

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1969

ENROLLED

SENATE BILL NO. 176

(By Mr. Cruziger and Mr. Smith [of Cabell])

PASSED February 26, 1969

In Effect July 1, 1969 Passage

176

FILED IN THE OFFICE
JOHN D. ROCKEFELLER, IV
SECRETARY OF STATE

THIS DATE 3-10-69

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Senate Bill No. 176

(By MR. CARRIGAN and MR. SMITH [of Cabell])

[Passed February 26, 1969; in effect July 1, 1969.]

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 institutions; 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 thousand 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 chapter, 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.

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

3 It is the intention of the Legislature in enacting this
4 chapter to foster and promote sound and dynamic finan-
5 cial institutions and particularly banking institutions in
6 the state in order to provide services to the public which
7 are necessary and desirable for the economic, social, and
8 industrial health and development of the state. There-
9 fore the provisions of this chapter shall be interpreted,
10 construed and administered liberally to accomplish these
11 purposes.

§31A-1-2. Definitions.

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

3 (a) The word "action" in the sense of a judicial pro-
4 ceeding, means any proceeding in a court of competent
5 jurisdiction in which rights are adjudicated and deter-
6 mined and shall embrace and include recoupment, coun-
7 terclaim, set-off and other related, similar and summary
8 proceedings;

9 (b) The words "bank" and "banking institution" mean
10 a corporation heretofore or hereafter chartered to con-
11 duct a banking business under the laws of West Virginia
12 or an association heretofore or hereafter authorized to con-
13 duct a banking business in West Virginia under the laws
14 of the United States and having its principal office in this
15 state and shall embrace and include a trust company
16 or an institution combining banking and trust company
17 facilities, functions and services so chartered or au-
18 thorized to conduct such business in this state;

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

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

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

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

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

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

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

41 (j) The words "financial institutions" means banks,
42 building and loan associations, industrial loan companies,

43 small loan companies, credit unions and all other similar
44 institutions, whether persons, firms or corporations, which
45 are by law under the jurisdiction and supervision of
46 the commissioner of banking;

47 (k) The word "officer" when referring to any finan-
48 cial institution, means any person designated as such
49 in the bylaws and includes, whether or not so designated,
50 any executive officer, the chairman of the board of di-
51 rectors, the chairman of the executive committee, and
52 any trust officer, assistant vice-president, assistant treas-
53 urer, assistant secretary, assistant trust officer, assistant
54 cashier, assistant comptroller, or any other person who
55 performs the duties appropriate to those offices, and
56 the term "executive officer" as herein used, when re-
57 ferring to banking institutions, means an officer of a bank
58 whose duties involve regular, active and substantial
59 participation in the daily operations of such institution
60 and who, by virtue of his position, has both a voice in
61 the formulation of the policy of the bank and responsibili-
62 ty for implementation of the policy, such responsibility
63 of and functions performed by the individual, and not
64 his title or office, being determinative of whether he is
65 an "executive officer";

66 (l) The words "person" or "persons" mean any indi-
67 vidual, partnership, society, association, firm, institution,
68 company, public or private corporation, state, govern-
69 mental agency, bureau, department, division or instru-
70 mentality, political subdivision, county court, municipi-
71 pality, trust, syndicate, estate or any other legal entity
72 whatsoever, formed, created or existing under the laws of
73 this state or any other jurisdiction;

74 (m) The words "safe deposit box" mean a safe de-
75 posit box, vault or other safe deposit receptacle main-
76 tained by a lessor bank, and the rules relating thereto
77 apply to property or documents kept therein in the
78 bank's vault under the joint control of lessor and lessee;

79 (n) The words "state bank" or "state banking insti-
80 tution" mean a bank chartered under the laws of West
81 Virginia, as distinguished from a national banking asso-
82 ciation; and

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

§31A-1-3. Application; construction.

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

7 (b) Every person, business or activity under the juris-
8 diction, supervision and control of the commissioner,
9 whether existing or operating as an individual, associa-
10 tion, firm, corporation or otherwise, shall be subject to
11 and be controlled by provisions of this chapter regardless
12 of any word or phrase referring to a particular entity, or
13 form of organization. Wherever in this chapter the word
14 corporation is used or wherever reference is made to
15 stockholders, directors, officers, or other personnel nor-
16 mally applicable only to corporate organizations, such
17 reference, unless the context in which used clearly indi-
18 cates otherwise, shall be construed to apply to and em-
19 brace associations, firms, individuals and any other entity
20 or form of organization by which any business or opera-
21 tions under the jurisdiction, supervision and control of
22 the commissioner may be conducted.

§31A-1-4. Separability and repealer.

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

8 All laws or parts of laws plainly inconsistent with the
9 provisions hereof are hereby repealed. No provision of
10 this chapter shall be deemed to be repealed by subsequent
11 legislation not specifically repealing it if such construc-
12 tion 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,
2 political subdivisions and agencies and instrumentalities
3 of any of them, fiduciaries, building and loan associations,
4 industrial loan companies, insurance companies, fraternal
5 benefit societies, and other persons lawfully engaging in
6 the lending and investing business and services shall have
7 and are hereby authorized and empowered to exercise
8 the same lawful rights and privileges as are banking insti-
9 tutions under provisions of sections twenty-seven, twenty-
10 eight and twenty-nine of article four of this chapter.

ARTICLE 2. DEPARTMENT OF BANKING.

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

1 The department of banking of West Virginia, the office
2 of commissioner of banking of West Virginia, and the
3 office of deputy commissioner of banking of West Vir-
4 ginia, heretofore created and existing in the state gov-
5 ernment, are continued.

6 The commissioner of banking in office when this chap-
7 ter becomes effective shall continue in office until the
8 expiration of his term, and until his successor is appointed
9 and qualified, unless earlier removed from office as pro-
10 vided by law.

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

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

7 Any person appointed as commissioner shall have had
8 within the fifteen years next preceding his first appoint-
9 ment at least five years' experience as an active execu-
10 tive officer of a bank in this state or a minimum of ten

11 years' experience in a bank examining or supervisory
12 capacity for this state, for other states, or for the federal
13 government, or a combination thereof, or a minimum of
14 ten years' combined experience as such active bank execu-
15 tive officer and in such examining or supervisory capacity.

16 The commissioner shall be paid a salary of fifteen
17 thousand dollars per year, payable in installments as
18 provided by law.

19 Before entering upon the discharge of his duties as
20 commissioner, he shall take and subscribe to the oath
21 of office prescribed in section five of article four of the
22 constitution of West Virginia and shall enter into a
23 bond in the penal sum of one hundred thousand dollars,
24 with a corporate surety authorized to engage in business
25 in this state, conditioned upon the faithful discharge and
26 performance of the duties of his office. The premium
27 on such bond shall be payable from the state treasury
28 out of funds allocated to the department of banking.
29 The executed oath and bond shall be filed in the office
30 of the secretary of state.

**§31A-2-3. Deputy commissioner's appointment, tenure, salary,
qualifications, oath, bond, exercise of commis-
sioner's powers.**

1 The deputy commissioner of banking shall be ap-
2 pointed by and be under the supervision and direction
3 of the commissioner of banking. The deputy commis-
4 sioner's tenure in office shall be at the will and pleasure
5 of the commissioner. The deputy commissioner's salary
6 shall be fixed annually by the commissioner and shall
7 be payable in installments as provided by law.

8 Any person appointed as deputy commissioner shall
9 have had at least five years' experience as an active
10 executive officer of a bank in this state or a minimum
11 of eight years' experience in a bank examining or super-
12 visory capacity for this state, for other states, or for the
13 federal government, or a combination thereof, or a
14 minimum of eight years' combined experience as such
15 active bank executive officer and in such examining or
16 supervisory capacity.

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

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

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

1 (a) Subject to the powers vested in the board by article
2 three of this chapter, the commissioner shall have super-
3 vision and jurisdiction over state banks (other than those
4 banks excepted by the provisions of section eleven of
5 this article), industrial loan companies, building and loan
6 associations, small loan companies, credit unions, and all
7 other persons now or hereafter made subject to his super-
8 vision or jurisdiction. All powers, duties, rights and
9 privileges vested in the department are hereby vested in
10 the commissioner. He shall be the chief executive officer
11 of the department of banking and shall be responsible for
12 the department's organization, services and personnel,
13 and for the orderly and efficient administration, enforce-
14 ment and execution of the provisions of this chapter and
15 all laws vesting authority or powers in or prescribing
16 duties or functions for the department or the commis-
17 sioner.

18 (b) The commissioner shall:

19 (1) Maintain the office for the department at the state
20 capitol, and there keep a complete record of all the de-
21 partment's transactions, of the financial conditions of all
22 financial institutions and such records of the activities
23 of other persons as the commissioner may deem important.
24 Notwithstanding any other provision of the code of West
25 Virginia, heretofore or hereafter enacted, the records
26 relating to the financial condition of any financial institu-

27 tion and any information contained therein shall be confi-
28 dential for the use of the commissioner and authorized
29 personnel of the department of banking. No person shall
30 divulge any information contained in any such records
31 except in response to a valid subpoena or subpoena duces
32 tecum issued pursuant to law. The commissioner shall
33 have and may exercise reasonable discretion as to the
34 time, manner and extent the other records in his office
35 and the information contained therein shall be available
36 for public examination.

37 (2) Require all financial institutions to comply with
38 all the provisions of this chapter and other applicable
39 laws, or any rule and regulation promulgated or order
40 issued thereunder.

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

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

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

55 (2) Employ, direct, discipline, discharge and establish
56 qualifications and duties for all personnel for the depart-
57 ment, including, but not limited to, examiners, assistant
58 examiners, conservators and receivers, to establish the
59 amount and condition of bonds for such thereof as he
60 deems appropriate and to pay the premiums thereon, and
61 if he so elects, to have all such personnel subject to and
62 under the classified service of the state personnel depart-
63 ment;

64 (3) To cooperate with organizations, agencies, com-
65 mittees and other representatives of financial institutions
66 of the state in connection with schools, seminars, con-

67 ferences and other meetings to improve the responsibili-
68 ties, services and stability of the financial institutions;

69 (4) In addition to the examinations required by sec-
70 tion six of this article, to inspect, examine and audit the
71 books, records, accounts and papers of all financial institu-
72 tions at such times as circumstances in his opinion may
73 warrant;

74 (5) To call for and require all such data, reports and
75 information from financial institutions under his jurisdic-
76 tion, at such times and in such form, content and detail,
77 deemed necessary by him in the faithful discharge of his
78 duties and responsibilities in the supervision of the finan-
79 cial institutions;

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

85 (A) Maintain their accounts consistent with such regu-
86 lations as he may prescribe and in accordance with gen-
87 erally accepted accounting practices;

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

91 (C) Charge off the whole or any part of an asset which
92 at the time of his action could not lawfully be acquired;

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

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

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

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

100 (H) Maintain adequate insurance against such other
101 risks as he may deem and determine to be necessary and
102 appropriate for the protection of depositors and the
103 public;

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

106 (J) Take such other action as may in his judgment be
107 required of the institution in order to maintain its sta-
108 bility, integrity and security as required by law and all
109 rules and regulations promulgated by him; and

