WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1969

ENROLLED
SENATE BILL NO. 176
(By Mr. )

PASSED February 26, 1969
In Effect July 1, 1969

FILED IN THE OFFICE
JOHN D. ROCKEFELLER, IV
SECRETARY OF STATE
THIS DATE 3-10-69
AN ACT to repeal articles four, four-b, four-c, four-e and eight, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal chapters fifteen, sixteen, seventeen and one hundred thirteen, acts of the Legislature of West Virginia, regular session, one thousand nine hundred thirty-five; to repeal chapter four, acts of the Legislature of West Virginia, regular session, one thousand nine hundred thirty-seven; to repeal chapter thirty-two, acts of the Legislature of West Virginia, regular session, one thousand nine hundred fifty-one; to repeal chapter fourteen, acts of the Legislature of West Virginia, regular session, one thousand nine hundred sixty; and to amend said code by adding thereto a new chapter, designated chapter thirty-one-a, relating to banks and banking; relating to financial institutions; relating to certain powers and authorities of fiduciaries and others; providing a short title, definitions, a statement of purpose, a separability clause and for the repeal of inconsistent laws; providing for the establishment, continuance and administration of a department of banking and the office of the commissioner of banking in the state government, for the organization, powers, duties, functions and services of the commissioner of banking and the vesting of the powers, duties, rights and privileges of said department in the commissioner of banking; establishing the West Virginia board of banking and financial institutions; providing the powers, duties, procedures and functions thereof; providing for the creation, organization, powers, functions and
services of banks, and other financial institutions; and for
the powers, jurisdiction and responsibilities of the board
and the commissioner of banking in their supervision and
control over and regulation of all such financial institu-
tions; establishing administrative procedures and providing
for hearings and judicial review; prohibiting certain
activities and establishing penalties.

Be it enacted by the Legislature of West Virginia:

That articles four, four-b, four-c, four-e and eight, chapter
thirty-one of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, be repealed; that chapters
fifteen, sixteen, seventeen and one hundred thirteen, acts of
the Legislature of West Virginia, regular session, one thou-
sand nine hundred thirty-five, be repealed; that chapter four,
acts of the Legislature of West Virginia, regular session, one
thousand nine hundred thirty-seven, be repealed; that chapter
thirty-two, acts of the Legislature of West Virginia, regular
session, one thousand nine hundred fifty-one, be repealed; that
chapter fourteen, acts of the Legislature of West Virginia,
regular session, one thousand nine hundred sixty, be repealed;
and that said code be amended by adding thereto a new chap-
ter, designated chapter thirty-one-a, to read as follows:

CHAPTER 31-A. BANKS AND BANKING.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§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 finan-
cial 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. There-
fore the provisions of this chapter shall be interpreted,
construed and administered liberally to accomplish these
purposes.


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, set-off and other related, similar and summary proceedings;

(b) The words "bank" and "banking institution" mean a corporation heretofore or hereafter chartered to conduct a banking business under the laws of West Virginia or an association heretofore or hereafter authorized to conduct a banking business in West Virginia under the laws of the United States and having its principal office in this state and shall embrace and include a 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;

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

(d) The word "board" means the West Virginia board of banking and financial institutions;

(e) The words "commissioner" or "commissioner of banking" mean the commissioner of banking of West Virginia;

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

(g) The word "department" means the department of banking of West Virginia;

(h) The words "deputy commissioner" or "deputy commissioner of banking" mean the deputy commissioner of banking of West Virginia;

(i) 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;

(j) The words "financial institutions" means banks, building and loan associations, industrial loan companies,
small loan companies, 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; (k) 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 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 title or office, being determinative of whether he is an "executive officer"; (1) 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 court, municipality, trust, syndicate, estate or any other legal entity whatsoever, formed, created or existing under the laws of this state or any other jurisdiction; (m) 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; (n) The words "state bank" or "state banking institution" mean a bank chartered under the laws of West Virginia, as distinguished from a national banking association; and
The words "trust business" mean the functions, services and activities contained, detailed and embraced in section fourteen of article four of this chapter and as elsewhere defined by law and as may be included within the meaning of the term "banking business."

§31A-1-3. Application; construction.

(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.

§31A-1-4. Separability and 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.
§31A-1-5. Lending and investing powers and authority of fiduciaries, financial institutions, governmental entities and other persons.

1 The state of West Virginia, counties, municipalities, political subdivisions and agencies and instrumentalities of any of them, fiduciaries, building and loan associations, industrial loan companies, 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 of article four of this chapter.

ARTICLE 2. DEPARTMENT OF BANKING.

§31A-2-1. Department of banking of West Virginia; commissioner and deputy commissioner; continuity of services.

1 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.

6 The commissioner of banking in office when this chapter becomes effective shall continue in office until the expiration of his term, and until his successor is appointed and qualified, unless earlier removed from office as provided by law.

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

1 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.

7 Any person appointed as commissioner shall have had within the fifteen years next preceding his first appointment at least five years' experience as an active executive officer of a bank in this state or a minimum of ten
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
ten years' combined experience as such active bank execu-
tive officer and in such examining or supervisory capacity.
The commissioner shall be paid a salary of fifteen
thousand dollars per year, payable in installments as
provided by law.
Before entering upon the discharge of his duties as
commissioner, he shall take and subscribe to the oath
of office prescribed in section five of article four of the
constitution of West Virginia and shall enter into a
bond in the penal sum of one hundred thousand dollars,
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
on 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.
§31A-2-3. Deputy commissioner's appointment, tenure, salary,
qualifications, oath, bond, exercise of commis-
sioner's powers.
The deputy commissioner of banking shall be ap-
pointed by and be under the supervision and direction
of the commissioner of banking. The deputy commis-
sioner'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 five years' experience as an active
executive officer of a bank in this state or a minimum
of eight years' experience in a bank examining or super-
visory capacity for this state, for other states, or for the
federal government, or a combination thereof, or a
minimum of eight 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.

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

(a) Subject to the powers vested in the board by article three of this chapter, the commissioner shall have supervision and jurisdiction over state banks (other than those banks excepted by the provisions of section eleven of this article), industrial loan companies, building and loan associations, small loan companies, credit unions, and all other persons now or hereafter made subject to his supervision or jurisdiction. All powers, duties, rights and privileges vested in the department are hereby vested in the commissioner. He shall be the chief executive officer of the department of banking and shall be responsible for the department'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 department or the commissioner.

(b) The commissioner shall:

(1) Maintain the office for the department at the state capitol, and there keep a complete record of all the department’s transactions, of the financial conditions of all financial institutions and such records of the activities of other persons as the commissioner may deem important. Notwithstanding any other provision of the code of West Virginia, heretofore or hereafter enacted, the records relating to the financial condition of any financial institu-
tion and any information contained therein shall be confidential for the use of the commissioner and authorized personnel of the department of banking. No person shall divulge any information contained in any such records except in response to a valid subpoena or subpoena duces tecum issued pursuant to law. The commissioner shall have and may exercise reasonable discretion as to the time, manner and extent the other records in his office and the information contained therein shall be 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 and regulation promulgated or order issued thereunder.

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

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

(1) To provide for the organization of the department and the procedures and practices thereof and implement the same by the promulgation of rules and regulations and forms as appropriate, which rules and regulations shall be promulgated in accordance with article three, chapter twenty-nine-a of this code;

(2) Employ, direct, discipline, discharge and establish qualifications and duties for all personnel for the department, including, but not limited to, examiners, assistant examiners, conservators and receivers, to establish the amount and condition of bonds for such thereof as he deems appropriate and to pay the premiums thereon, and if he so elects, to have all such personnel subject to and under the classified service of the state personnel department;

(3) To cooperate with organizations, agencies, committees and other representatives of financial institutions of the state in connection with schools, seminars, con-
(4) In addition to the examinations required by section six of this article, to inspect, examine and audit the books, records, accounts and papers of all financial institutions at such times as circumstances in his opinion may warrant;

(5) To call for and require all such data, reports and information from financial institutions under his jurisdiction, at such times and in such form, content and detail, deemed necessary by him in the faithful discharge of his duties and responsibilities in the supervision of the financial institutions;

(6) Subject to the powers vested in the board by article three of this chapter, to supervise the location, organization, practices and procedures of financial institutions and, without limitation on the general powers of supervision thereof, to require financial institutions to:

(A) Maintain their accounts consistent with such regulations as he may prescribe and in accordance with generally accepted accounting practices;

(B) Observe methods and standards which he 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 action could 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 such other risks as he may deem and 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 such other action as may in his judgment be required of the institution in order to maintain its stability, integrity and security as required by law and all rules and regulations promulgated by him; and

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

(7) Subject to the powers vested in the board by article three of this chapter, to receive from any person or persons and to consider any request, petition or application relating to the organization, location, conduct, services, policies and procedures of any financial institution and to act thereupon in accordance with any provisions of law applicable thereto;

(8) In connection with the investigations required by subdivision (3), subsection (b) of this section, to issue subpoenas and subpoenas duces tecum, administer oaths, examine persons under oath, and hold and conduct hearings, any such subpoenas or subpoenas duces tecum to be issued, served and enforced in the manner provided in section one, article five, chapter twenty-nine-a of this code. Any person appearing and testifying at such a hearing may be accompanied by an attorney employed by him;

(9) To issue declaratory rulings in accordance with the provisions of section one, article four, chapter twenty-nine-a of this code;

(10) To 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 to compile and keep current data thereon to aid and guide him in the administration of the duties of his office;

(11) To implement all of the provisions of this chapter (except the provisions of article three) and all other laws which he is empowered to administer and enforce by the promulgation of rules and regulations in accordance with the provisions of article three, chapter twenty-nine-a of this code;
(12) To foster and encourage a working relationship between the department of banking 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;

(13) To 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 such other forms and printed materials as may be found by him to be helpful to financial institutions, their stockholders, depositors and patrons, and to make reasonable charges therefor;

(14) To delegate the powers and duties of his office, other than the powers and duties in this subsection hereinafter excepted, to qualified department personnel, who shall act under the direction and supervision of the commissioner and for whose acts he shall be responsible, but the commissioner may delegate to the deputy commissioner of banking and to no other department 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 shall likewise be responsible:

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

(B) To order any person to cease engaging in any unsound practice or procedure which may detrimentally affect any financial institution or depositor thereof; and

(C) To revoke the certificate of authority, permit or license of any financial institution except a banking institution in accordance with the provisions of section thirteen of this article; and

(15) To take such other action as he may deem necessary to enforce and administer the provisions of this chapter (except the provisions of article three) and all other laws which he is empowered to administer and
§31A-2-5. Certificate or license to engage in business required; applications; requirements; fee; charter and bylaw amendments; limitation.

