30 such compensation exceed that paid to employees of the de-
31 partment of banking for similar services.

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

44 the conservatorship and permit such banking institution to
45 resume the transaction of its business subject to such terms,
46 conditions, 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
50 by depositors and payment to other creditors, on a ratable
51 basis, such amounts as in the opinion of the commissioner may
52 be used safely for this purpose, subject to such priorities and
53 preferences as are provided by law. The commissioner may,
54 in his discretion, permit the conservator to receive deposits.
55 Such deposits shall not be subject to any limitation as to
56 payment or withdrawal. The deposits shall be segregated
57 and shall not be used either to liquidate any indebtedness of
58 such banking institution existing at the time that the conserv-
59 ator was appointed for it or any subsequent indebtedness
60 incurred for the purpose of liquidating any indebtedness of
61 such banking institution existing at the time such conservator
62 was appointed.

63 Deposits received while the banking institution is in the
64 hands of a conservator shall: (1) Be kept on hand in cash;

65 or, (2) be deposited with a federal reserve bank or deposited
66 with such banking institution organized under the United
67 States national bank act, or the law of this state as the com-
68 missioner of banking may, in his discretion, designate; or,
69 (3) be invested in the direct obligations of the United States
70 or the state of West Virginia or the funded obligations of
71 any political subdivision of this state approved by the com-
72 missioner of banking.

73 (d) In any reorganization of any banking institution under
74 a plan of a kind which, by its own terms or under existing
75 law, requires the consent, as the case may be, (a) of depositors
76 and other creditors; or (b) of stockholders; or (c) of both
77 depositors and other creditors, and stockholders, such reor-
78 ganization shall become effective only (1) when the commis-
79 sioner of banking shall be satisfied that the plan of reorgani-
80 zation is fair and equitable to all depositors, other creditors
81 and stockholders, and that the plan is in the public interest
82 and when he shall have approved the plan subject to such
83 conditions, restrictions and limitations as he may prescribe;
84 and (2) when, after reasonable notice of such reorganization,
85 as the case may require, (a) depositors and other creditors

86 of such banking institution representing at least seventy-five
87 per cent in amount of its total deposits and other liabilities;
88 or (b) stockholders owning at least two-thirds in amount of
89 its outstanding capital stock; or (c) both depositors and other
90 creditors representing at least seventy-five per cent in amount
91 of the total deposits and other liabilities and stockholders own-
92 ing at least two-thirds in amount of its outstanding capital
93 stock, shall, as the plan may require, have consented in writing
94 to the plan of reorganization. Claims of depositors or other
95 creditors which will be satisfied in full under the plan of
96 reorganization shall not be included among the total deposits
97 and other liabilities of said banking institution in determining
98 the seventy-five per cent thereof as above provided.

99 When such reorganization becomes effective, all books,
100 records, and assets of the bank shall be disposed of in accord-
101 ance with the provisions of the plan and the affairs of the
102 bank shall be conducted by its board of directors in the man-
103 ner provided by the plan and under the conditions, restric-
104 tions and limitations which may have been prescribed by the
105 banking commissioner. In any reorganization which shall have
106 been approved and shall have become effective as provided

107 herein, all depositors and other creditors and stockholders of
108 such bank, whether or not they shall have consented to such
109 plan of reorganization, shall be fully and in all respects sub-
110 ject to and bound by its provisions, and claims of all depositors
111 and other creditors shall be treated as if they had consented
112 to such plan of reorganization.

113 (e) Fifteen days after the affairs of a banking institution
114 shall have been turned back to its board of directors by the
115 conservator, either with or without a reorganization as pro-
116 vided in subsection (d) hereof, the provisions of subsection
117 (c) hereof shall no longer be effective. Before the conservator
118 shall turn back the affairs of the institution to its board of
119 directors he shall publish in a newspaper published in the
120 municipality or county in which such bank is located, and
121 if no newspaper is so published, then in a newspaper of gen-
122 eral circulation in the county in which the bank is located,
123 a notice in form approved by the commissioner, stating the
124 date on which the affairs of the banking institution will be
125 returned to its board of directors and that the said provisions
126 of subsection (c) will not be effective fifteen days after such
127 date. On the date of the publication of such notice the con-

128 servator shall send a copy of such notice by registered mail
129 to the last known address of every person who is a depositor
130 as shown by the records of the institution. The conservator
131 shall send similar notice in like manner to every person making
132 deposit in such institution under subsection (c) after the date
133 of such newspaper publication and before the time when the
134 affairs of the bank are returned to its directors.

135 (f) Nothing in this section shall be construed to impair in
136 any manner any powers of the governor or the commissioner
137 of banking.

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

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Clinton F. Howard
Chairman Senate Committee

Arnold M. Vickers
Chairman House Committee

Originated in the *Senate*

Takes effect *from* passage.

Donald R. ...
Clerk of the Senate

Prosser
Clerk of the House of Delegates

Chas. E. Hodge
President of the Senate

John S. Belton
Speaker House of Delegates

The within *is approved* this the *6th*
day of *March*, 1935.

H. S. ...
Governor

Filed in the office of the Secretary of State
of West Virginia.

Wm. S. O'BRIEN,
Secretary of State

MAR 11 1935