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

111 (7) Subject to the powers vested in the board by
112 article three of this chapter, to receive from any person
113 or persons and to consider any request, petition or appli-
114 cation relating to the organization, location, conduct, serv-
115 ices, policies and procedures of any financial institution
116 and to act thereupon in accordance with any provisions
117 of law applicable thereto;

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

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

130 (10) To study and survey the location, size and serv-
131 ices of financial institutions, the geographic, industrial,
132 economic and population factors affecting the agricul-
133 tural, commercial and social life of the state, and the
134 needs for reducing, expanding or otherwise modifying
135 the services and facilities of financial institutions in the
136 various parts of the state, and to compile and keep current
137 data thereon to aid and guide him in the administration
138 of the duties of his office;

139 (11) To implement all of the provisions of this chapter
140 (except the provisions of article three) and all other laws
141 which he is empowered to administer and enforce by the
142 promulgation of rules and regulations in accordance with
143 the provisions of article three, chapter twenty-nine-a of
144 this code;

145 (12) To foster and encourage a working relationship
146 between the department of banking and financial institu-
147 tions, credit, consumer, mercantile and other commercial
148 and finance groups and interests in the state in order to
149 make current appraisals of the quality, stability and
150 availability of the services and facilities of financial insti-
151 tutions;

152 (13) To provide to financial institutions and the public
153 copies of the West Virginia statutes relating to financial
154 institutions, suggested drafts of bylaws commonly used
155 by financial institutions, and such other forms and printed
156 materials as may be found by him to be helpful to finan-
157 cial institutions, their stockholders, depositors and pa-
158 trons, and to make reasonable charges therefor;

159 (14) To delegate the powers and duties of his office,
160 other than the powers and duties in this subsection here-
161 inafter excepted, to qualified department personnel, who
162 shall act under the direction and supervision of the com-
163 missioner and for whose acts he shall be responsible, but
164 the commissioner may delegate to the deputy commis-
165 sioner of banking and to no other department personnel
166 the following powers, duties and responsibilities, all of
167 which are hereby granted to and vested in the commis-
168 sioner and for all of which the commissioner shall like-
169 wise be responsible:

170 (A) To order any person to cease violating any pro-
171 vision or provisions of this chapter or other applicable
172 law or any rule and regulation promulgated or order
173 issued thereunder;

174 (B) To order any person to cease engaging in any un-
175 sound practice or procedure which may detrimentally
176 affect any financial institution or depositor thereof; and

177 (C) To revoke the certificate of authority, permit or
178 license of any financial institution except a banking insti-
179 tution in accordance with the provisions of section thir-
180 teen of this article; and

181 (15) To take such other action as he may deem neces-
182 sary to enforce and administer the provisions of this
183 chapter (except the provisions of article three) and all
184 other laws which he is empowered to administer and

185 enforce, and to apply to any court of competent jurisdic-
186 tion for appropriate orders, writs, processes and remedies.

**§31A-2-5. Certificate or license to engage in business required;
applications; requirements; fee; charter and bylaw
amendments; limitation.**

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

9 (b) Application for such license or certificate shall be
10 upon such forms and contain such information as the
11 commissioner may prescribe. In connection with such
12 applications every corporate financial institution shall
13 file a certified copy of its charter and bylaws, a state-
14 ment as to the amount of capital that has been subscribed
15 and paid in and a statement of its financial condition duly
16 verified under oath by its president or vice-president and
17 its cashier or secretary as the case may be and every
18 financial institution other than a corporation shall file
19 a verified statement of its financial condition.

20 (c) If the application be that of a banking institution,
21 the commissioner of banking shall examine the informa-
22 tion, documents and statements submitted and, if he
23 finds that such banking institution has adopted bylaws
24 which provide practical, safe, just and equitable rules
25 and methods for the management of its business and it
26 has complied in all respects with the provisions of this
27 chapter and other applicable laws, he shall issue to it a
28 certificate or license permitting it to engage in busi-
29 ness. If the application be that of a financial institution
30 other than a banking institution, the commissioner of
31 banking shall examine the information, documents and
32 statements submitted, and, if he finds that such financial
33 institution has adequate resources for the proposed busi-
34 ness and has provided practical, safe, just and equitable
35 rules and methods for the management of its business,

36 and it has complied in all respects with the provisions of
37 this chapter and other applicable laws, and that the
38 public convenience and advantage will be promoted by
39 the issuance of a certificate or license thereto, he shall
40 issue to it a certificate or license permitting it to engage
41 in business. Such certificate or license shall be preserved
42 and displayed in the place of business of such banking
43 or other financial institution.

44 (d) In addition to the requirements of subsection (b) of
45 this section, every foreign corporation applying for a
46 license or certificate to engage in the business of a
47 financial institution in this state shall file with the com-
48 missioner of banking a copy of the laws of the juris-
49 diction under which it is organized which pertain to its
50 organization and powers and the conduct of its business.
51 The commissioner shall examine the information, docu-
52 ments and statements submitted by such foreign corpora-
53 tion and if he finds that they provide practical, safe, just
54 and equitable rules and methods for the management of
55 the business of the corporation, that it has adequate re-
56 sources for the proposed business and it has complied in
57 all respects with the provisions of this chapter and other
58 applicable laws, and that the public convenience and ad-
59 vantage will be promoted by the issuance of a license or
60 certificate thereto, he shall issue to such corporation a
61 certificate or license permitting it to engage in business
62 in this state, which certificate or license shall authorize
63 such corporation to engage in the business of the type of
64 financial institution specified therein, until the thirtieth
65 day of the following June. Thereafter a new certificate
66 or license shall be secured annually by any such foreign
67 corporation. The fee for the original and each addition-
68 al license or certificate issued to a foreign corporation
69 shall be one hundred dollars, unless otherwise provided
70 by statute. A verified statement of the financial condition
71 of every such foreign corporation shall be filed with the
72 commissioner before the issuance of each annual certifi-
73 cate or license. Such certificate or license shall be pre-
74 served and displayed in the place of business of such
75 corporation.

76 (e) No amendment of the charter or bylaws of any
77 domestic or foreign corporation engaging in business in
78 this state as a financial institution shall become effective
79 until the proposed change shall have been submitted to
80 to and approved by the commissioner of banking; but, if
81 the commissioner does not disapprove such proposed
82 change within twenty days after it is received by him, it
83 shall be deemed to have been approved. A certified copy
84 of the amendment of any statute of another state govern-
85 ing such a foreign corporation shall be filed with the
86 commissioner of banking by such foreign corporation
87 within thirty days after such amendment becomes effec-
88 tive in such other state.

89 (f) Nothing contained in this code shall authorize any
90 person to engage in the banking business in this state
91 except corporations chartered to conduct a banking busi-
92 ness under the laws of West Virginia and which hold a li-
93 cense or certificate to do so issued under this section or as-
94 sociations authorized to conduct a banking business in
95 West Virginia under the laws of the United States and
96 having their principal place of business in this state.

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

1 The commissioner of banking shall make, at least once
2 each calendar year, a thorough examination of all the
3 books, accounts, records and papers of every financial
4 institution. He shall carefully examine all of the assets
5 of each such institution, including its notes, drafts, checks,
6 mortgages, securities deposited to assure the payment
7 of debts unto it, and all papers, documents and records
8 showing, or in any manner relating to, its business affairs,
9 and shall ascertain the full amount and the nature in
10 detail of all of its assets and liabilities. The commissioner
11 may also make such examination of any subsidiaries or
12 affiliates of a financial institution as he may deem neces-
13 sary to ascertain the financial condition of such financial
14 institution, the relations between such financial institution
15 and its subsidiaries and affiliates and the effect of such re-

16 lations upon the affairs of such financial institution. A full
17 report of every such examination shall be made and filed
18 and preserved in the office of the commissioner and a copy
19 thereof forthwith mailed to the institution examined.
20 Every such institution shall retain all of its records of final
21 entry for such period of time as required in section
22 thirty-five of article four of this chapter for banking
23 institutions.

24 Every official communication from the commissioner
25 to any such institution, or to any officer thereof, relating
26 to an examination or an investigation of the affairs of
27 such institution conducted by the commissioner or con-
28 taining suggestions or recommendations as to the man-
29 ner of conducting the business of the institution, shall
30 be read to the board of directors at the next meeting
31 after the receipt thereof, and the president, or other
32 executive officer, of the institution shall forthwith notify
33 the commissioner in writing of the presentation and
34 reading of such communication and of any action taken
35 thereon by the institution.

36 The commissioner of banking, in his discretion, may
37 accept a copy of a reasonably current examination of
38 any banking institution made by the federal deposit
39 insurance corporation or the federal reserve system in
40 lieu of an examination of such banking institution re-
41 quired or authorized to be made by the laws of this
42 state, and the commissioner may furnish to the federal
43 deposit insurance corporation or the federal reserve
44 system, or to any official or examiner thereof, any copy
45 or copies of the commissioner's examinations of and
46 reports on such banking institutions, but nothing herein
47 shall be construed to limit the duty and responsibility
48 of banking institutions to comply with all provisions of
49 law relating to examinations and reports, nor to limit
50 the powers and authority of the commissioner of bank-
51 ing with reference to examinations and reports under
52 existing laws.

**§31A-2-7. Cooperation and duties of financial institutions and
others; offenses, penalties and enforcement.**

1 All officers, directors, employees and other persons
2 connected with any financial institution, upon request

3 of the commissioner of banking, or his duly authorized
4 representative, shall furnish and give full access to
5 all of the books, papers, notes, bills, and other evidences
6 of debts due to the institution; produce and furnish all
7 documents, records, writings and papers relating to the
8 business of the institution which the commissioner is
9 required to examine; disclose fully, accurately and in
10 detail all of the debts and liabilities of the institution;
11 and furnish such clerical aid and assistance as may be
12 required in the performance of the commissioner's duties
13 as provided by law. The commissioner or his repre-
14 sentative, as the case may be, shall have the right and
15 authority to administer oaths and to examine under
16 oath each officer, director, employee or other person
17 connected with the institution concerning any matter and
18 thing pertaining to the business and condition of such
19 institution.

20 Any officer, director, employee or other person con-
21 nected with any such institution who wilfully fails or
22 refuses to so furnish the documents, papers, materials
23 or information as herein required or who wilfully fails
24 to discharge any other duty or obligation as herein pro-
25 vided shall be guilty of a misdemeanor and, upon con-
26 viction thereof, shall be subject to the penalties pro-
27 vided in section fifteen of article eight of this chapter.

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

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

9 (b) For making such an examination within the state
10 of any other financial institution, the commissioner of
11 banking shall charge and collect from such other finan-
12 cial institution and pay into the state treasury the actual
13 and necessary costs and expenses incurred in connection
14 therewith, as fixed and determined by the commissioner.

15 (c) If any such examination be made at a place out-
16 side of this state, the fees, costs and expenses shall be as
17 above provided, except that there shall be an additional
18 charge for mileage and travel expense as provided and
19 allowed by law for state agencies and employees.