(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) 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.

(c) If the application be that of a banking institution, the commissioner of banking shall examine the information, documents and statements submitted and, if he 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 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 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 shall issue to it a certificate or license permitting it to engage in business. Such certificate or license shall be preserved and displayed in the place of business of such banking or other financial institution.

(d) In addition to the requirements of subsection (b) of this section, every foreign corporation applying for a license or certificate to engage in the business of a financial institution in this state shall file with the commissioner of banking a copy of the laws of the jurisdiction under which 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 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 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. The fee for the original and each additional license or certificate issued to a foreign corporation shall be one hundred dollars, 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 displayed in the place of business of such corporation.
(e) No amendment of the charter or bylaws of any domestic or foreign corporation 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, it shall be deemed to have been approved. A certified copy of the amendment of any statute of another state governing such a foreign corporation shall be filed with the commissioner of banking by such foreign corporation within thirty days after such amendment becomes effective in such other state.

(f) 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 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.

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

The commissioner of banking shall make, at least once each calendar year, a thorough examination of all the books, accounts, records and papers of every financial institution. He shall carefully examine all of the assets of each such 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 make such examination of any subsidiaries or affiliates of a financial institution as he may deem necessary to ascertain the financial condition of such financial institution, the relations between such financial institution and its subsidiaries and affiliates and the effect of such re-
lations upon the affairs of such financial institution. A full
report of every such examination shall be made and filed
and preserved in the office of the commissioner and a copy
thereof forthwith mailed to the institution examined.
Every such institution shall retain all of its records of final
entry for such period of time as required in section
thirty-five of article four of this chapter for banking
institutions.
Every official communication from the commissioner
to any such institution, or to any officer thereof, relating
to an examination or an investigation of the affairs of
such institution conducted by the commissioner or con-
taining suggestions or recommendations as to the man-
er of conducting the business of the institution, shall
be read to the board of directors at the next meeting
after the receipt thereof, and the president, or other
executive officer, of the institution shall forthwith notify
the commissioner in writing of the presentation and
reading of such communication and of any action taken
thereon by the institution.
The commissioner of banking, in his discretion, may
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 such banking institution re-
quired 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 such banking institutions, but nothing herein
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 bank-
ing with reference to examinations and reports under
existing laws.
§31A-2-7. Cooperation and duties of financial institutions and
others; offenses, penalties and enforcement.
All officers, directors, employees and other persons
connected with any financial institution, upon request
of the commissioner of banking, or his 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 required to examine; disclose fully, accurately and in detail all of the debts and liabilities of the institution; and furnish such clerical aid and assistance as may be required in the performance of the commissioner's duties as provided by law. The commissioner or his 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 such institution.

Any officer, director, employee or other person connected with any such institution who wilfully fails or refuses to so furnish the documents, papers, materials or information as herein required or who wilfully 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 of article eight of this chapter.

§31A-2-8. Fees, costs and expenses of examinations; collection.

(a) For making an examination within the state of any state banking institution, the commissioner of banking shall charge and collect from such institution and pay into the state treasury a fee of fifty dollars upon the first twenty-five thousand dollars of the assets as shown by the books of the bank on the date of examination and six cents for each additional one thousand dollars of such assets.

(b) For making such an examination within the state of any other financial institution, the commissioner of banking shall charge and collect from such other financial institution and pay into the state treasury the actual and necessary costs and expenses incurred in connection therewith, as fixed and determined by the commissioner.
(c) If any such examination be made at a place outside of this state, the fees, costs and expenses shall be as above provided, except that there shall be an additional charge for mileage and travel expense as provided and allowed by law for state agencies and employees.

(d) The commissioner of banking may maintain an action for the recovery of all such fees, costs and expenses in any court of competent jurisdiction.

§31A-2-9. Correction of irregularities and business practices; violation of laws, etc.; special reports; special 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 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 as often as he may deem necessary, until he 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.

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.

§31A-2-10. Reports by financial institutions other than banks;
disposition; publication.
1 Every financial institution other than banking institu-
tions shall furnish to the commissioner of banking, at
least twice each year and within fifteen days after his
request therefor, a statement, verified by its president or
secretary, and approved by three of its directors, in such
form as may be prescribed by the commissioner of bank-
ing, showing in detail the actual financial condition and
the amount of the assets and liabilities of such financial
institution, and shall furnish such other information as to
its business and affairs as the commissioner of banking
may require, which reports, in the same form in which
they are transmitted to the commissioner of banking,
shall be printed and circulated among all of the stock-
holders of the financial institution and published as a
Class I legal advertisement in compliance with the pro-
visions 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.

§31A-2-11. No reports from or supervision over non-resident
banks; laws applicable thereto.
1 Any state banking institution, all of whose business is
conducted entirely outside of the state of West Virginia,
shall not be subject to supervision by the department of
banking or the commissioner of banking, and shall not
be required to make any reports to it or him, or to pub-
lish such reports, and no consent or authority of the
commissioner shall be necessary or required as to any
of the acts and practices of such non-resident banks in
and about the conduct of their business outside of the
state of West Virginia, and the commissioner of banking
shall not be responsible for any acts or practices of such
non-resident banks. The officers and directors of such
non-resident banking institutions may all be non-residents
of the state of West Virginia and such non-resident banking institutions may conduct the banking business at such place or places outside of the state of West Virginia as they may be permitted under the laws of the jurisdiction in which such place or places are situated. The restrictions in the banking laws of this state contained as to establishment and maintenance of branch banks shall not be applicable to said non-resident banks, but no non-resident bank shall operate or maintain any branch bank in this state. The provisions, requirements, restrictions and limitations in the banking laws contained relative to the capital stock, either authorized or issued, and to the increase thereof, to the acquisition and holding of real estate, to the oath and qualifications of directors, to loans and the property, real or personal, upon the security of which loans may be made, to the borrowing of money by banking institutions and the hypothecation of securities or other property for the same, to reserves, and to dividends and all other restrictions and limitations of the banking laws of this state, shall not apply to said non-resident banks.

No provision of this section shall be construed as relieving such non-resident banks from compliance with the laws of the jurisdiction in which they may conduct business. The provisions of this section shall not be applicable to any banking institution any part of whose actual business is conducted within the state of West Virginia, and nothing in this section contained shall be interpreted as rendering any laws now in force or hereafter enacted inapplicable to banking institutions doing actual business in the state of West Virginia. Subsequently enacted legislation shall be construed as applicable only to banking institutions having a place of business in this state, unless a contrary intent specifically or by necessary implication appears therein.

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

Annually on or before the first day of December, 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.

§31A-2-13. Commissioner's enforcement powers and processes; revocation of certificate, permit or license of financial institution other than bank; grounds; injunctive enforcement.

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 (14), 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, or, at his election, may apply to any court having jurisdiction for a prohibitory or mandatory injunction or other appropriate remedy to compel obedience to such order.
§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.

ARTICLE 3. BOARD OF BANKING AND FINANCIAL INSTITUTIONS.

§31A-3-1. Creation of board; members' terms; meetings; officers' oaths; compensation; office space and personnel, procedure.

(a) There is hereby created the West Virginia board of banking and financial institutions which 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, of whom one shall be truly representative of such state banking institutions having assets not greater than ten million dollars, one shall be truly representative of such state banking institutions having total assets greater than ten million dollars but not greater than twenty-five million dollars, and one shall be truly representative of such banking institutions having total assets greater than twenty-five million dollars. 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 stockholder of any financial institution. No member shall hold any other office, employment or position with the United States, any state, county, municipality or other governmental entity or any instrumentality or agency of any of the foregoing or with any political party.

(b) The members of the board shall be appointed for overlapping terms of six years, except that of the original appointments, two members shall be appointed for a term of two years, two members shall be appointed for a term
of four years and two members shall be appointed for a
term of six years, and in every instance until their re-
spective 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
such term. Any member appointed for less than a full
six-year term shall be eligible for reappointment for a
full term. Before entering upon the performance of his
duties each member shall take and subscribe to the oath
required by section 5, article IV, of the constitution of
the state of West Virginia. The governor shall, within
sixty days following the occurrence of a vacancy on the
board, fill the same by appointing a person for the un-
expired term of, and meeting the same requirements for
membership as, the person vacating said office. Any
member may be removed by the governor in case of
incompetency, neglect of duty, gross immorality or mal-
feasance in office.