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

**§31A-2-9. Correction of irregularities and business practices;
violation of laws, etc.; special reports; special
meetings.**

1 Whenever it appears that any law, rule and regulation
2 or order applicable to any financial institution is being
3 violated, or that any irregularities exist or unsound prac-
4 tices or procedures are being engaged in, it shall be the
5 duty of the commissioner of banking to promptly call the
6 same to the attention of the officers and directors of the
7 financial institution offending and to demand that the
8 same be promptly corrected; and he may require a sworn
9 statement from the said officers and directors covering the
10 matter of all such violations and of all such irregularities,
11 unsound practices or procedures to be furnished to him
12 as often as he may deem necessary, until he is satisfied
13 that such violations have ceased and that the irregulari-
14 ties, unsound practices or procedures complained of have
15 been corrected. Such reports shall not be made public.

16 If any such institution owns any asset, the value of
17 which, in the judgment of the commissioner of banking,
18 is questionable, or owns past-due obligations, the com-
19 missioner of banking may require the assets of doubtful
20 value to be at once converted into money or charged off
21 of the books of the financial institution at the expiration
22 of three months from the date of such order; or require
23 legal proceedings to be at once instituted for the collec-
24 tion of any past-due obligations to the financial institution
25 or that they be charged off.

26 Upon the written notice of the commissioner of banking,
27 the directors of any financial institution shall call a gen-
28 eral meeting of the stockholders thereof to consider such
29 matters as the commissioner may prescribe. Notice of

30 such meeting shall be given in accordance with applicable
31 statutes and the bylaws of the financial institution. The
32 expense of such meeting and notice thereof shall be borne
33 by the financial institution whose stockholders are so
34 required to convene.

**§31A-2-10. Reports by financial institutions other than banks;
disposition; publication.**

1 Every financial institution other than banking institu-
2 tions shall furnish to the commissioner of banking, at
3 least twice each year and within fifteen days after his
4 request therefor, a statement, verified by its president or
5 secretary, and approved by three of its directors, in such
6 form as may be prescribed by the commissioner of bank-
7 ing, showing in detail the actual financial condition and
8 the amount of the assets and liabilities of such financial
9 institution, and shall furnish such other information as to
10 its business and affairs as the commissioner of banking
11 may require, which reports, in the same form in which
12 they are transmitted to the commissioner of banking,
13 shall be printed and circulated among all of the stock-
14 holders of the financial institution and published as a
15 Class I legal advertisement in compliance with the pro-
16 visions of article three, chapter fifty-nine of this code,
17 and the publication area for such publication shall be the
18 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
2 conducted entirely outside of the state of West Virginia,
3 shall not be subject to supervision by the department of
4 banking or the commissioner of banking, and shall not
5 be required to make any reports to it or him, or to pub-
6 lish such reports, and no consent or authority of the
7 commissioner shall be necessary or required as to any
8 of the acts and practices of such non-resident banks in
9 and about the conduct of their business outside of the
10 state of West Virginia, and the commissioner of banking
11 shall not be responsible for any acts or practices of such
12 non-resident banks. The officers and directors of such
13 non-resident banking institutions may all be non-residents

14 of the state of West Virginia and such non-resident bank-
15 ing institutions may conduct the banking business at such
16 place or places outside of the state of West Virginia as
17 they may be permitted under the laws of the jurisdiction
18 in which such place or places are situated. The restric-
19 tions in the banking laws of this state contained as to
20 establishment and maintenance of branch banks shall not
21 be applicable to said non-resident banks, but no non-
22 resident bank shall operate or maintain any branch bank
23 in this state. The provisions, requirements, restrictions
24 and limitations in the banking laws contained relative
25 to the capital stock, either authorized or issued, and to the
26 increase thereof, to the acquisition and holding of real
27 estate, to the oath and qualifications of directors, to loans
28 and the property, real or personal, upon the security of
29 which loans may be made, to the borrowing of money
30 by banking institutions and the hypothecation of securi-
31 ties or other property for the same, to reserves, and to
32 dividends and all other restrictions and limitations of the
33 banking laws of this state, shall not apply to said non-
34 resident banks.

35 No provision of this section shall be construed as re-
36 lieving such non-resident banks from compliance with
37 the laws of the jurisdiction in which they may conduct
38 business. The provisions of this section shall not be ap-
39 plicable to any banking institution any part of whose
40 actual business is conducted within the state of West
41 Virginia, and nothing in this section contained shall be
42 interpreted as rendering any laws now in force or here-
43 after enacted inapplicable to banking institutions doing
44 actual business in the state of West Virginia. Subse-
45 quently enacted legislation shall be construed as appli-
46 cable only to banking institutions having a place of busi-
47 ness in this state, unless a contrary intent specifically or
48 by necessary implication appears therein.

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

1 Annually on or before the first day of December, the
2 commissioner of banking shall prepare and submit to the
3 governor a careful and complete report, detailing the
4 work, services and functions performed by him during

5 the preceding fiscal year. The report shall show the total
6 resources and liabilities of all financial institutions, the
7 increase or decrease for the year in the aggregate of such
8 resources and liabilities, carefully noting any failures
9 that may have occurred, stating the causes thereof, and
10 making such remarks, suggestions and recommendations
11 as he may deem pertinent, including recommendations
12 on policy, administration and legislation pertaining to all
13 financial institutions.

14 Such report shall be verified by the affidavit of said com-
15 missioner, who shall swear that, in making the exami-
16 nation of each financial institution he, or a qualified
17 person in his department appointed by him, has person-
18 ally and carefully inspected the books, papers and affairs
19 of the institution, or in the case of any banking institu-
20 tion, that he has accepted a reasonably current exami-
21 nation made by the federal deposit insurance corpora-
22 tion or the federal reserve system in lieu of conducting
23 such an examination, and that he has not, and, so far as
24 he knows or is informed, no person in his department has,
25 in any case received or agreed to receive directly or in-
26 directly any reward, gift, or promise thereof, from any
27 officer or other person connected with any financial in-
28 stitution.

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

1 If any financial institution other than a state bank
2 shall fail or refuse to comply with any order of the com-
3 missioner, entered pursuant to the provisions of para-
4 graphs (A) or (B), subdivision (14), subsection (c),
5 section four of this article, the commissioner may make
6 and enter an order revoking the certificate of authority,
7 permit or license of such institution to engage in the
8 business of a financial institution in this state, or, at his
9 election, may apply to any court having jurisdiction for
10 a prohibitory or mandatory injunction or other appro-
11 priate remedy to compel obedience to such order.

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

1 No officer or employee of the department of banking
2 shall be an officer, director, trustee, attorney, owner,
3 shareholder, or partner in or of any financial institution.
4 Nor shall any officer or employee of the department re-
5 ceive, directly or indirectly, any payment or gratuity
6 from any financial institution, or be engaged in any man-
7 ner 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.

1 (a) There is hereby created the West Virginia board
2 of banking and financial institutions which shall consist
3 of six members and the commissioner, who shall be
4 chairman. The six members shall be appointed by the
5 governor by and with the advice and consent of the
6 Senate. Three of the members shall be executive officers
7 of state banking institutions, of whom one shall be truly
8 representative of such state banking institutions having
9 assets not greater than ten million dollars, one shall be
10 truly representative of such state banking institutions
11 having total assets greater than ten million dollars but
12 not greater than twenty-five million dollars, and one shall
13 be truly representative of such banking institutions hav-
14 ing total assets greater than twenty-five million dollars.
15 One member shall be an executive officer of a financial
16 institution other than a banking institution. Two members
17 shall represent the public, neither of whom shall be an em-
18 ployee, officer, trustee, director or stockholder of any fi-
19 nancial institution. No member shall hold any other office,
20 employment or position with the United States, any
21 state, county, municipality or other governmental entity
22 or any instrumentality or agency of any of the foregoing
23 or with any political party.

24 (b) The members of the board shall be appointed for
25 overlapping terms of six years, except that of the original
26 appointments, two members shall be appointed for a term
27 of two years, two members shall be appointed for a term



28 of four years and two members shall be appointed for a
29 term of six years, and in every instance until their re-
30 spective successors have been appointed and qualified.
31 Any member appointed for a full six-year term may not
32 be reappointed until two years after the expiration of
33 such term. Any member appointed for less than a full
34 six-year term shall be eligible for reappointment for a
35 full term. Before entering upon the performance of his
36 duties each member shall take and subscribe to the oath
37 required by section 5, article IV, of the constitution of
38 the state of West Virginia. The governor shall, within
39 sixty days following the occurrence of a vacancy on the
40 board, fill the same by appointing a person for the un-
41 expired term of, and meeting the same requirements for
42 membership as, the person vacating said office. Any
43 member may be removed by the governor in case of
44 incompetency, neglect of duty, gross immorality or mal-
45 feasance in office.

46 (c) A majority of the members of the board shall con-
47 stitute a quorum. The board shall meet at least once in
48 each calendar quarter on a date fixed by the board. The
49 commissioner may, upon his own motion, or shall upon
50 the written request of three members of the board, call
51 additional meetings of the board upon at least twenty-
52 four hours' notice. No member shall participate in a pro-
53 ceeding before the board to which a corporation, partner-
54 ship or unincorporated association is a party, and of which
55 he is or was at any time in the preceding twelve months
56 a director, officer, owner, partner, employee, member or
57 stockholder. A member may disqualify himself from
58 participation in a proceeding for any other cause
59 deemed by him to be sufficient. Each member shall re-
60 ceive fifty dollars for each day or portion thereof spent
61 in attending meetings of the board and shall be reim-
62 bursed for all reasonable and necessary expenses in-
63 curred incident to his duties as a member of the board.

64 (d) The board shall keep an accurate record of all its
65 proceedings and make certificates thereupon as may be
66 required by law. The commissioner shall make available
67 necessary office space and secretarial and other assist-
68 ance as the board may reasonably require.

§31A-3-2. General powers and duties of board.

1 (a) In addition to other powers conferred by this
2 chapter, the board shall have the power to:

3 (1) Regulate its own procedure and practice;

4 (2) Promulgate reasonable rules and regulations to
5 implement any provision of this article, such rules and
6 regulations to be promulgated in accordance with the
7 provisions of article three, chapter twenty-nine-a of this
8 code;

9 (3) Advise the commissioner in all matters within his
10 jurisdiction;

11 (4) Study the organization, programs and services of
12 financial institutions and the laws relating thereto in this
13 state and in other jurisdictions, and to report and recom-
14 mend to the governor and the Legislature all such
15 changes and amendments in laws, policies and procedures
16 relating thereto as may be by it deemed proper; and

17 (5) Grant permission and authority to a financial in-
18 stitution:

19 (A) To participate in a public agency hereafter cre-
20 ated under the laws of this state or of the United States,
21 the purpose of which is to afford advantages or safe-
22 guards to financial institutions or to depositors therein,
23 and to comply with all lawful requirements and condi-
24 tions imposed upon such participants;

25 (B) To engage in any financial institution activity,
26 services, procedures and practices in which financial in-
27 stitutions of the same type subject to the jurisdiction of
28 the federal government may hereafter be authorized by
29 federal laws, rules or regulations to engage, notwithstand-
30 ing any contrary provision of this code: *Provided, how-*
31 *ever,* That no such permission or authority shall be grant-
32 ed to any banking institution to install or maintain any
33 branch bank or engage in business at any place other than
34 its principal office in this state in contravention of the
35 provisions of section twelve, article eight of this chapter.

36 (C) To pay interest on demand deposits of the United
37 States or any agency thereof, if the payment of such
38 interest shall be permitted under any applicable federal
39 law, rule or regulation.

40 Any permission and authority granted by the board
41 pursuant to this subdivision (5) shall cease and termi-
42 nate upon the adjournment of the next regular session
43 of the Legislature, unless the Legislature shall at such
44 session enact legislation authorizing the financial insti-
45 tution participation, activity, services and procedures or
46 payment of interest with respect to which such permis-
47 sion and authority was granted, in which event such per-
48 mission and authority shall continue in effect until the
49 effective date of such legislation.

50 (b) The board shall further have the power, by en-
51 tering appropriate orders, to:

52 (1) Restrict the withdrawal of deposits from any
53 financial institution when in the judgment of the board
54 extraordinary circumstances make such restrictions nec-
55 essary for the protection of creditors of and depositors in
56 the affected institution;

57 (2) Compel the holder of shares in any corporate
58 financial institution to refrain from voting said shares on
59 any matter when in the judgment of the board such
60 order is necessary to protect the institution against reck-
61 less, incompetent or careless management, to safeguard
62 funds of depositors in the institution, or to prevent wil-
63 ful violation of any applicable law or of any rule and
64 regulation or order issued thereunder. In such a case
65 the shares of such a holder shall not be counted in de-
66 termining the existence of a quorum or a percentage of
67 the outstanding shares necessary to take any corporate
68 action;

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

73 (4) Revoke the certificate of authority, permit, cer-
74 tificate or license of any state banking institution to
75 engage in business in this state if such institution shall
76 fail or refuse to comply with any order of the commis-
77 sioner entered pursuant to the provisions of paragraphs
78 (A) or (B), subdivision (14), subsection (c), section
79 four of article two of this chapter, or at the board's

80 election to direct the commissioner to apply to any
81 court having jurisdiction for a prohibitory or mandatory
82 injunction or other appropriate remedy to compel obedi-
83 ence to such order; and

84 (5) Suspend or remove a director, officer or em-
85 ployee of any financial institution who is or becomes
86 ineligible to hold such position under any provision of
87 law or rule and regulation or order, or who wilfully
88 disregards or fails to comply with any order of the board
89 or commissioner made and entered in accordance with
90 the provisions of this chapter or who is dishonest or
91 grossly incompetent in the conduct of financial institution
92 business.

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

1 (a) Subject to the provisions of subsection (e) of this
2 section, notice and hearing shall be provided in advance
3 of the entry of any order by the board.

4 (1) Such notice shall be given to the financial in-
5 stitution or person with respect to whom the hearing
6 is to be conducted in accordance with the provisions
7 of section two, article seven of chapter twenty-nine-a
8 of this code, and such hearing and the administrative
9 procedures in connection therewith shall be governed
10 by all of the provisions of article five, chapter twenty-
11 nine-a of this code, and shall be held at a time and place
12 set by the board, but shall not be held less than ten
13 nor more than thirty days after such notice is given.
14 A hearing may be continued by the board on its own
15 motion or for good cause shown.

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

19 (b) After any such hearing and consideration of all
20 of the testimony and evidence, the board shall make and
21 enter an order deciding the matters with respect to which
22 such hearing was conducted, which order shall be accom-
23 panied by findings of fact and conclusions of law as
24 specified in section three, article five, chapter twenty-

25 nine-a of this code, and a copy of such order and accom-
26 panying findings and conclusions shall be served upon
27 all parties to such hearing, and their attorneys of record,
28 if any.

29 (c) In the case of an application for the board's ap-
30 proval to incorporate and organize a banking institution
31 in this state, as provided in subdivision (3), subsection
32 (b), section two of this article, the board shall, upon
33 receipt of any such application, provide notice to all
34 banking institutions, which in the manner hereinafter
35 provided, have requested notice of any such action. The re-
36 quest by any such banking institution to receive such
37 notice shall be in writing and shall request the board
38 to notify it of the receipt by the board of any appli-
39 cation to incorporate and organize a banking institution
40 in this state. A banking institution may, within ten days
41 after receipt of such notice, file a petition to intervene
42 and shall, if it so files such petition, thereupon become
43 a party to any hearing relating thereto before the board.

44 (d) The board shall have the power and authority
45 to issue subpoenas and subpoenas duces tecum, ad-
46 minister oaths and examine any person under oath in
47 connection with any subject relating to duties imposed
48 upon or powers vested in the board.

49 (e) Whenever the board shall find that extraordinary
50 circumstances exist which require immediate ²⁴ action, it
51 may forthwith without notice or hearing enter an order
52 taking any action permitted by subdivisions (1), (2),
53 (4) and (5) of subsection (b), section two of this article.
54 Immediately upon the entry of such order, certified copies
55 thereof shall be served upon all persons affected thereby
56 and upon demand such persons shall be entitled to a
57 hearing thereon at the earliest practicable time.

§31A-3-4. Judicial review; appeals to supreme court of appeals.

1 (a) Any party to a hearing before the board adversely
2 affected by any order of the board made and entered after
3 a hearing as provided in section three, article three of
4 this chapter shall be entitled to judicial review thereof
5 in the manner provided in section four, article five, chap-
6 ter twenty-nine-a of this code.

7 (b) Any such party adversely affected by a final judg-
8 ment of a circuit court following judicial review as pro-
9 vided in subsection (a) of this section may seek review
10 thereof by appeal to the supreme court of appeals in the
11 manner provided in article six, chapter twenty-nine-a of
12 this code.

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES.

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

1 The general corporation laws of the state, including
2 the provisions of chapter thirty-one of the code of West
3 Virginia, shall govern banking institutions and the char-
4 tering thereof, except as otherwise provided in or where
5 inconsistent with the provisions of this chapter.

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

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

1 No person doing business in this state, except a banking
2 institution, shall use or advertise in connection with such
3 business, or as a designation or title thereof, the term
4 "bank," "banker," "banking," "banking company," "in-
5 dustrial bank," "savings bank," or "trust company," or
6 engage in the banking or trust business in this state.

7 It shall be unlawful for any such person other than
8 banking institutions as herein excepted, to advertise or
9 hold himself, itself, or themselves, as the case may be,
10 out to the public in any manner indicating, directly,
11 indirectly or by implication, that any of them is engaged
12 in the banking or trust business or is authorized and ap-
13 proved to engage therein in this state.

14 Any violation of the provisions of this section shall con-
15 stitute a misdemeanor offense, punishable as provided in
16 section fifteen of article eight of this chapter.

17 The commissioner of banking or any one or more bank-
18 ing institutions, acting individually or jointly, may peti-
19 tion the circuit court of the county in which any violation
20 of the provisions of this section occur or are threatened

21 to occur for injunction or other appropriate judicial
22 remedies for enforcement of the provisions hereof and
23 the prevention of further or continued violations thereof.

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

1 (a) No banking institution shall hereafter be incor-
2 porated unless it shall have a bona fide subscribed capital
3 stock of:

4 (1) At least fifty thousand dollars, if the population
5 of the community in which the bank is to be located be
6 not more than three thousand;

7 (2) At least seventy-five thousand dollars, if the popu-
8 lation of the community in which the bank is to be located
9 be more than three thousand, but not more than six
10 thousand;

11 (3) At least one hundred thousand dollars, if the popu-
12 lation of the community in which the bank is to be located
13 be more than six thousand but not more than twenty-
14 five thousand;

15 (4) At least one hundred twenty-five thousand dollars,
16 if the population of the community in which the bank is
17 to be located be more than twenty-five thousand but not
18 more than fifty thousand; and,

19 (5) At least one hundred fifty thousand dollars, if the
20 population of the community in which the bank is to be
21 located be more than fifty thousand.

22 The population figures as herein specified shall be ascer-
23 tainable from and be based upon the latest available
24 United States census.

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

30 (c) Banking institutions shall issue but one class of
31 stock and the shares shall have a nominal or par value of
32 not less than five dollars nor more than one hundred
33 dollars each, and as to each banking institution each
34 share shall be equal in all respects with any other share.

35 (d) Any banking institution may capitalize its surplus
36 and undivided profits by issuing shares of stock against
37 the same at par and distributing such shares among its
38 stockholders, or change the par value of its shares, when
39 and to the extent that any such action may be authorized
40 in writing by the commissioner.

**§31A-4.4. Organizational expenses; payments for capital stock;
limitations; unissued stock; additional stock; penal-
ties; preemptive rights of stockholders.**

1 All of the capital stock of every banking institution,
2 chartered under the laws of this state, shall be paid in
3 full in cash before it shall be authorized to engage in busi-
4 ness, except such business as is incidental and necessarily
5 preliminary to its organization, except that with the ap-
6 proval of the commissioner, the charter of any state bank,
7 now or hereafter organized, may provide that not to ex-
8 ceed five percent of the bank's authorized capital stock
9 may be unissued stock. Such authorized but unissued
10 stock may be issued from time to time to employees of the
11 bank pursuant to a stock option or stock purchase plan
12 approved by the commissioner or may be issued for such
13 other purposes and consideration as may be approved by
14 the board of directors of said bank.

15 Each subscriber at the time he subscribes to the stock
16 of a proposed banking institution shall pay in cash a sum
17 at least equal to five percent of the par value of such
18 stock into a fund to be used to defray the expenses of
19 organization of said institution. No organizational ex-
20 penses shall be paid out of any other funds of the bank. No
21 part of said organizational expense fund shall be used for
22 the payment of any fee, compensation or commission for
23 promotion in connection with the institution's organiza-
24 tion or for obtaining subscriptions, selling shares or other
25 services in connection with its organization, except legal
26 fees and other usual and ordinary expenses necessary for
27 its organization. Upon the grant of a charter to the institu-
28 tion any unexpended balance in the organizational ex-
29 pense fund shall be transferred to undivided profits of the
30 institution. If the charter application is finally denied, any
31 unexpended balance in said fund shall be distributed

32 among the contributors in proportion to their respective
33 payments.

34 A majority of the incorporators shall file with the board
35 at the time of filing of the charter application an affidavit:
36 (1) Setting forth all expenses incurred or to be incurred
37 in connection with the organization of the institution,
38 subscriptions for its shares and sale of its shares, and (2)
39 stating that no fee, compensation or commission pro-
40 hibited by this section has been or will be paid or in-
41 curred. The board may disapprove the charter applica-
42 tion on account of any violation of this section and order
43 the incorporators to restore any sum expended for other
44 than proper organizational expense. In addition, viola-
45 tions hereof shall constitute a misdemeanor offense
46 punishable as prescribed in section fifteen, article eight
47 of this chapter.

48 Unless otherwise provided in the charter, whenever
49 additional stock is offered for sale, stockholders of record
50 on the date of the offer shall have the right to subscribe
51 to such proportion of the shares as the stock held by
52 them bears to the total of the outstanding stock. This
53 right shall be transferable but shall terminate if not
54 exercised within sixty days of the offer. If the right be
55 not exercised, the stock shall not be offered for sale to
56 others at a lower price without the stockholders again
57 being accorded a preemptive right to subscribe. No bank-
58 ing institution shall sell its shares of stock at less than
59 par, but may sell its shares at such price above par as
60 may be set by the board of directors. The preemptive
61 rights of the stockholders, as provided in this paragraph,
62 shall not apply to any stock issued by a banking institu-
63 tion, to another bank or financial institution or the stock-
64 holders thereof, pursuant to a merger or consolidation
65 with such other bank or financial institution, or to author-
66 ized but unissued stock authorized by the charter of the
67 banking institution.