(c) A majority of the members of the board shall con-
stitute 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 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. No member shall participate in a pro-
ceeding before the board to which a corporation, partner-
ship or unincorporated association is a party, and of which
he 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 from
participation in a proceeding for any other cause
deemed by him to be sufficient. Each member shall re-
ceive fifty dollars for each day or portion thereof spent
in attending meetings of the board and shall be reim-
bursed for all reasonable and necessary expenses in-
curred incident to his duties as a member of the board.

(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 assist-
ance as the board may reasonably require.
(a) In addition to other powers conferred by this chapter, the board shall have the power to:

(1) Regulate its own procedure and practice;
(2) Promulgate reasonable rules and regulations to implement any provision of this article, such rules and regulations to be promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code;
(3) Advise the commissioner in all matters within his 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 may be by it deemed proper; and
(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 such participants;
   (B) To engage in any financial institution activity, services, procedures and practices in which financial institutions of the same type subject to the jurisdiction of the federal government may hereafter be authorized by federal laws, rules or regulations to engage, notwithstanding any contrary provision of this code: Provided, however, That no such permission or authority shall be granted to any banking institution to install or maintain any branch bank or engage in business at any place other than its principal office in this state in contravention of the provisions of section twelve, article eight of this chapter.
   (C) To pay interest on demand deposits of the United States or any agency thereof, if the payment of such interest shall be permitted under any applicable federal law, rule or regulation.
Any permission and authority granted by the board pursuant to this subdivision (5) shall cease and terminate upon the adjournment of the next regular session of the Legislature, unless the Legislature shall at such session enact legislation authorizing the financial institution participation, activity, services and procedures or payment of interest with respect to which such permission and authority was granted, in which event such permission and authority shall continue in effect until the effective date of such legislation.

(b) The board shall further have 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 such 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 said shares on any matter when in the judgment of the board such order is necessary to protect the institution against reckless, incompetent or careless management, to safeguard funds of depositors in the institution, or to prevent wilful violation of any applicable law or of any rule and regulation or order issued thereunder. In such a case the shares of such a holder shall 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 of article four of this chapter;

(4) Revoke the certificate of authority, permit, certificate or license of any state banking institution to engage in business in this state if such institution shall fail or refuse to comply with any order of the commissioner entered pursuant to the provisions of paragraphs (A) or (B), subdivision (14), subsection (c), section four of 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; and

(5) Suspend or remove a director, officer or employee of any financial institution who is or becomes ineligible to hold such position under any provision of law or rule and regulation or order, or who wilfully 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.

§31A-3-3. Hearings before the board, procedures, intervention, etc.

(a) Subject to the provisions of subsection (e) of this section, 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 of 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 nor 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) of 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.

§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.

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES.

§31A-4-1. Corporation laws applicable; board; approval of charter applications.

The general corporation laws of the state, including the provisions of chapter thirty-one of the code of Virginia, shall govern banking institutions and the chartering thereof, except as otherwise provided in or where inconsistent with the provisions of this chapter.

No charter shall issue in this state for any banking institution, unless the application therefor shall have been submitted to and approved by the board.

§31A-4-2. Banking terms and banking business; prohibitions; penalties.

No person doing business in this state, except a banking institution, shall 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," or engage in the banking or trust business in this state.

It shall be unlawful for any such person other than banking institutions as herein excepted, to advertise or hold himself, 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 is engaged in the banking or trust business or is authorized and approved to engage therein in this state.

Any violation of the provisions of this section shall constitute a misdemeanor offense, punishable as provided in section fifteen of article eight of this chapter.

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

(a) No banking institution shall hereafter be incorporated unless it shall have a bona fide subscribed capital stock of:

1. At least fifty thousand dollars, if the population of the community in which the bank is to be located be not more than three thousand;
2. At least seventy-five thousand dollars, if the population of the community in which the bank is to be located be more than three thousand, but not more than six thousand;
3. At least one hundred thousand dollars, if the population of the community in which the bank is to be located be more than six thousand but not more than twenty-five thousand;
4. At least one hundred twenty-five thousand dollars, if the population of the community in which the bank is to be located be more than twenty-five thousand; and,
5. At least one hundred fifty thousand dollars, if the population of the community in which the bank is to be located be more than fifty thousand.

(b) Notwithstanding any provision of subsection (a), no banking institution proposing to engage in the trust business shall be incorporated unless it shall have a bona fide subscribed capital stock of at least one hundred thousand dollars.

(c) Banking institutions shall issue but one class of stock and the shares shall have a nominal or par value of not less than five dollars nor more than one hundred dollars each, and as to each banking institution each share shall be equal in all respects with any other share.
(d) Any banking institution may capitalize its surplus and undivided profits by issuing shares of stock against the same at par and distributing such shares among its stockholders, or change the par value of its shares, when and to the extent that any such action may be authorized in writing by the commissioner.

§31A-4-4. Organizational expenses; payments for capital stock; limitations; unissued stock; additional stock; penalties; preemptive rights of stockholders.

All of the capital stock of every banking institution, chartered under the laws of this state, shall be paid in full in cash before it shall be authorized to engage in business, except such business as is incidental and necessarily preliminary to its organization, except that with the approval of the commissioner, the charter of any state bank, now or hereafter organized, may provide that not to exceed five percent of the bank's authorized capital stock may be unissued stock. Such 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.

Each subscriber at the time he 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. No part of said organizational expense fund shall be used for the payment of any fee, compensation or commission for promotion in connection with the institution's organization or for obtaining subscriptions, selling shares or other services in connection with its organization, except legal fees and other usual and ordinary expenses necessary for its organization. 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.

A majority of the incorporators shall file with the board 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.

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.

§31A-4-5. Incorporation of state banks; requirements; procedures.

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 provisions of article one of 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 five hundred dollars 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. 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.
§31A-4-6. Board's examination and investigation.

(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;
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 appropriate action on and making proper disposition of the application.

§31A-4-7. Board's approval or disapproval of application; procedures.

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
27 of any other corporate charter application. Upon issuance
28 of the charter to a banking institution, the incorporators
29 shall promptly comply with the provisions of section
30 five of article two of this chapter, preliminary to the
31 commissioner's issuance of a permit or license to engage
32 in business in this state, and shall likewise comply with
33 other provisions of this chapter relating to completion
34 of its corporate organization, and the corporation's readi-
35 ness to commence business as a banking institution.

§31A-4-8. Directors, their qualifications and oaths.
1 For every state banking institution there shall be a
2 board of not less than five nor more than twenty-five
3 directors, who shall meet at least once each month and
4 who shall have power to do, or cause to be done, all
5 things that are proper to be done by the banking insti-
6 tution; and a majority of whom shall at all times be
7 residents of this state. Every such director shall own
8 in his own right shares of the aggregate par value of not
9 less than five hundred dollars, of the capital stock of
10 the banking institution of which he is a director, and,
11 before entering on the discharge of his duties as such
12 director, he shall take an oath that he will, so far as the
13 duty devolves upon him, diligently and honestly admin-
14 ister the affairs of the banking institution, and that he
15 will not knowingly or willingly permit to be violated
16 any of the provisions of the laws of this state relative
17 to banking and banking institutions, and that the stock
18 standing in his name upon the books of the banking
19 institution is not hypothecated or pledged in any way
20 as security for loans obtained from or debts owing to
21 the banking institution of which he is a director, and
22 that the number of shares necessary to qualify a stock-
23 holder to be a director are not now, and shall not at
24 any time while he serves as a director be pledged or
25 hypothecated in any manner for any debt or obligation
26 of the director, or any other person; which oath sub-
27 scribed by him and certified by the officer before whom
28 it was taken shall be filed and preserved in the office
29 of the commissioner of banking. Should a director fail
30 to subscribe to the oath herein provided for within sixty
days after notice of his election, 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 obliga-
tion, such qualifying shares, or any number thereof,
necessary for his qualification, thereupon the remaining
directors shall elect another director in his stead. No
person shall serve as a director of any banking institu-
tion who has evidenced personal dishonesty and unfitness
to serve as such director by his conduct or practice with
another financial institution which resulted in a substan-
tial financial loss or damage thereto or who has been con-
icted of any crime involving personal dishonesty.
§31A-4-9. Fidelity bonds and insurance.
1 (a) The directors of a state bank shall direct and re-
quire 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 inde-
pendently 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.
12 (b) The directors shall also direct and require suitable
insurance protection to the bank against burglary, rob-
bbery, theft and other similar insurable hazards to which
the bank may be exposed in the operations of its business
on the premises or elsewhere.
17 (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 and thereafter be reported to the commis-
sioner of banking.

§31A-4-10. List of stockholders; procedures.
1 The president, cashier, or other executive officer of
every state banking institution shall cause to be kept at
§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
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.

§31A-4-13. Powers of state banking institutions; investment limitations.

Any state banking institution shall have and 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 and sell 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 banking institution may accept, for payment at a future date, drafts drawn upon it by its customers, and issue letters of credit authorizing the holders thereof to draw drafts upon it or its correspondents, at sight or on time, not exceeding one year. Any such banking institution may organize, acquire, own, operate, dispose of, and otherwise manage wholly owned subsidiary corporations for purposes incident to the banking powers and services authorized by this chapter.

Any such banking institution may hereafter invest in the capital stock of small business investment companies chartered under the laws of this state, which are licensed under the act of Congress known as the “Small Business Investment Act of 1958,” as amended. But in no event shall any such bank hold shares in small business investment companies in any amount aggregating more than
two percent of the combined capital and surplus of such
banking institution.