**§31A-4-5. Incorporation of state banks; requirements; proce-
dures.**

1 A state bank may be organized by five or more in-
2 corporators, a majority of whom shall be residents of the

3 state of West Virginia. Such banking institution shall
4 have as a part of its corporate name or title one or more
5 of the following words indicative of the business which
6 it is authorized to conduct, namely, "bank," "banking com-
7 pany," "banking association," "trust company," "banking
8 and trust company" or "bank and trust company."

9 The incorporators shall file with the board an agree-
10 ment of incorporation, in duplicate, following generally
11 the form prescribed by the secretary of state for charter-
12 ing corporations under provisions of article one of chapter
13 thirty-one of this code. The information set forth in the
14 agreement shall include the following:

- 15 (1) The name of the proposed bank;
- 16 (2) The community and county in which the bank is to
17 be located, together with the post office address of the
18 place of business of the bank;
- 19 (3) Whether such bank proposes also to engage in
20 the trust business;
- 21 (4) The name, residence and occupation of each in-
22 corporator, and the amount of capital stock subscribed
23 and paid for by each;
- 24 (5) The names of the persons who are to serve as
25 officers and directors of the banking institution and the
26 official position proposed to be held by each; and,
- 27 (6) The total authorized capital stock of the institu-
28 tion.

29 The agreement of incorporation shall be signed and
30 acknowledged by each of the incorporators and, when
31 filed with the board, shall be accompanied by the statu-
32 tory corporation charter fees, and an examination and
33 investigation fee of five hundred dollars payable to the
34 board. When transmitting the agreement to the board,
35 the incorporators shall designate by name and give the
36 address of the attorney, agent or other responsible party
37 with whom the board may communicate, on whom the
38 board may call for further information, and to whom the
39 board may officially report as to action on the agreement
40 so filed with him. The agreement shall constitute and
41 may be considered and treated by the board as an appli-
42 cation for the board's approval to incorporate and organ-
43 ize a banking institution in this state.

§31A-4-6. Board's examination and investigation.

1 (a) When an agreement of incorporation, fully com-
2 plying with the requirements of this article, has been
3 filed with the board, it shall promptly make or cause to
4 be made a careful examination and investigation rela-
5 tive to the following:

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

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

14 (3) The present and future ability of the community
15 to support the proposed bank and all other existing
16 banking and trust facilities and services in the com-
17 munity;

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

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

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

27 (1) Public convenience and advantage will be pro-
28 moted by the establishment of the proposed bank;

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

32 (3) The proposed capital structure is adequate;

33 (4) The proposed officers and directors have sufficient
34 banking experience and trust experience (if the bank
35 proposes to engage in the trust business), ability, charac-
36 ter and standing to assure reasonable promise of suc-
37 cessful operation;

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

41 (6) Provision has been made for suitable banking
42 house quarters in the community specified in the appli-
43 cation.

44 (c) In the course of its examination and investigation,
45 the board may call upon the attorney, agent or other re-
46 sponsible person representing the incorporators and upon
47 the incorporators for additional information and disclos-
48 ures it deems necessary in taking appropriate action on
49 and making proper disposition of the application.

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

1 The board shall complete its examination and investi-
2 gation within ninety days from and after the date on
3 which the agreement of incorporation is filed with it,
4 unless it requests in writing additional information and
5 disclosures concerning the proposed banking institution
6 from the incorporators, in which event the period of
7 ninety days shall be extended for an additional period
8 of thirty days.

9 Upon completion of such examination, the board shall
10 forthwith make and proceed to give notice, hold a hear-
11 ing and enter an order approving or disapproving the
12 application in the manner provided in section three,
13 article three of this chapter. Such order shall be accom-
14 panied by findings of fact and conclusions of law on which
15 such approval or disapproval is based. If no judicial
16 review of such order is sought in the time provided
17 therefor and (1) such order disapproves the application,
18 the agreement of incorporation, the corporation char-
19 tering fees, and any other papers filed therewith shall
20 thereupon be promptly returned to the attorney, agent
21 or other responsible person representing the incorporators
22 in the application or (2) if such order approves such
23 application, the agreement of incorporation with a cer-
24 tified copy of the board's order and the accompanying
25 corporation charter fees shall thereupon be transmitted
26 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

31 days after notice of his election, or at any time after
32 qualifying as such, sell or dispose of, or in any manner
33 hypothecate or pledge as security for a debt or obliga-
34 tion, such qualifying shares, or any number thereof,
35 necessary for his qualification, thereupon the remaining
36 directors shall elect another director in his stead. No
37 person shall serve as a director of any banking institu-
38 tion who has evidenced personal dishonesty and unfitness
39 to serve as such director by his conduct or practice with
40 another financial institution which resulted in a substan-
41 tial financial loss or damage thereto or who has been con-
42 victed 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-
2 quire good and sufficient fidelity bonds on all active
3 officers and employees, whether or not they draw salary
4 or compensation, which bonds shall provide for indemnity
5 to such bank on account of any losses sustained by it
6 as the result of any dishonest, fraudulent or criminal act
7 or omission committed or omitted by them acting inde-
8 pendently or in collusion or combination with any person
9 or persons. Such bonds may be in individual, schedule
10 or blanket form, and the premiums therefor shall be paid
11 by the bank.

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

17 (c) The directors shall be responsible for prescribing
18 at least once in each year the amount or penal sum of such
19 bonds or policies and the sureties or underwriters thereon,
20 after giving due and careful consideration to all known
21 elements and factors constituting such risk or hazard.
22 Such action shall be recorded in the minutes of the board
23 of directors and thereafter be reported to the commis-
24 sioner of banking.

§31A-4-10. List of stockholders; procedures.

1 The president, cashier, or other executive officer of
2 every state banking institution shall cause to be kept at

3 all times a full and correct list of the names and post
4 office addresses of all of the stockholders of the banking
5 institution, and the number of shares owned by each, in
6 the office where its business is transacted. Such list shall
7 be open to inspection by all of the stockholders of the
8 banking institution, and the officers authorized by law to
9 assess taxes, during business hours of each day, except
10 Sundays and holidays. A copy of such list shall be made
11 on the first Monday in July of each year and verified by
12 the oath of the president, cashier, or other executive
13 officer and immediately transmitted by mail to the com-
14 missioner of banking at his office.

§31A-4-11. Liability of stockholders.

1 Each stockholder of any state banking institution, in
2 addition to the liability imposed upon him as a stock-
3 holder of a corporation under the provisions of article
4 one of chapter thirty-one of this code, shall be liable to
5 the creditors of the banking institution, on obligations
6 accruing while he is a shareholder, to an amount equal
7 to the par value of the shares of stock held by him; and
8 no sale or transfer of the shares of stock made by any
9 such stockholder, after the liability of the banking insti-
10 tution originated or accrued, shall relieve the stockholder
11 from the liability imposed by this section. Any proceed-
12 ing to enforce the liability of stockholders imposed by
13 this section may be prosecuted severally against any one
14 stockholder or jointly against any number of stockholders.
15 But the additional liability imposed upon such stock-
16 holders by provisions of this section shall not apply with
17 respect to any such institution so long as such institution,
18 pursuant to law, has its deposits insured by the federal
19 deposit insurance corporation or by any other similar
20 federal instrumentality or agency hereafter created and
21 in existence for that purpose. Nor shall such additional
22 liability apply with respect to any banking institution
23 from and after the time it shall obtain from the commis-
24 sioner of banking a certificate setting forth that such
25 institution has, as ascertained by him, an unimpaired sur-
26 plus equal to at least fifty percent of the authorized
27 capital of such institution. Upon application by any state

28 banking institution to the commissioner of banking for
29 such certificate, the commissioner shall ascertain whether
30 such institution has in fact such unimpaired surplus, and
31 if such unimpaired surplus be found by him to exist, then
32 he shall issue such certificate. If impairment of such
33 surplus shall thereafter occur, such impairment shall not
34 impose further or additional liability upon the stock-
35 holders of such institution.

36 Nothing in this section shall affect or impair the au-
37 thority of the officers and directors of a banking institu-
38 tion to cause to be made good any impairment of the
39 capital of such institution, under the provisions of the
40 next succeeding section of this article.

**§31A-4-12. Impairment of capital forbidden; remedies; assess-
ments; sale of stock; procedures.**

1 The officers and directors of a state banking institution
2 shall not pay out, disburse or withdraw, or permit to be
3 paid out, disbursed or withdrawn, in any manner what-
4 ever, any part of the capital of the corporation except in
5 case of merger or consolidation, as hereinafter provided.
6 Whenever, from any cause, the capital of such banking
7 institution shall become impaired, it shall be the duty of
8 the officers and directors of such institution, forthwith,
9 to cause any such impairment to be made good, by as-
10 sessing the amount of the deficiency pro rata on the
11 shares of the capital stock outstanding, which assessments
12 shall be paid within thirty days after notice thereof. If
13 any stockholder shall neglect or refuse to pay the assess-
14 ment on his shares after thirty days' notice, it shall be
15 the duty of the board of directors to cause a sufficient
16 number of his shares of stock to be sold for cash, at
17 public sale at the banking room of the banking institution.

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

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

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

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

1 Any state banking institution shall have and exercise
2 all of the powers necessary for, or incidental to, the busi-
3 ness of banking, and, without limiting or restricting such
4 general powers, it shall have the right to buy or discount
5 promissory notes and bonds, negotiate drafts, bills of ex-
6 change and other evidences of indebtedness, borrow
7 money, receive deposits on such terms and conditions as
8 its officers may prescribe, buy and sell exchange, bank
9 notes, bullion or coin, loan money on personal or other
10 security, rent safe deposit boxes and receive on deposit,
11 for safekeeping, jewelry, plate, stocks, bonds and personal
12 property of whatsoever description and provide customer
13 services incidental to the business of banking, including
14 but not limited to the issuance and servicing of and lending
15 money by means of credit cards as letters of credit or
16 otherwise. Any banking institution may accept, for pay-
17 ment at a future date, drafts drawn upon it by its cus-
18 tomers, and issue letters of credit authorizing the holders
19 thereof to draw drafts upon it or its correspondents, at
20 sight or on time, not exceeding one year. Any such
21 banking institution may organize, acquire, own, operate,
22 dispose of, and otherwise manage wholly owned sub-
23 sidiary corporations for purposes incident to the banking
24 powers and services authorized by this chapter.

25 Any such banking institution may hereafter invest in
26 the capital stock of small business investment companies
27 chartered under the laws of this state, which are licensed
28 under the act of Congress known as the "Small Business
29 Investment Act of 1958," as amended. But in no event
30 shall any such bank hold shares in small business invest-
31 ment companies in any amount aggregating more than

32 two percent of the combined capital and surplus of such
33 banking institution.

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

39 (a) Such as shall be necessary for the convenient
40 transaction of its business, including in any buildings,
41 office space or other facilities to rent as a source of in-
42 come; such investment hereafter made shall not exceed
43 sixty-five percent of the amount of its capital stock and
44 surplus, unless the consent in writing of the commissioner
45 of banking is first secured;

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

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

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

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

59 Any real estate acquired by any such banking institu-
60 tion under clauses (c) and (d) shall be disposed of by the
61 banking institution at the earliest practicable date, but
62 the officers thereof shall have a reasonable discretion in
63 the matter of the time to dispose of such property in order
64 to save the banking institution from unnecessary losses.
65 In every case such property shall be disposed of within
66 five years from the time it is acquired by the banking
67 institution, unless an extension of time is given in writing
68 by the commissioner of banking.

69 No such banking institution shall hereafter invest more
70 than twenty percent of the amount of its capital and sur-
71 plus in furniture and fixtures, whether the same be in-

72 stalled in a building owned by such banking institution,
73 or in quarters leased by it, unless the consent in writing
74 of the commissioner of banking is first secured.

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

1 Every state banking institution which files the certifi-
2 cates required in the following section and which is
3 otherwise authorized to do so, shall have and exercise the
4 following powers:

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

7 (b) To act as trustee, assignee, special commissioner,
8 general or special receiver, guardian, executor, admini-
9 strator, committee, agent, curator, or in any other fidu-
10 ciary capacity, and to take, assume, accept and execute
11 trusts of every description not inconsistent with the cons-
12 titution and laws of the United States of America or of
13 this state; and to receive, hold, manage and apply any
14 sinking fund on the terms and for the purposes specified
15 in the instrument creating such fund;

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

18 (d) To make, hold and dispose of investments and
19 establish common trust funds, and account therefor, pur-
20 suant to the provisions of chapter forty-four of this code;

21 (e) To purchase and sell and take charge of and re-
22 ceive the rents, issues and profits of any real estate for
23 other persons or corporations;

24 (f) To act as trustee or agent in any collateral trust
25 and in order to secure the payment of any obligations of
26 any person, firm, private corporation, public corporation,
27 public body or public agency to receive and hold in trust
28 any items of personal property (including without limita-
29 tion notes, bonds, debentures, obligations and certificates
30 for shares of stock) with the right in case of default to sell
31 and dispose of such personal property and to collect,
32 settle and adjust any obligations for the payment of
33 money, and at any sale of such personal property held
34 by it, to purchase the same for the benefit of all or any of
35 the holders of the obligations, to secure the payment of

36 which such items of personal property were pledged and
37 delivered to the trustee or agent. Any such sale may be
38 made without any proceedings in any court, and at such
39 times and upon such terms as may be specified in the
40 instrument or instruments creating the trust, or, in the
41 absence of any specification of terms, at such time and
42 upon such terms as the trustee shall deem reasonable;
43 and,

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

47 All national banks having their principal offices in this
48 state which have been, or hereafter may be, authorized
49 under the laws of the United States to act as trustee and
50 in other fiduciary capacities in the state of West Virginia
51 shall have all the rights, powers, privileges and immuni-
52 ties conferred hereunder, provided they have a capital of
53 at least one hundred thousand dollars and comply with
54 the requirements hereof.

**§31A-4-15. Exercise of trust powers; certificate required;
penalties and action for violations.**

1 No banking institution shall exercise any of the trust
2 powers mentioned in the preceding section until it shall
3 have filed with the secretary of state and the commission-
4 er of banking a duly authenticated certificate, showing
5 the unimpaired capital of such institution to be at least
6 one hundred thousand dollars and a like duly authenti-
7 cated certificate shall be filed with the secretary of state
8 and the commissioner of banking in the month of January
9 of each year thereafter. If any such banking institution
10 shall exercise, or attempt to exercise, any such powers or
11 rights without having complied with the requirements
12 of this section as to the filing of such certificate, it shall
13 be guilty of a misdemeanor, and, upon conviction there-
14 of, shall be fined not more than five hundred dollars; and
15 in every such case, whether or not there shall have been
16 a prosecution or conviction of the company so offending,
17 the commissioner of banking, being satisfied of the facts,
18 may publish a notice of the fact that it has failed to com-
19 ply with the requirements of this section and is therefore

20 not entitled to exercise the trust powers and rights men-
21 tioned in the preceding section. In the event a notice is
22 published as aforesaid, it shall be published as a Class II
23 legal advertisement in compliance with the provisions of
24 article three, chapter fifty-nine of this code, and the
25 publication area for such publication shall be the county
26 in which such institution is located.

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

1 Every banking institution, authorized to engage in the
2 trust business, shall keep all trust funds and investments
3 separate and distinct from the assets owned by the cor-
4 poration; and shall keep a separate set of books and
5 records showing in proper detail all transactions so
6 engaged in; and all investments made by such institution
7 as fiduciary shall be so designated that the trust to which
8 such investments shall appertain or belong shall be
9 clearly and distinctly shown on the books of the insti-
10 tution; and such funds shall be held for the uses of the
11 trust designated and for the beneficiaries thereof, and
12 shall not be liable for any other obligations of the
13 institution.

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

1 Whenever any court, or the clerk thereof, shall appoint
2 any banking institution exercising trust powers, as trus-
3 tee, receiver, assignee, guardian, executor, administrator,
4 special commissioner, curator, committee, or in any other
5 fiduciary capacity to perform any duty or execute any
6 trust, the chairman of the board, the president, vice-
7 president, secretary, treasurer, trust officer or assistant
8 trust officer of such institution shall take the oath and
9 make the affirmation required by law of any such fidu-
10 ciary, before the court or the clerk thereof, or before
11 any other officer authorized to administer oaths.

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

1 Whenever any banking institution authorized to exer-
2 cise trust powers, and having complied with the require-
3 ments of this article, shall be appointed trustee, assignee,
4 receiver, guardian, executor, administrator, special com-
5 missioner, curator, committee, or in any other fiduciary

6 capacity, or shall be directed by the order or decree of
7 any court to execute any trust whatsoever, the capital
8 and other assets of the fiduciary corporation shall con-
9 stitute the security required by law for the faithful
10 performance of its duties and shall be absolutely liable
11 in case of any default whatsoever, but, where the lia-
12 bility under any such appointment as trustee, assignee,
13 receiver, guardian, executor, administrator, special com-
14 missioner, curator or committee, or, in the execution of
15 any trust by order or decree of any court, shall be equal
16 to, or shall exceed the capital and surplus of such fiduciary
17 corporation, the court making such appointment or en-
18 tering such order or decree may require, and the fiduciary
19 shall give, additional security. No bond shall be required
20 of any banking institution unless such additional security
21 is required.

§31A-4-19. Reports; publication.

1 Every state banking institution shall make at least
2 four reports each year to the commissioner of banking
3 upon his call therefor. Such reports shall be called for
4 as nearly as conveniently may be on the dates on which
5 the comptroller of the currency shall call for reports
6 by national banking associations, and be in such form
7 and contain such details as shall be prescribed by the
8 commissioner of banking. The reports shall be verified
9 by the oath of the president or active vice-president or
10 cashier and attested by the signatures of at least three
11 directors of the banking institution. Each report shall
12 show in detail, under appropriate heads, the resources
13 and liabilities of the banking institution at the close of
14 business on the date specified by the banking com-
15 missioner, and shall be transmitted to the commissioner
16 within ten days from the receipt of the request for the
17 same.

18 Such report, in the same form in which it is made to
19 the commissioner of banking, shall be published as a
20 Class I legal advertisement in compliance with the pro-
21 visions of article three, chapter fifty-nine of this code,
22 and the publication area for such publication shall be
23 the county in which the banking institution is located.

24 In lieu of such report and publication, the commissioner
25 of banking shall have discretion to accept from a banking
26 institution which is a member of the federal reserve
27 system a report, and the publication thereof required
28 of such banking institution by the federal reserve board,
29 or by its agency, provided that such report shall show in
30 detail, under appropriate heads, the resources and lia-
31 bilities of the banking institution at the close of business
32 on the day specified by the federal reserve board, or
33 by its agency, and shall contain such further details as
34 may be deemed necessary or desirable by the commis-
35 sioner of banking.

36 Any report and the publication thereof shall be at
37 the expense of the banking institution, and it shall fur-
38 nish to the commissioner of banking such proof of the
39 publication as may be required by him.

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

1 The stockholders of each state banking institution shall
2 meet annually and at such annual meeting it shall be the
3 duty of the cashier or other executive officer of such bank-
4 ing institution to prepare and submit to the stockholders
5 a clear and concise statement of the financial condition
6 of the corporation as of the close of business on the last
7 day of the month next preceding. At such meeting, the
8 stockholders present in person or by proxy shall elect an
9 examining committee composed of not less than three
10 nor more than five persons, each of whom shall be a stock-
11 holder in such banking institution. At such time or times
12 as it may be directed to do so by the written request of
13 the board of directors or the commissioner of banking,
14 such committee shall immediately proceed to examine
15 the condition of the bank and, upon completion of such
16 examination, shall file its report in writing with the board
17 of directors. Such report shall set forth in detail all items
18 included in the assets of the bank which the committee
19 has reason to believe are not of the value at which they
20 appear on the books and records of the bank, and shall

21 give the value of each of such items according to its judg-
22 ment. The board of directors shall cause such report to
23 be retained as a part of the records of the bank and shall
24 transmit a duly authenticated copy thereof to the com-
25 missioner of banking. With the consent and approval of
26 the stockholders, such committee may employ registered
27 or certified public accountants to make such examination
28 or make the same in conjunction with any official exami-
29 nation made by any supervisory authority. Any official
30 examiner of the department of banking may require the
31 presence of the examining committee or the executive
32 committee during his examination.

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

1 State banking institutions are authorized to do any act
2 necessary to obtain insurance of their deposits by the
3 United States or any agency or instrumentality thereof
4 including the federal deposit insurance corporation and
5 to acquire and hold membership in the federal reserve
6 system. Such banking institutions which are members
7 of the federal reserve system shall be vested with all
8 powers conferred upon members of such system by the
9 terms of the federal reserve act, as amended, as fully as
10 if such powers were specifically granted herein; and all
11 such powers shall be exercised subject to all restrictions
12 and limitations imposed by the federal reserve act, as
13 amended, or by regulations of the federal reserve board
14 made pursuant thereto. Any such banking institution
15 shall continue to be subject to the supervision and exami-
16 nations required by the laws of this state, except that the
17 federal reserve board or the federal deposit insurance
18 corporation shall have the right, if either deems it neces-
19 sary to make examinations; and the commissioner of
20 banking may disclose to the federal reserve board or the
21 federal deposit insurance corporation, or to examiners
22 duly appointed by either, all information in reference to
23 the affairs of any banking institution which has become,
24 or desires to become, a member of the federal reserve
25 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 main-
2 tain on hand as a reserve in lawful money of the United
3 States of America an amount equal to at least seven per-
4 cent of the aggregate of all of its deposits which are sub-
5 ject to withdrawal on demand and three percent of its time
6 deposits. Whenever the commissioner of banking shall
7 determine that the maintenance of sound banking prac-
8 tices or the prevention of injurious credit expansion or
9 contraction makes such action advisable, he may by rule
10 or regulation from time to time change such require-
11 ments as to reserves against demand or time deposits, or
12 both, but the reserves so prescribed shall in no event be
13 less than those specified in this section nor more than
14 twice those specified. Whenever such reserve shall fall
15 below that required, the institution shall not thereafter
16 make any new loan or investment until the required re-
17 serve shall be restored. For the purpose of computing
18 such reserve, all deposits requiring notice of thirty days
19 or more for withdrawal and time certificates of deposit
20 and Christmas savings shall be deemed time deposits, and
21 all checking accounts, certified checks, cashier's checks,
22 demand certificates of deposit and balances due other
23 banks shall be deemed demand deposits. But in lieu of
24 lawful money on hand, four-fifths of such reserve may
25 consist of balances payable on demand from any national
26 or state bank doing business in this state or solvent bank-
27 ing institutions in other states. The reserve balances re-
28 quired herein shall be computed on the basis of average
29 daily net deposit balances and average daily currency and
30 coin during biweekly periods. The required reserve
31 balance of each bank shall be computed at the close of
32 business each day based upon its net deposit balances and
33 currency and coin at the opening of business on the
34 same day. The biweekly period shall end at the close of
35 business on days to be fixed by the commissioner in his
36 promulgated rules and regulations. When, however, the
37 reserve computation period ends with a nonbusiness day,
38 or two or more consecutive nonbusiness days, such non-
39 business day or days may, at the option of the banking

40 institution, and whether or not it had a deficiency in re-
41 serve balances in such computation period, be included in
42 the next biweekly computation period.