Any such banking institution may acquire, own, hold,
use and dispose of, real estate, which shall in no case be
carried on its books at a value greater than the actual
cost, subject to the following limitations and for the fol-
lowing purposes:

(a) Such as shall be necessary for the convenient
transaction of its business, including in any buildings,
office space or other facilities to rent as a source of in-
come; such investment hereafter made shall 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;

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

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

(d) Such as it shall purchase at sales under judgments,
decrees, trust deeds or mortgages in its favor, or shall
purchase at private sale, to secure and effectuate the pay-
ment of debts due to it; and

(e) The value at which any real estate is held shall
not be increased by the addition thereto of taxes, insur-
ance, interest, ordinary repairs, or other charges which
do not materially enhance the value of the property.

Any real estate acquired by any such banking institu-
tion under clauses (c) and (d) 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.

In every case such property shall be disposed of within
five 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.

No such banking institution shall hereafter invest more
than twenty percent of the amount of its capital and sur-
plus in furniture and fixtures, whether the same be in-
stalled in a building owned by such banking institution, or in quarters leased by it, unless the consent in writing of the commissioner of banking is first secured.

§31A-4-14. Banking institutions with trust powers.

Every state banking institution which files the certificates required in the following section and which is otherwise authorized to do so, shall have and exercise the following powers:

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

(b) 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 such fund;

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

(d) 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;

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

(f) 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 such 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 such 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 such time and
upon such terms as the trustee shall deem reasonable;
and,
(g) To do and perform any act or thing requisite or
necessary in, or incidental to, the exercise of the general
powers herein set forth.
All national banks having their principal offices 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 immuni-
ties conferred hereunder, provided they have a capital of
at least one hundred thousand dollars and comply with
the requirements hereof.
§31A-4-15. Exercise of trust powers; certificate required;
penalties and action for violations.
No banking institution shall exercise any of the trust
powers mentioned in the preceding section until it shall
have filed with the secretary of state and the commission-
er of banking a duly authenticated certificate, showing
the unimpaired capital of such institution to be at least
one hundred thousand dollars and a like duly authenti-
cated certificate shall be filed with the secretary of state
and the commissioner of banking in the month of January
of each year thereafter. If any such banking institution
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 certificate, it shall
be guilty of a misdemeanor, and, upon conviction there-
of, shall be fined not more than five hundred dollars; and
in every such case, whether or not there shall have 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 com-
ply 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 in which such institution is located.

§31A-4-16. Trust funds; bookkeeping and management.

1. Every banking institution, authorized to engage in the trust business, 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.

§31A-4-17. Banking institution as fiduciary; oath.

1. Whenever any court, or the clerk thereof, shall appoint any banking institution exercising trust powers, 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 institution 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.

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

1. Whenever any banking institution authorized to exercise trust powers, 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 unless such additional security is required.

§31A-4-19. Reports; publication.

Every state banking institution shall make at least four reports each year to the commissioner of banking upon his call therefor. Such 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 such form and contain such 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 same.

Such report, in the same form in which it is made to the commissioner of banking, 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 banking institution is located.
In lieu of such report and publication, the commissioner of banking shall have discretion to accept from a banking institution which is a member of the federal reserve system a report, and the publication thereof required of such banking institution by the federal reserve board, or by its agency, provided that such 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 and the publication thereof shall be at the expense of the banking institution, and it shall furnish to the commissioner of banking such proof of the publication as may be required by him.

§31A-4-20. Stockholders' annual meeting; financial statement; examining committee; appointment, duties, report; employment of accountants; examiners may require presence.

The stockholders of each state banking institution shall meet annually and at such annual meeting it shall be the duty of the cashier or other executive officer of such banking institution to prepare and submit to the stockholders a clear and concise statement of the financial condition of the corporation as of the close of business on the last day of the month next preceding. At such meeting, the stockholders present in person or by proxy shall elect an examining committee composed of not less than three nor more than five persons, each of whom shall be a stockholder in such banking institution. 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 banking, such committee 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 committee 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 judg-
ment. The board of directors shall cause such report to
be retained as a part of the records of the bank and shall
transmit a duly authenticated copy thereof to the com-
missioner of banking. With the consent and approval of
the stockholders, such committee may employ registered
or certified public accountants to make such examination
or make the same in conjunction with any official exami-
nation made by any supervisory authority. Any official
examiner of the department of banking may require the
presence of the examining committee or the executive
committee during his examination.

§31A-4-21. Federal deposit insurance; federal reserve system
membership; cooperation and benefits.

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 exami-
nations 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 neces-
sary 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.
§31A-4-22. State banking institution reserves; reports; penalties.

1 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 or regulation 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 and regulations. When, however, the reserve computation period ends with a nonbusiness day, or two or more consecutive nonbusiness days, such non-business day or days may, at the option of the banking
institution, and whether or not it had a deficiency in re-
serve 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 re-
ports shall be submitted at such times and contain such
information as will enable the commissioner to adequate-
ly supervise the maintenance of reserves under this sec-
tion. Penalties for any deficiencies in the required re-
serves of any banking institution shall be assessed month-
ly by the commissioner on the basis of average daily
deficiencies during each of the computation periods end-
ing 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 such banking institu-
tion which is a member of the federal reserve system with
the reserve requirements of the federal reserve act, as
amended, shall be full compliance with the provisions
hereof. No such member bank shall be required to carry
or maintain a reserve other than such as required under
terms of the federal reserve act, as amended.

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

Any state banking institution may borrow money, redis-
count 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 fed-
eral 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 condi-
tions imposed in connection therewith, as collateral secu-
ritv for the payment of any and all such loans. An accurate
record of all securities and exact copies of all notes with-
drawn from the files of such banking institutions, to be
pledged as collateral for borrowed money or other pur-
poses, 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 two dollars
of the book value of any of its assets for each one dollar
of borrowed money.

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

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

With the written approval of the commissioner of bank-
ing and with the approval of its board of directors and
stockholders, any banking institution may at any time is-
sue and sell either its non-convertible capital notes or non-
convertible debentures or both its non-convertible capital
notes and non-convertible 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 insti-
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tution, the need of expanded banking capital in the town,
city or community in which the banking institution is lo-
cated, the objects and purposes to be accomplished by is-
suance of the notes or debentures, and such other econo-
ic and monetary factors as he, in his judgment and dis-
cretion, 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 sub-
ordinated 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 insti-
tution, 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 com-
missioner 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 bank-
ing institution.

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

The directors of any banking institution may declare
and pay cash dividends. Before the declaration of any
such dividend, at least one-tenth part of the net profits
of the preceding calendar year shall be carried to its
surplus fund until the same shall equal fifty percent of
the amount of its capital stock. No such dividend shall
be declared, except from earnings remaining after de-
ducting all losses, all sums due for expenses, and all
overdue debts upon which no interest has been paid for a period of six months, unless the same are well secured, and in process of collection and such other items as the commissioner of banking may direct. Any director voting to pay any cash 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.

§31A-4-26. Limitation on loans and investments; exceptions; valuation of securities.

The total liabilities to any banking institution of any person, partnership, association or corporation under evidences of indebtedness and agreements for the payment of money, including in the liabilities of a partnership the liabilities of the several members thereof, except limited partners, and including in the liabilities of any corporation an investment by such banking institution in the stock of such corporation, shall at no time exceed ten percent of the unimpaired capital and surplus fund of such banking institution. But such limitation of ten percent shall be subject to the exceptions hereinafter stated:

(a) The following types of obligations shall not be subject to any limitation based upon such capital and surplus fund:

(1) The sale of federal funds;

(2) Obligations arising out of the discount of commercial or business paper actually owned by the person, partnership, association or corporation negotiating the same;

(3) Obligations in the form of negotiable drafts or bills of exchange which have been drawn in good faith against actually existing values in connection with the sale of goods and which have been accepted or endorsed;

(4) Obligations drawn in good faith against actually existing values and secured by goods or commodities in process of shipment;

(5) Obligations in the form of banker's acceptances of other banks of the kind described in section thirteen of the federal reserve act;
(6) Obligations of the United States or general obligations of any state or political subdivision thereof, when there has been no default in the payment of interest or principal in respect of the general obligations of any such state or political subdivision within ten years prior to the purchase of such obligations, bonds or obligations issued under authority of the West Virginia bridge commission or the state road commission, commonly known as bridge revenue bonds, or obligations issued under authority of the Federal Farm Loan Act, as amended, or under the authority of the "Farm Credit Act of 1933," as amended, or issued by the Federal National Mortgage Association, Government National Mortgage Association or the Federal Home Loan Bank, or any loans or obligations to the extent that they are secured or covered by guaranties or by commitments or agreements to take over or to purchase the same or to provide funds for the payment thereof, made by any federal reserve bank or by the United States or any department, board, bureau, agency, association, commission or establishment of the United States, including any corporation wholly owned, directly or indirectly, by the United States;

(7) Obligations of a corporation owning the property in which the banking institution is located when the banking institution has an unimpaired capital and surplus of not less than one million dollars, or when approved in writing by the commissioner of banking; and,

(8) Obligations arising from the sale of property owned by a banking institution, when approved in writing by the commissioner of banking.