43 The commissioner shall, by rule and regulation, require
44 regular reports from such banking institutions, which re-
45 ports shall be submitted at such times and contain such
46 information as will enable the commissioner to adequate-
47 ly supervise the maintenance of reserves under this sec-
48 tion. Penalties for any deficiencies in the required re-
49 serves of any banking institution shall be assessed month-
50 ly by the commissioner on the basis of average daily
51 deficiencies during each of the computation periods end-
52 ing in the preceding calendar month. Such penalties shall
53 be assessed at a rate of two percent per annum above the
54 lowest rate applicable to borrowings by member banks
55 from the federal reserve bank of the district in which
56 such deficient institution is located on the first day of the
57 calendar month in which the deficiencies occurred. Such
58 penalties shall be paid by the commissioner into the
59 treasury of the state of West Virginia and credited to
60 the general fund.

61 Compliance on the part of any such banking institu-
62 tion which is a member of the federal reserve system with
63 the reserve requirements of the federal reserve act, as
64 amended, shall be full compliance with the provisions
65 hereof. No such member bank shall be required to carry
66 or maintain a reserve other than such as required under
67 terms of the federal reserve act, as amended.

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

1 Any state banking institution may borrow money, redis-
2 count any of its notes, or borrow bonds for the use of
3 the bank in order to meet any emergency that may arise.
4 The books and accounts of such banking institutions shall
5 at all times show the amount of such borrowed money,
6 bonds or rediscounts. No officer, director or employee of
7 any such banking institution shall issue the note of such
8 banking institution for borrowed money, or rediscount any
9 note or pledge any of the assets of such banking institution

10 except when authorized by resolution of the board of
11 directors of such banking institution.

12 A banking institution, when authorized by resolution of
13 the board of directors thereof, may borrow money from
14 and contract with any federal agency or instrumentality
15 created and existing pursuant to an act of the Congress of
16 the United States, or any other person or persons, and may
17 pledge, hypothecate, assign or rediscount to any such fed-
18 eral agency or instrumentality, or to any other person or
19 persons, any assets or securities belonging to the banking
20 institution in such manner or form as may be approved by
21 its board of directors, and subject to any terms or condi-
22 tions imposed in connection therewith, as collateral secur-
23 ity for the payment of any and all such loans. An accurate
24 record of all securities and exact copies of all notes with-
25 drawn from the files of such banking institutions, to be
26 pledged as collateral for borrowed money or other pur-
27 poses, shall be kept in the files of such banking institution
28 at all times.

29 It shall be unlawful for any such banking institution to
30 issue its certificate of deposit for purposes of borrowing
31 money or to pledge or hypothecate more than two dollars
32 of the book value of any of its assets for each one dollar
33 of borrowed money.

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

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

1 With the written approval of the commissioner of bank-
2 ing and with the approval of its board of directors and
3 stockholders, any banking institution may at any time is-
4 sue and sell either its non-convertible capital notes or non-
5 convertible debentures or both its non-convertible capital
6 notes and non-convertible debentures. In connection with
7 his approval or disapproval of the issuance of the notes or
8 debentures, the commissioner of banking shall take into
9 consideration the financial condition of the banking insti-

10 tution, the need of expanded banking capital in the town,
11 city or community in which the banking institution is lo-
12 cated, the objects and purposes to be accomplished by is-
13 suance of the notes or debentures, and such other econo-
14 mic and monetary factors as he, in his judgment and dis-
15 cretion, may deem to be proper bases for his action.

16 The word "capital," as used in the laws of this state
17 relating to banking, shall be construed to include the
18 amount of outstanding capital notes and debentures
19 legally issued by the banking institution for all purposes.
20 Such capital notes and debentures shall be subordinate
21 and subject to the claims of depositors and may be sub-
22 ordinated and subjected to the claims of other creditors,
23 but shall in no case be subject to any assessment. The
24 holders of such capital notes and debentures shall not
25 be held individually responsible as such holders for any
26 debts, contracts, or engagements of the banking insti-
27 tution, and shall not be held liable for assessments to
28 restore any impairments in the institution's capital. The
29 capital stock of the banking institution shall not be
30 considered to be impaired when the amount of such
31 capital notes and debentures as represented by cash or
32 sound assets exceeds any impairment found by the com-
33 missioner of banking. If any such impairment in the
34 institution's capital be found by the commissioner of
35 banking, before any such capital notes or debentures are
36 retired or paid by the bank, any existing deficiency of
37 the bank's capital, disregarding the notes or debentures,
38 must be paid in cash, to the end that the sound capital
39 assets shall at least equal the capital stock of the bank-
40 ing institution.

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

1 The directors of any banking institution may declare
2 and pay cash dividends. Before the declaration of any
3 such dividend, at least one-tenth part of the net profits
4 of the preceding calendar year shall be carried to its
5 surplus fund until the same shall equal fifty percent of
6 the amount of its capital stock. No such dividend shall
7 be declared, except from earnings remaining after de-
8 ducting all losses, all sums due for expenses, and all

9 overdue debts upon which no interest has been paid for
10 a period of six months, unless the same are well secured,
11 and in process of collection and such other items as the
12 commissioner of banking may direct. Any director voting
13 to pay any cash dividend, in violation of the provisions
14 of this section, shall be personally liable to the creditors
15 of such banking institution for any loss occasioned there-
16 by, and shall be guilty of a misdemeanor.

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

1 The total liabilities to any banking institution of any
2 person, partnership, association or corporation under evi-
3 dences of indebtedness and agreements for the payment
4 of money, including in the liabilities of a partnership the
5 liabilities of the several members thereof, except limited
6 partners, and including in the liabilities of any corpora-
7 tion an investment by such banking institution in the
8 stock of such corporation, shall at no time exceed ten
9 percent of the unimpaired capital and surplus fund of
10 such banking institution. But such limitation of ten per-
11 cent shall be subject to the exceptions hereinafter stated:

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

15 (1) The sale of federal funds;

16 (2) Obligations arising out of the discount of com-
17 mercial or business paper actually owned by the person,
18 partnership, association or corporation negotiating the
19 same;

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

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

27 (5) Obligations in the form of banker's acceptances of
28 other banks of the kind described in section thirteen of
29 the federal reserve act;

30 (6) Obligations of the United States or general obliga-
31 tions of any state or political subdivision thereof, when
32 there has been no default in the payment of interest or
33 principal in respect of the general obligations of any such
34 state or political subdivision within ten years prior to the
35 purchase of such obligations, bonds or obligations issued
36 under authority of the West Virginia bridge commission
37 or the state road commission, commonly known as bridge
38 revenue bonds, or obligations issued under authority of
39 the Federal Farm Loan Act, as amended, or under the
40 authority of the "Farm Credit Act of 1933," as amended,
41 or issued by the Federal National Mortgage Association,
42 Government National Mortgage Association or the Fed-
43 eral Home Loan Bank, or any loans or obligations to the
44 extent that they are secured or covered by guaranties or
45 by commitments or agreements to take over or to purchase
46 the same or to provide funds for the payment thereof,
47 made by any federal reserve bank or by the United States
48 or any department, board, bureau, agency, association,
49 commission or establishment of the United States, includ-
50 ing any corporation wholly owned, directly or indirectly,
51 by the United States;

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

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

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

62 (1) Obligations in the form of notes, secured by not
63 less than a like amount of bonds or notes of the United
64 States issued since April twenty-fourth, one thousand
65 nine hundred seventeen, or certificates of indebtedness
66 of the United States, treasury bills of the United States,
67 or obligations fully guaranteed both as to principal and
68 interest by the United States, shall be subject under this
69 section to a limitation of thirty-five percent of such un-

70 impaired capital and surplus fund, in addition to such
71 ten percent of such capital and surplus fund;

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

78 (3) Obligations in the form of notes or drafts secured
79 by shipping documents, warehouse receipts or other such
80 documents transferring or securing titles covering readily
81 marketable, nonperishable staples when such property is
82 fully covered by insurance, if it is customary to insure
83 such staples, shall be subject to a limitation of ten percent
84 of the unimpaired capital and surplus fund, in addition
85 to such ten percent of such capital and surplus fund, when
86 the market value of such staples securing such obligations
87 is not at any time less than one hundred fifteen percent
88 of the face amount of such obligations; and such limita-
89 tions may be increased up to thirty-five percent of such
90 unimpaired capital and surplus fund, in addition to such
91 ten percent thereof, with a corresponding increase in
92 market value of such staples securing such obligations up
93 to not less than one hundred forty percent of the face
94 amount of such additional obligations, but this exception
95 shall not apply to obligations of any one person, partner-
96 ship, association, or corporation arising from the same
97 transaction or secured upon the identical staples for more
98 than ten months.

99 No officer, director, clerk or other employee of any
100 banking institution or the commissioner of banking or
101 any employee of the department of banking shall borrow,
102 directly or indirectly, from the banking institution with
103 which he is connected, or which is subject to examination
104 by the commissioner of banking, any sum of money with-
105 out the approval of a majority of the board of directors
106 or discount committee of the banking institution, or of
107 any duly constituted committee whose duties include
108 those usually performed by a discount committee, em-
109 bodied in a resolution adopted by a majority vote of

110 such board or committee, exclusive of the director to
111 whom the loan is made. If any officer, clerk or other em-
112 ployee of any bank shall own or control a majority of the
113 stock of any other corporation, a loan to such corporation
114 shall, for the purpose of this section, constitute a loan to
115 such officer, clerk or other employee.

116 Securities purchased by a banking institution shall be
117 entered upon the books of the bank at actual cost. For the
118 purpose of calculating the undivided profits applicable to
119 the payment of dividends, securities shall not be valued
120 at a valuation exceeding their present cost as determined
121 by amortization, that is, by deducting from the cost of a
122 security purchased at a premium, and charging to profit
123 and loss a sum sufficient to bring it to par at maturity.