(b) The following types of obligations shall be subject to the following limitations:

(1) Obligations in the form of notes, secured by not less than a like amount of bonds or notes of the United States issued since April twenty-fourth, one thousand nine hundred seventeen, or certificates of indebtedness of the United States, treasury bills of the United States, or obligations fully guaranteed both as to principal and interest by the United States, shall be subject under this section to a limitation of thirty-five percent of such un-
impaired capital and surplus fund, in addition to such ten percent of such capital and surplus fund;

(2) Obligations in the form of notes, secured by not less than a like amount of cash surrender value of life insurance policies shall be subject to a limitation of fifteen percent of such unimpaired capital and surplus fund, in addition to such ten percent of such capital and surplus fund; and,

(3) Obligations in the form of notes or drafts secured by shipping documents, warehouse receipts or other such documents transferring or securing titles covering readily marketable, nonperishable staples when such property is fully covered by insurance, if it is customary to insure such staples, shall be subject to a limitation of ten percent of the unimpaired capital and surplus fund, in addition to such ten percent of such capital and surplus fund, when the market value of such staples securing such obligations is not at any time less than one hundred fifteen percent of the face amount of such obligations; and such limitations may be increased up to thirty-five percent of such unimpaired capital and surplus fund, in addition to such ten percent thereof, with a corresponding increase in market value of such staples securing such obligations up to not less than one hundred forty percent of the face amount of such additional obligations, but this exception shall not apply to obligations of any one person, partnership, association, or corporation arising from the same transaction or secured upon the identical staples for more than ten months.

No officer, director, clerk or other employee of any banking institution or the commissioner of banking or any employee of the department of banking shall borrow, directly or indirectly, from the banking institution with which he is connected, or which is subject to examination by the commissioner of banking, any sum of money without the 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, embodied in a resolution adopted by a majority vote of
such board or committee, exclusive of the director to whom the loan is made. If any officer, clerk or other employee of any bank shall own or control a majority of the stock of any other corporation, a loan to such corporation shall, for the purpose of this section, constitute a loan to such officer, clerk or other employee.

Securities purchased by a 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 shall not be valued at a valuation exceeding their present cost as determined by amortization, that is, by deducting from the cost of a security purchased at a premium, and charging to profit and loss a sum sufficient to bring it to par at maturity.

§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.

§31A-4-28. Investments in notes, bonds and other obligations secured by mortgages and deeds of trust insured or guaranteed by the United States; federal agencies securities; other investments.

It shall be lawful for banking institutions to invest their funds and the monies in their custody or possession eligible for investment, in notes, bonds or other obliga-
tions secured by mortgages or deeds of trust insured or
guaranteed by the federal housing commissioner or United
State 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 guar-
anteed by the federal housing commissioner, federal na-
tional mortgage association or government national
mortgage association or in other federal agencies securi-
ties.

Wherever, by statute of this state, collateral is re-
quired 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.

§31A-4-23. Application of other laws to certain loans and in-
vestments.

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 pur-
suant to the provisions of the two preceding sections of
this article by banking institutions or by any person pur-
suant 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.

§31A-4-30. Interest allowed in certain cases.

In addition to the interest rate provided in article six
of chapter forty-seven of this code and elsewhere by law,
a banking institution may charge and collect a reason-
able amount to cover the expenses incurred in procuring
reports and information respecting loans and the value
of and title to property offered as security therefor,
and a charge of three dollars may be made for any loan or
8 forbearance of money or other thing where the interest
9 at the rate of six percent per annum would not amount
10 to that sum and the same shall not be a usurious charge
11 or rate of interest. Any banking institution authorized to
12 do, and doing business in this state, may contract for and
13 charge for a secured or unsecured loan, repayable in in-
14 stallments, not in excess of six percent per annum upon
15 the face amount of the instrument or instruments evi-
16 dencing the obligation to repay the loan, for the entire
17 period of the loan, and deduct such charge in advance
18 or add the same to the principal amount of the loan. But
19 if the entire unpaid balance outstanding on the loan is
20 paid on any installment date, prior to maturity, the bank
21 shall make a refund or rebate of such charge in an amount
22 computed on the aggregate installments not due, at the
23 original contract rate of charge; and any note evidencing
24 any such installment loan may provide that the entire un-
25 paid balance thereof at the option of the holder shall
26 become due and payable upon default in the payment of
27 any stipulated installment without impairing the negoti-
28 ability of such note, if otherwise negotiable.

§31A-4-31. Depository bonds; uniform and continuing type;
security for deposits insured under federal deposit
insurance law not required.

1 Notwithstanding any provision of any law, ordinance,
2 order, rule, regulation or resolution requiring depository
3 bonds of banking institutions covering state, county
4 and municipal deposits or the deposits of any state,
5 county, municipality or other political subdivision agency,
6 bureau, department, instrumentality or officer or public
7 corporation to be renewed annually or periodically, all
8 such depository bonds may be uniform in content and
9 continuing in nature and need not be renewed annually
10 or periodically, but it shall be the responsibility of
11 any such depositor to review the bonds covering its
12 deposits from time to time, and at least once each year
13 on or about the anniversary date of each one thereof,
14 to ascertain and verify that the coverage and sureties are
15 adequate and sufficient in all particulars and that such
16 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.

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

(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.

§31A-4-33. Deposits in trust; deposits in more than one name; procedures.

1 If any deposit in any banking institution be made by any person describing himself 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.

11 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; and the same, 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; and such payment and the re-
ceipt or the acquittance of the one to whom such pay-
ment 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.

§31A-4-34. Deposits by minors; payment limitations.
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.

§31A-4-35. Reproduction of checks and other records; disposi-
tion of originals; admissibility in evidence.
Any banking institution may cause to be copied or
reproduced by any photographic, photostatic, micro-
photographic or other miniature photographic process,
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 there-
of, 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 origin-
al 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 de-
posits made, for a period of at least six 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 pow-
ers, until the expiration of six years from the date of
termination of any trust or fiduciary relationship by a
final accounting, release, court decree or other proper
means of termination.

All circumstances surrounding the making or issuance of
such checks, documents, books, records, correspondence
and other instruments, papers or writings, or the photo-
graphic, photostatic or microphotographic copies or re-
productions thereof, when the same are offered in evi-
dence, 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 film
used therein shall be of durable material.

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

1 When a banking institution makes a statement of ac-
count 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.

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

1 Any state banking institution or institutions, or institu-
tion or institutions jointly with a national banking asso-
ciation 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 opera-
tions, 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, asso-
ciation or associations.

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

Banking institutions may, subject to rules and regula-
tions promulgated by the commissioner of banking, ac-
quire and lease personal property pursuant to a binding
arrangement for the leasing of such property to any per-
son upon terms requiring payment to the institution, dur-
ing 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.

§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.

§31A-4-40. Permissive closing on fixed week-day or portions
of week-days; emergency closings; procedures.

(a) In addition to Sundays and legal holidays any
banking institution may remain closed on any one fixed
week-day or portion of such day in each calendar week,
or on any one fixed week-day and a portion of another
week-day in each calendar week, or on portions of two
week-days in each calendar week, which day and/or por-
tion or portions of the day or days when the institution is
to remain closed shall be designated by a resolution
adopted by the board of directors thereof. Not less than
fifteen nor more than thirty days in advance of closing on
any such week-day and/or portion of one or more week-
days, such banking institution shall post a notice in a
conspicuous place in its banking room stating that on or
after a day certain and until further notice given in like manner, such banking institution will remain closed on a fixed week-day and/or portion of one or more week-days. Concurrently with the posting of such notice, such banking institution shall cause a notice to 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 principal office of such bank is located. Such notice shall set forth the time or times on which said bank will remain closed and the date when such closing becomes effective. A certified copy of such resolution certified by the cashier or secretary of such banking institution, together with an affidavit of posting and proof of publication of the notice herein required shall be filed with the commissioner of banking.

(b) The commissioner may permit any banking institution to close, without notice, during any period of actual or threatened enemy attack affecting the community in which such banking institution is located or during any period of other emergency including, but not limited to, fire, flood, hurricane, riot or civil commotion.

(c) Any fixed week-day and/or portion of one or more week-days on which any banking institution shall elect to close and any period during which the commissioner may permit it to close pursuant to the authority of this section shall constitute a legal holiday with respect to such 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 such 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.

§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.

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

No person except banking associations chartered and authorized to conduct a banking business in this state under the laws of the United States of America and having their principal places of business in this state, and state banking institutions which hold a permit, license or certificate to engage in such business issued by the commissioner under the provisions of section five, article two of this chapter, shall 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.

Nothing contained in this section shall 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 shall be guilty of a misdemeanor, and, upon conviction, shall be fined not more than five thousand dollars, and, in addition to such penalty, every corporation so offending shall forfeit its corporate franchise, and every individual so offending shall be subject to a further penalty by confinement in jail for not more than one year.
ARTICLE 5. BANK SERVICE CORPORATIONS AND BANK SERVICES.

§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.


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.
§31A-5-3. Extension of bank services to 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.

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

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

§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
4 to the commissioner of banking are furnished to him
5 by both the state bank and the party performing such
6 services that the performance thereof will be subject
7 to regulation and examination by the commissioner and
8 any federal supervisory agency to the same extent as if
9 such services were being performed by the state bank
10 on its own premises.

ARTICLE 6. NOMINEE REGISTRATION OF FIDUCIARY
SECURITIES.

§31A-6-1. Procedures for nominee registration of securities.
1 Any bank authorized to exercise trust powers under
2 the laws of this state, which holds in a fiduciary capacity
3 any stock, bond, debenture, note, warrant, certificate or
4 other security evidencing ownership or interest, either
5 whole or fractional, in fully paid and nonassessable in-
6 tangible personal property, may cause such security or
7 evidence of ownership, to be registered and held in the
8 name of a nominee or nominees of such bank, or in its
9 own name, without disclosing the fiduciary relationship,
10 but, where such bank is acting jointly with some other
11 individual or individuals, it shall first secure the written
12 consent of such individual fiduciary or fiduciaries thereto,
13 which consent such individual fiduciary or fiduciaries are
14 hereby authorized to give.
15 The placing of property in the name of a nominee,
16 nominees, or in the name of the bank, without disclosure
17 of the fiduciary capacity, shall be deemed to be nominee
18 registration under this article and every such registra-
19 tion shall ipso facto constitute a declaration of trust upon
20 the part of the registered owner so far as the fiduciary
21 and the beneficiaries of the fiduciary status are concerned.

§31A-6-2. Bank duties in nominee registrations.
1 Every such bank making use of nominee registration as
2 provided in this article shall:
3 (a) At all times maintain such records as may be
4 necessary to show the actual beneficial ownership of the
5 property so held;
6 (b) At all times retain possession and control of such
7 securities or other evidences of ownership which shall
be kept separate and apart from the assets of such bank and assets held in other fiduciary capacities;

(c) Secure from such nominee or nominees such 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.

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

Any such bank which places property in nominee registration under this article shall be 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 bank or its officers, employees, nominees or agents placing property in nominee registration in violation of any of the provisions of this article shall be guilty of a misdemeanor, and, in addition to civil liability for restitution, shall be punished by a fine of not less than fifty dollars nor more than one thousand dollars.

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

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

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

No bank shall 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, minimize or relieve itself or any other person, firm or corporation, or the property, from taxation.

ARTICLE 7. CHANGES IN STRUCTURE AND STATUS.

§31A-7-1. Appointment of conservators; duties; reorganization; procedures.

(a) Whenever the commissioner of banking shall deem it necessary, in order to conserve the assets of any state bank for the benefit of the depositors and other creditors thereof, he may appoint a conservator for such state bank. The conservator may be an employee of the department of banking, and shall be required to give such bond and security as the commissioner deems proper.

(b) The conservator, under the direction of the commissioner of banking, shall take possession of the papers, books, records and assets of every description of such state bank and take such action as may be necessary to conserve such assets pending further disposition of the business of such institution.

(c) The conservator shall have all the rights, powers and privileges now possessed by or hereafter given receivers of state banks and shall be subject to all the liabilities, obligations and penalties, not inconsistent with the provisions of this article, to which receivers are now or may hereafter become subject.

(d) During the period that such conservator remains in possession of such state bank, 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.

(e) All expenses of any such conservatorship shall be paid out of the assets of such state bank and shall be a lien thereon, which shall be prior to any other lien. The
conservator shall receive a reasonable compensation for
his services to be fixed by the commissioner of banking,
but in no event shall such compensation exceed that paid
to employees of the department of banking for similar
services.

(f) Immediately upon taking charge of such state bank,
the conservator in conjunction with a representative of
the bank designated by the directors thereof shall make
in triplicate a complete inventory of all assets and an
itemized list of all liabilities of such institution. The
original and two copies of such list shall be subscribed
and sworn to by the persons making the same and the
original shall be filed with the commissioner as soon as
practicable, and one copy shall be furnished to such in-
stitution and one copy retained by the conservator.

(g) If the commissioner of banking becomes satisfied
that such a course of action may be pursued safely and
that it will be in the public interest, he may, in his
discretion, terminate the conservatorship and permit such
bank to resume the transaction of its business subject to
such terms, conditions, restrictions, and limitations as he
may prescribe.

(h) While such state bank is in the hands of the
conservator, the commissioner of banking may require
such 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
commissioner may be used safely for this purpose, sub-
ject to such priorities and preferences as are provided by
law. The commissioner may, in his discretion, permit the
conservator to receive deposits. Such deposits shall not
be subject to any limitation as to payment or withdrawal.
The deposits shall be segregated and shall not be used
either to liquidate any indebtedness of such banking in-
stitution existing at the time that a conservator was
appointed for it or any subsequent indebtedness incurred
for the purpose of liquidating any indebtedness of such
banking institution existing at the time such conservator
was appointed.

(i) Deposits received while the state bank 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 banking institution as the commis-
sioner of banking may, in his discretion, designate, or (3)
be invested in the direct obligations of the United States
or the state of West Virginia or the funded obligations of
any political subdivision of this state approved by the
commissioner of banking.

(j) In any reorganization of any state bank under a
plan of a kind which, by its own terms or under existing
law, requires the consent, as the case may be, of deposi-
tors and other creditors, or of stockholders, or of both
depositors and other creditors, and stockholders, such re-
organization shall become effective only when the com-
missioner of banking shall be satisfied that the plan of
reorganization is fair and equitable to all depositors,
other creditors and stockholders, and that the plan is in
the public interest and shall have approved the plan sub-
ject to such conditions, restrictions and limitations as
he may prescribe; and when, after reasonable notice
of such reorganization, as the case may require, deposi-
tors and other creditors of such banking institution rep-
resenting at least seventy-five percent in amount of its
total deposits and other liabilities; or stockholders own-
ing at least two-thirds in amount of its outstanding capi-
tal stock; or both depositors and other creditors repres-
ting at least seventy-five percent in amount of the
total deposits and other liabilities and stockholders own-
ing at least two-thirds in amount of its outstanding capital
stock, shall have consented in writing to the plan of re-
organization. Claims of depositors or other creditors
which will be satisfied in full under the plan of reorgani-
ization shall not be included among the total deposits and
other liabilities of said banking institution in determining
the seventy-five percent thereof as above provided.

(k) When such reorganization becomes effective, all
books, records, and assets of the bank shall be disposed
of in accordance with the provisions of the plan and the
affairs of the bank shall be conducted by its board of
directors in the manner provided by the plan and under
the conditions, restrictions and limitations which may
have been prescribed by the banking commissioner. In
any reorganization which shall have been approved and shall have become effective as provided herein, all de-
positors and other creditors and stockholders of such bank, whether or not they shall have consented to such plan of reorganization, shall be fully and in all respects subject to and bound by its provisions, and claims of all depositors and other creditors shall be treated as if they had consented to such plan of reorganization.

(1) Fifteen days after the affairs of a state bank shall have been turned back to its board of directors by the conservator, either with or without a reorganization as provided in subsection (j) of this section, the provisions of subsections (h) and (i) of this section shall no longer be effective. Before the conservator shall turn back the affairs of the institution to its board of directors he shall publish a notice, in form approved by the commissioner, stating the date on which the affairs of the banking institution will be returned to its board of directors and that the said provisions of subsections (h) and (i) will not be effective fifteen days after such date. Such 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 such bank is located. On the date of the publication of such notice the conservator shall send a copy of such notice by regis-

tered 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 similar notice in like manner to every person making a deposit in such institution under subsection (h) after the date of such newspaper publication and before the time when the affairs of the bank are returned to its directors.

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

(n) The commissioner of banking is hereby authorized to prescribe such rules and regulations as he may deem necessary in order to carry out the provisions of this sec-

§31A-7-2. Institutions with impaired capital or insolvent; receivers; powers and duties; procedures; claims; actions.

If the commissioner of banking shall ascertain from any source that the capital of any financial institution is substantially impaired, and any such institution, upon notice from him, does not promptly make good such impairment, or if the commissioner shall ascertain from any source that any such financial institution is insolvent, he shall have authority to appoint an employee of the department of banking receiver thereof to take charge of the papers, books, records, moneys and assets of every description of such institution; and immediately upon taking charge of any such institution, the commissioner of banking and a representative of such institution designated by the directors thereof shall make in triplicate a complete inventory of all assets and an itemized list of all liabilities of such institution. The original and two copies of such list shall be subscribed and sworn to by the persons making the same and the original shall be retained by the commissioner and one copy shall be furnished such receiver and one copy to such institution, and such receiver, upon assuming office, shall open and keep such books and records as are prescribed by the commissioner of banking.

In addition to all other powers vested in him, such receiver shall have all the powers vested in special receivers by general law. The receiver, with the approval of the commissioner of banking, shall institute and prosecute any action or actions necessary to obtain possession of any property and to sell and dispose of the same and to collect all obligations due such institution and wind up the affairs of such institution. The receiver in such action, or by separate actions, with the approval of the commissioner of banking, shall enforce against the officers, directors and stockholders any liability incurred by them and existing in favor of the creditors of such institution, and collect from such officers, directors and stockholders any sums for which they are liable as aforesaid. He shall also defend any actions brought against such institution.
If it shall appear that the assets of any such insolvent financial institution are not sufficient to pay in full all of its creditors and depositors, without waiting to administer the assets of such institution, or delaying for any other cause, the receiver, with the approval of the commissioner, shall forthwith institute any action or actions necessary to collect from each of the several stockholders of such institution all sums for which they are severally liable to such institution, for the benefit of its creditors. Any action or proceeding instituted by the receiver under this or any other section of this article may be instituted in the receiver’s name, the name of the commissioner of banking or the name of the financial institution, as the commissioner may direct.

In connection with the administration of the assets of any such institution, any such receiver may bring an action in the circuit court of the county where such institution is located, to ascertain the several depositors and creditors of such institution and the amounts and priorities of their respective claims. In any such action instituted by a receiver the financial institution and all the stockholders thereof and all of the creditors and depositors thereof, or a representative number of such creditors and depositors determined in accordance with the provisions of rule 23 of the West Virginia rules of civil procedure, shall be made parties defendant and all persons who theretofore filed proofs of claims against such institution with the commissioner of banking or receiver or thereafter file such proofs of claim in such action shall be deemed defendants as though they had been specifically named as defendants therein. The court shall refer the cause to a commissioner of that court who shall thereupon cause to be published a notice to all depositors and creditors of such financial institution requiring them to present their claims to such court commissioner for allowance. Such notice 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 wherein the suit is pending. After publication of such notice is completed, such court commissioner shall proceed as promptly
as possible to ascertain and report the several depositors 
and creditors of such institution and the amounts and 
priorities of their respective claims, proven before him. 
All claims as shall have been duly proved and allowed 
by the receiver or the commissioner of banking, before 
the decree of reference, may be allowed and reported by 
the court commissioner without further proof, unless the 
same shall be contested and disallowed for proper cause. 
The court commissioner shall also ascertain and report 
what funds and assets of such institution have come into 
the hands of the receiver, what disposition has been made 
of such assets, and what dividends, if any, have been paid. 
The court shall enter such orders and decrees and take 
such proceedings as are proper to ascertain the several 
depositors and creditors of such financial institution, and 
adjudicate their respective rights and direct the distribu-
tion of the assets and funds in the hands of the receiver 
and confirm any distribution made under orders of the 
commissioner of banking, and may confirm any and all 
sales made by such receiver of property and assets of 
such financial institution and settle the accounts of 
such receiver. Any creditor whose claim is not pre-

tended and allowed before any decree of distribution 
becomes final shall be forever barred from partici-
pating in the funds distributed under such decree, or 
theretofore distributed and confirmed by such decree, 
and shall have no claim by reason of such distribution 
against any creditor sharing therein or against the com-
missioner of banking, the receiver, or any surety upon 
the receiver's bond. Any claim which shall have been 
proved and allowed after any dividend or distribution 
has been made by the receiver shall be paid dividends 
equal or proportionate in amount to those already re-
ceived by the other creditors of the same rank and 
priority, if the funds and assets in the hands of the re-
ceiver are sufficient therefor, before such other creditors 
receive any further dividend or distribution. 
In any such action brought by the receiver for the pur-
pose of ascertaining the several depositors and creditors 

of such institution, as hereinbefore provided, the receiver 
may also proceed against the officers, directors and stock-
holders of the institution to enforce their individual liabilities as hereinabove provided, or for the adjudication of any other pertinent matter involved in the administration of the assets and affairs of such institution.

All of the assets of any such insolvent institution shall be administered under, applied and paid out through the orders of the commissioner of banking or a court of competent jurisdiction, as herein provided. The costs and expenses of the receivership and of any action or actions brought by the receiver under the direction of the commissioner of banking shall be entitled to priority of payment out of the assets of such institution.

The receiver shall, by proper proceedings, ascertain the several creditors and the amounts and priorities of their respective claims against such institution and shall, from time to time, as the assets of the institution are reduced to possession, and converted into cash, pay the same to the several creditors in the order and the manner in which they are respectively entitled to payment, but, without regard to priority, the receiver may at any time pay in full the claim of any creditor which is less than five dollars.

If the assets of any such institution, including any sums collected from the stockholders, shall more than suffice to pay all of the creditors of the institution who have presented and proved, or caused to be allowed, their several demands, the surplus shall be disbursed as follows: First in the case of a banking institution, to the stockholders, who have paid in any sums upon their extraordinary liability as stockholders, pro rata up to the respective amounts paid by each of them. Second, if anything shall remain thereafter it shall be paid to the stockholders of the institution in proportion to the number of shares owned by them respectively.

The salary of such receiver for the time devoted to such receivership and all expenses incurred by such receiver in the discharge of his duties, including reasonable fees paid for legal services, shall be paid out of the assets of such institution as a part of the costs of the receivership. No other compensation shall be paid to such officer for acting as receiver of such institution.
The receiver of any such financial institution, before entering upon the discharge of his duties, or receiving into his possession any of the assets of such institution, shall enter into bond in favor of the state of West Virginia, in a penalty fixed by and with corporate surety authorized to transact business in this state, approved by the commissioner, conditioned for the faithful discharge of his duties as receiver, and for accounting for and paying over, as required by law, all properties, moneys and funds which shall come into the hands of such receiver, his agents, attorneys or representatives. The bond and certificate of appointment of such receiver shall be recorded in the office of the clerk of the county court of the county in which such institution is situated, and a certified copy thereof shall be forthwith transmitted by the receiver to the commissioner of banking.

Upon the appointment of a receiver for a banking institution engaged in business in this state and authorized to exercise trust powers, such trust powers and authority shall end, and for every case where such banking institution has acted as fiduciary, such receiver shall immediately make a final settlement before the court in which such banking institution qualified as such fiduciary, which settlement shall cover all matters not included in a prior settlement, if any. Thereupon, such court shall proceed as is provided in section six, article five, chapter forty-four of this code, and no formal revoking or annulling order shall be necessary.

Nothing in this section shall impair the right of any court in any action, on a proper showing, to appoint a receiver for any such institution, in cases where the commissioner of banking has failed, refused or neglected to act.

In the administration of the assets of banking institutions by receivers appointed pursuant to this article, having deposits of money belonging to the state of West Virginia, no greater rate of interest, notwithstanding the provisions of the contracts relative to interest between such banking institutions and the state of West Virginia, shall be paid on such deposits than that paid for the same period
or periods on the same class or classes of such deposits by banking institutions operating in the usual course of business.

§31A-7-3. Appraisal of assets of institutions under conservator or receiver; procedure; publication; costs.

1 Within sixty days after the filing of the inventory of the assets of a state banking institution in conservatorship or receivership its assets shall be appraised in the manner herein provided and a copy filed with the commissioner of banking. The commissioner shall not approve or consent to the reorganization, consolidation, merger or sale of the business of such banking institution in conservatorship or receivership until an appraisal shall have been made and published as provided in this section. Appraisal shall be made on the basis of present true and actual value by three appraisers one of whom shall be the conservator or receiver, one a representative of such banking institution designated by its board of directors, and the third a representative of the depositors, who was a depositor at the time the conservator or receiver was appointed and shall not have disposed of his claim, to be designated by the commissioner of banking upon the nomination in writing of a majority in amount of depositors or assigns if such nomination is filed with the commissioner not later than two weeks after the filing of the inventory in the receivership or conservatorship. If no such nomination is made, the commissioner shall designate the depositors' representative in his discretion. In the event of disagreement as to a valuation the determination of any two of the appraisers shall be final. A copy or a summary of the completed appraisal shall be published, in form approved by the commissioner of banking, 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 banking institution is located. The expense of appraisal and publication shall be deemed part of the cost of the conservatorship or receivership and shall include reasonable compensation allowed the appraisers, other than a conservator or receiver, by the commissioner of banking.
§31A-7-4. Receivers may borrow from federal lending agencies and others; procedures.

Any receiver of a banking institution, heretofore or hereafter appointed under provisions of this chapter, if there be no proceeding instituted as authorized by law by such receiver in any court in this state against such banking institution and its stockholders, with the consent in writing of the commissioner of banking, and if there be a proceeding instituted as authorized by law by such receiver in any court in this state against such banking institution and its stockholders, with the consent in writing of the commissioner of banking and the approval of the court, and any receiver of a banking institution heretofore or hereafter appointed by any court in this state in connection with any proceeding in such court against such banking institution, with the consent in writing of the commissioner of banking and the approval of the court, is hereby authorized and empowered to borrow money from and contract for loans with any federal finance or lending agency, created and existing under any act of the Congress of the United States, or any other agencies or persons, for the purpose of furnishing immediate relief to or aiding in the reorganization or liquidation or reopening of such banking 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 banking institution, and paying the claims of secured creditors where the security is deemed by the receiver and the commissioner of banking to be of a value in excess of the debt so secured and to be for the preservation of the assets of such banking institution; and to pledge, hypothecate, assign or transfer to any such agency or other person any assets or securities belonging to the banking institution as collateral security for the payment of any and all such loans, subject to terms and conditions imposed and agreed upon between the parties.
All acts of the receiver or commissioner of banking hereunder are hereby declared to be legal, valid and binding and effective to transfer to any such agencies or persons, their respective successors and assigns, assets and securities in accordance with the terms of the contract of pledge, transfer or assignment.

The commissioner of banking and receiver of any such banking institution shall be under no personal obligation to repay any such loans so made and shall have power to take any and all action necessary or proper to consummate such loans and to provide for the repayment thereof and to give bond, when required, for the faithful performance of all undertakings in connection therewith.

The authority herein conferred on a receiver of a banking institution for the procuring and obtaining of such loans includes authority to renew the same from time to time, with the consent in writing of the commissioner of banking.

An accurate record of all securities and exact copies of all notes withdrawn from the files of such banking institution, to be pledged as aforesaid as collateral for borrowed money, shall be kept in the files of such banking institution at all times.

§31A-7-5. Reorganization; purchase, merger or consolidation of and by state banks; conversion of national bank to state bank; voluntary liquidation.

In any voluntary or compulsory proceeding to liquidate a state banking institution, such 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 reorganize, reclaim possession of its assets, and continue in business.

Any state banking institution may at any time, with the approval of the board, purchase the business and assets and assume the liabilities of, or merge or consolidate with, another state banking institution, the terms and conditions of any such purchase, merger or consolidation to be
first approved by the board. With the approval of the
board and 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 purchase, merger or consolidation to be first ap-
proved by the board. With the approval of the board and
compliance with all applicable laws of this state and the
United States a national banking association may con-
vert into a state bank. After any such purchase, merger
or consolidation, no other corporation shall be allowed
to take or use the name of any 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, whether heretofore or hereafter effected
under any past, present or future law of this state or of
the United States of America, and whether such bank-
ing institution be organized under the provisions of the
laws of this state or of the United States of America,
or both, the purchasing, merged or consolidated banking
institution shall be deemed to have been substituted by
operation of law in the place and stead of each of the
participating institutions in all fiduciary relationships, and
all and singular the titles, properties, offices, appoint-
ments, rights, powers, duties, obligations and liabilities
of each participating institution as trustee, agent, exec-
cutor, administrator, guardian, depository, registrar,
transfer agent or other fiduciary or in any other capacity,
office or position shall be deemed to have become vested
in and devolved upon the purchasing, merged or con-
solidated institution, and such purchasing, merged or con-
solidated institution shall be entitled to take, receive, ac-
cept, hold, administer and discharge any and all grants,
gifts, bequests, devises, conveyances, trusts, powers and
appointments made by deed, deed of trust, will, agree-
ment, 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 con-
solidation, as fully and to the same effect as if the pur-
chasing, merged or consolidated institution had been
named in such deed, deed of trust, will, agreement, order
or other instrument instead of another participating in-
stitution; and all acts heretofore taken or performed in
its own name or in the name of, or in behalf of, any in-
stitution participating in any such purchase, merger or
consolidation by any purchasing, merged or consolidated
institution as trustee, agent, executor, administrator,
guardian, depository, registrar, transfer agent, or other
fiduciary shall be as good, valid, and effectual as if this
section had been in force at the time of the taking or per-
formance of such acts.

Any banking institution may, after thirty days' notice
to the commissioner of banking, cease to transact business
and go into voluntary liquidation and convert its assets
into money and pay the same to the persons entitled there-
to.

§31A-7-6. Enforced liquidation of financial institutions; pro-
cedures.

1 If the commissioner of banking shall revoke the certifi-
cate of authority, permit or license of any financial insti-
tution other than a state bank, or if the board shall revoke
such certificate, permit or license of a state bank and any
such financial institution or state bank shall, within a
reasonable time, fail to comply with the laws of the state
and the requirements of the commissioner or board, and
thereby fail to secure a new certificate of authority, per-
mit or license to continue in business, it shall be the duty
of the commissioner of banking to compel any such offend-
ing financial institution or state bank to go into liquida-
tion, wind up its affairs and surrender its charter. In any
such case the attorney general, at the request of the com-
missioner of banking, shall institute an action in the
circuit court of the county in which the business of the
offending financial institution or state bank is located,
in the name of the state of West Virginia, to wind up the
affairs and dissolve such financial institution or state
bank, and such court shall have jurisdiction to make and
enter all necessary and proper orders and to wind up the
affairs and dissolve the financial institution or state bank
as in the case of insolvent corporations.

If any such financial institution or state bank shall,
within a reasonable time after the revocation of its
certificate of authority, license or permit to transact busi-
ness in this state, fail to comply with the laws of the
state and the requirements of the department of banking
and thereby fail to secure a new certificate of authority,
permit or license to continue in business, it shall be the
duty of the commissioner of banking to cause the assets
of such offending financial institution located in the state
of West Virginia to be liquidated, and to compel such
financial institution to cease to transact business in the
state of West Virginia. At the request of the commissioner
of banking, the attorney general shall institute and prose-
cute any action or actions in the circuit court of the
county in which any of the assets of the offending finan-
cial institution may be located, in the name of the state
of West Virginia, to accomplish the purposes of this
section.

§31A-7-7. Federal agency as receiver or liquidator.
1 The federal deposit insurance corporation, or a suc-
cessor federal agency or instrumentality in lieu thereof,
is hereby authorized and empowered to be and act with-
out bond as receiver or liquidator of any state banking
institution, the deposits in which are to any extent in-
sured by said corporation, and which shall have been
closed on account of inability to meet the demands of its
depositors.

In the event of such closing the commissioner of bank-
ing may tender to such corporation the appointment as
receiver or liquidator of such banking institution, and, if
the corporation accepts said appointment, the corpora-
tion shall have and possess all the powers and privileges
provided by the laws of this state with respect to a re-
ceiver or liquidator respectively of a banking institution,
its depositors and other creditors, and be subject to all
the duties of such receiver or liquidator, except insofar
as such powers, privileges or duties are in conflict with the provisions of the federal reserve act or the federal deposit insurance corporation act and any amendments thereto.

When a banking institution shall have been closed, as herein contemplated, and the federal deposit insurance corporation shall pay or make available for payment the insured deposit liabilities of such closed institution, the corporation, whether or not it shall have become receiver or liquidator of such closed banking institution, as herein provided, shall be subrogated to all rights against such closed banking institution of the owners of such deposits in the same manner and to the same extent as subrogation of the corporation is provided for under the federal deposit insurance act and amendments thereto, but the rights of depositors and other creditors of the closed institution shall be determined in accordance with the applicable provisions of the laws of this state.

Upon the corporation's acceptance of appointment as receiver or liquidator, as herein provided, the possession of and title to all the assets, business and property of such banking institution of every kind and nature shall pass to and vest in said corporation and without the execution of any instruments of conveyance, assignment, transfer or endorsement.

ARTICLE 8. HEARINGS, ADMINISTRATIVE PROCEDURES, JUDICIAL REVIEW, UNLAWFUL ACTS, PENALTIES.

§31A-8-1. Hearings before the commissioner, procedures, 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.

§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
(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.

§31A-8-3. Certain practices 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;

(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 provisions of this section shall be guilty of a misdemeanor and be subject to the penalties provided in section fifteen of this article.

§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 organ-
ized 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 shar-
es involved, (2) the names and addresses of the sellers (or
transferors), (3) the names and addresses of the pur-
chasers (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 own-
ers 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 secur-
ing 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 sub-
section (a) of this section occurs, such banking insti-
tution 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 pur-
poses of transferring, selling, lending, investing or other-
wise disposing of 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.
§31A-8-5. Dealing in own stock; limitations; exceptions.

1. No banking institution shall make any loan or discount any obligation on the security of the shares of its own capital stock, or be the purchaser or holder of any such shares, except shares of authorized but unissued stock provided for by the charter of such banking institution in accordance with the provisions of section four, article four of this chapter unless taken as a pledge or purchased to prevent loss upon a debt previously contracted lawfully and in good faith; and all shares of its stock, purchased or held in such manner, shall, within six months after the time of the purchase or pledge, be sold or disposed of at public or private sale.

2. 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.

§31A-8-6. Receiving deposits or issuing choses in action during insolvency.

1. 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.

§31A-8-7. Certifying checks falsely.

1. 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 draw-
ing 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.

§31A-8-8. False statements concerning banking institutions.

Whoever, directly or indirectly, wilfully and know-
ingly 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.

§31A-8-9. Misapplication of funds; fraud by officers or em-
ployees; false entries in books; false statements;
penalties.

Every officer, director, employee or agent of any finan-
cial institution who wilfully misapplies or without au-
thority 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, re-
port 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 ten thousand dollars.

§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 pro-
visions of this chapter and any rules and regulations pro-
mulgated by the commissioner of banking thereunder;
or

(b) To obstruct or endeavor to obstruct a lawful
examination of such institution by any lawfully au-
thorized officer or employee of any state or federal gov-
ernmental supervisory department, agency or office.
§31A-8-11. Failure to make, publish or distribute reports; forfeitures.

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 one hundred dollars 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.

§31A-8-12. Branch banks forbidden; limitation on purchase of bank stock.

(a) No banking institution shall:

(1) Install or maintain any branch bank; or

(2) Engage in business at any place other than at its principal office in this state.

(b) It shall be unlawful for any person to purchase and hold stock in any banking institution for the purpose of selling, negotiating or trading participation in the ownership thereof either for the purpose of perfecting control of one or more such banking institutions or for the purpose of inducing other persons, firms or corporations or the general public to become participating owners therein. Nothing herein shall prevent the ownership of stock in any such banking institution by any person for investment purposes.

(c) Any violation of any provision of this section shall constitute a misdemeanor offense punishable by applicable penalties as provided in section fifteen of article eight of this chapter.

§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 instrument-
ality thereof, or any county, district, municipal corpora-
tion, 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 guar-
tee deposits made by receivers of closed or insolvent
banking institutions; and the receiver of a closed or in-
solvent 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 con-
sent 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 secur-
ity shall be released only by order of record of the public
officer or public body, or by the receiver of a closed or in-
solvent 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 con-
sent in writing of the commissioner of banking and the ap-
proval 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 insti-
tution, 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.

§31A-8-14. Interest on demand deposits not allowed.

Consistent with provisions of the federal reserve and federal deposit insurance corporation laws, as enacted and amended by the Congress of the United States, subject to any authority granted by the board pursuant to section two, article three of this chapter, and notwithstanding any provisions of the laws of the state of West Virginia to the contrary, no banking institution shall, directly or indirectly, by any device whatsoever, pay any interest on any deposit which is payable on demand, including deposits of public funds by any governments or governmental bodies, agencies or activities.

§31A-8-15. Punishments and penalties.

Upon conviction for any misdemeanor offense under provisions of this chapter, an offending financial institution shall be fined not more than five thousand dollars 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 provisions of this chapter, the offending individual shall be fined not more than one thousand dollars and may, in the discretion of the court, be confined in the county jail for not more than twelve months.

§31A-8-16. Penalties for failure to act or doing forbidden act.

The failure to perform any duty required of any financial institution or individual pursuant to provisions of this chapter, or the 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.

§31A-8-17. Legal representation of the 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.

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

William Tempos
Chairman Senate Committee

Clayton C. Dandoo
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1969.

Robert N. Byrd
Clerk of the Senate

C.A. Blankenship
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker House of Delegates

The within is approved this the 7th
day of March, 1969.

[Signature]
Governor