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

1 Banking institutions are authorized:

2 (a) To make such loans and advances of credit and
3 purchases of obligations representing loans and advances
4 of credit as are eligible for insurance or guaranty by the
5 federal housing commissioner or United States admini-
6 strator of veterans' affairs, or by any other officer, depart-
7 ment, agency or instrumentality of the United States for
8 the purpose of financing alterations, repairs and improve-
9 ments upon real property, and to obtain such insurance or
10 guaranty; and,

11 (b) To make such loans secured by real property or
12 leasehold as the federal housing commissioner or ad-
13 ministrator of veterans' affairs or any other officer, depart-
14 ment, board, bureau, commission, agency or instrumental-
15 ity of the United States insures or guarantees or makes
16 a commitment to insure or guarantee and to obtain such
17 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.**

1 It shall be lawful for banking institutions to invest
2 their funds and the monies in their custody or possession
3 eligible for investment, in notes, bonds or other obliga-

4 tions secured by mortgages or deeds of trust insured or
 5 guaranteed by the federal housing commissioner or United
 6 State administrator of veterans' affairs or by any other
 7 officer, department, agency or instrumentality of the
 8 United States and in notes, bonds, debentures and other
 9 obligations and securities issued by, insured by, or guar-
 10 anteed by the federal housing commissioner, federal na-
 11 tional mortgage association or government national
 12 mortgage association or in other federal agencies securi-
 13 ties.

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

**§31A-4-29. Application of other laws to certain loans and in-
 vestments.**

1 No law of this state prescribing the security upon which
 2 loans or investments may be made or the nature, amount,
 3 or form of such security, or prescribing or limiting the
 4 period for which loans or investments may be made shall
 5 be deemed to apply to loans or investments made pur-
 6 suant to the provisions of the two preceding sections of
 7 this article by banking institutions or by any person pur-
 8 suant to the provisions of section five, article one of this
 9 chapter; and no law limiting interest rates upon loans
 10 or investments shall be deemed to apply to any such
 11 loans or investments.

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

1 In addition to the interest rate provided in article six
 2 of chapter forty-seven of this code and elsewhere by law,
 3 a banking institution may charge and collect a reason-
 4 able amount to cover the expenses incurred in procuring
 5 reports and information respecting loans and the value
 6 of and title to property offered as security therefor,
 7 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

17 any bond is found to be inadequate or insufficient, written
18 notice of the inadequacy or insufficiency shall be given
19 to the banking institution, and it shall be the responsi-
20 bility of the banking institution to act promptly to correct
21 the same by executing a new bond or enlarging and
22 correcting the coverage of the existing bond, or by taking
23 such other action as may be required.

24 The commissioner of banking, with the approval of
25 the attorney general, shall prescribe the form of the
26 uniform and continuing type of depository bonds as
27 authorized by this section.

28 Notwithstanding any provision of any such law, ordi-
29 nance, order, rule, regulation or resolution requiring se-
30 curity for such deposits in the form of collateral, surety
31 bond or other assets or documents, security for such
32 deposits shall not be required to the extent such deposits
33 are insured by the federal deposit insurance corporation.

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

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

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

10 (2) An individual or group of individuals who are
11 authorized to draw on or control the account or property
12 pursuant to a certified corporate resolution or other writ-
13 ten arrangement with the customer, currently on file
14 with the institution, which:

15 (A) Has not been revoked by valid corporate action
16 in the case of a corporation, or by a valid agreement or
17 other valid action appropriate for the form of legal or-
18 ganization of any other customer, of which the institu-
19 tion has received notice, and,

20 (B) Is not the subject of a dispute known to the in-
21 stitution as to its original validity.

22 (b) To require an institution to recognize an adverse
23 claim to, or adverse claim of authority to control, a
24 deposit account or property held in safe-deposit, who-
25 ever makes the claim must either:

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

32 (2) Deliver to the institution a bond, in form and
33 amount and with sureties satisfactory to the institution,
34 indemnifying the institution against any liability, loss,
35 damage, cost or expense, including reasonable attorney
36 fees, which it might incur because of its recognition of
37 the adverse claim or because of its refusal by reason
38 of such claim to honor any check or other order of, or
39 to deliver any property to anyone described in subdi-
40 visions (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
2 any person describing himself in making such deposit as
3 trustee for another, and no other or further notice of the
4 existence and terms of a legal and valid trust than such
5 description shall be given in writing to the banking in-
6 stitution, in the event of the death of the person so de-
7 scribed as trustee, such deposit, or any part thereof, to-
8 gether with the interest thereon, may be paid to the
9 person for whom the deposit was thus stated to have
10 been made.

11 When a deposit is made by any person in the name of
12 such depositor and another or others and in form to be
13 paid to any one of such depositors, or the survivor or
14 survivors of them, such deposit, and any additions there-
15 to, made by any of such persons, upon the making there-
16 of, shall become the property of such persons as joint
17 tenants; and the same, together with all interest thereon,
18 shall be held for the exclusive use of the persons so
19 named, and may be paid to any one of them during

20 the lifetime of them, or to the survivor or survivors after
21 the death of any of them; and such payment and the re-
22 ceipt or the acquittance of the one to whom such pay-
23 ment is made shall be a valid and sufficient release and
24 discharge for all payments made on account of such
25 deposit, prior to the receipt by the banking institution of
26 notice in writing, signed by any one of such joint tenants
27 not to pay such deposit in accordance with the terms
28 thereof.

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

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

**§31A-4-35. Reproduction of checks and other records; disposi-
tion of originals; admissibility in evidence.**

1 Any banking institution may cause to be copied or
2 reproduced by any photographic, photostatic, micro-
3 photographic or other miniature photographic process,
4 all or any number of its checks, and all or any part of its
5 documents, books, records, correspondence and all other
6 instruments, papers and writings, in any manner relating
7 to the operation of its business, other than its notes, bonds,
8 mortgages and other securities and investments, and may
9 substitute such copies or reproductions either in positive
10 or negative form for the originals thereof. Thereafter, such
11 copy or reproduction in the form of a positive print there-
12 of, shall be deemed for all purposes to be an original
13 counterpart of and shall have the same force and effect
14 as the original thereof and shall be admissible in evidence
15 in all courts and administrative agencies in this state, to
16 the same extent, and for the same purposes as the origi-
17 nal thereof, and the banking institution may destroy or
18 otherwise dispose of the original. But every banking
19 institution shall retain either the originals or such copies
20 or reproductions of its records of final entry, including,

21 without limiting the generality of the foregoing, cards
22 used under the card system and deposit tickets for de-
23 posits made, for a period of at least six years from the
24 date of the last entry on such books or the date of making
25 of such deposit tickets and card records, or, in the case
26 of a banking institution exercising trust or fiduciary pow-
27 ers, until the expiration of six years from the date of
28 termination of any trust or fiduciary relationship by a
29 final accounting, release, court decree or other proper
30 means of termination.

31 All circumstances surrounding the making or issuance of
32 such checks, documents, books, records, correspondence
33 and other instruments, papers or writings, or the photo-
34 graphic, photostatic or microphotographic copies or re-
35 productions thereof, when the same are offered in evi-
36 dence, may be shown to affect the weight but not the
37 admissibility thereof.

38 Any device used to copy or reproduce such documents
39 and records shall be one which correctly and accurately
40 reproduces the original thereof in all details and film
41 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-
2 count available to its customer in the manner provided
3 in section four hundred six, article four, chapter forty-
4 six of this code, such customer shall, with respect to errors
5 in said account, have the same duties and shall be bound
6 by the same rules, preclusions and limitations as are
7 provided in said section four hundred six with respect
8 to any alteration of an item.

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

1 Any state banking institution or institutions, or institu-
2 tion or institutions jointly with a national banking asso-
3 ciation or associations, owning, leasing or renting, directly
4 or through a subsidiary corporation wholly owned by it
5 or them, computer, bookkeeping, or other like or similar
6 machines or equipment for its or their own business opera-
7 tions, may contract for the sale of and sell the services,

8 use and products of the machines or equipment to other
9 financial institutions and businesses, upon such terms and
10 conditions as may be the subject of agreement between
11 the parties, but only when the use and services of the
12 machines and equipment are not employed in the orderly
13 operations of such banking institution, institutions, asso-
14 ciation or associations.

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

1 Banking institutions may, subject to rules and regula-
2 tions promulgated by the commissioner of banking, ac-
3 quire and lease personal property pursuant to a binding
4 arrangement for the leasing of such property to any per-
5 son upon terms requiring payment to the institution, dur-
6 ing the minimum period of the lease, of rentals which in
7 the aggregate will exceed a reasonable estimate of the
8 total expenditures to be made by the institution for or in
9 connection with the acquisition, ownership, maintenance
10 and protection of the property.

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

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

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

1 (a) In addition to Sundays and legal holidays any
2 banking institution may remain closed on any one fixed
3 week-day or portion of such day in each calendar week,
4 or on any one fixed week-day and a portion of another
5 week-day in each calendar week, or on portions of two
6 week-days in each calendar week, which day and/or por-
7 tion or portions of the day or days when the institution is
8 to remain closed shall be designated by a resolution
9 adopted by the board of directors thereof. Not less than
10 fifteen nor more than thirty days in advance of closing on
11 any such week-day and/or portion of one or more week-
12 days, such banking institution shall post a notice in a
13 conspicuous place in its banking room stating that on or

14 after a day certain and until further notice given in like
15 manner, such banking institution will remain closed on a
16 fixed week-day and/or portion of one or more week-days.
17 Concurrently with the posting of such notice, such bank-
18 ing institution shall cause a notice to be published as a
19 Class II legal advertisement in compliance with the pro-
20 visions of article three, chapter fifty-nine of this code,
21 and the publication area for such publication shall be the
22 county in which the principal office of such bank is
23 located. Such notice shall set forth the time or times on
24 which said bank will remain closed and the date when
25 such closing becomes effective. A certified copy of such
26 resolution certified by the cashier or secretary of such
27 banking institution, together with an affidavit of posting
28 and proof of publication of the notice herein required
29 shall be filed with the commissioner of banking.

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

36 (c) Any fixed week-day and/or portion of one or more
37 week-days on which any banking institution shall elect to
38 close and any period during which the commissioner may
39 permit it to close pursuant to the authority of this section
40 shall constitute a legal holiday with respect to such bank-
41 ing institution and not a business day or banking day
42 for the purposes of the law relating to negotiable instru-
43 ments, and any act or contract authorized, required or per-
44 mitted to be carried out or performed at, by or with re-
45 spect to such banking institution may be performed on
46 the next business or banking day, and no liability or loss
47 of rights on the part of any person or banking institu-
48 tion shall result therefrom.

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

1 The board may, by and with the consent of the gover-
2 nor, permit or require any state bank or any number or all
3 of such banks to:

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

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

**§31A-4-42. Unlawful for persons other than banking institu-
tions to engage in the banking business; penal-
ties.**

1 No person except banking associations chartered and
2 authorized to conduct a banking business in this state
3 under the laws of the United States of America and
4 having their principal places of business in this state, and
5 state banking institutions which hold a permit, license
6 or certificate to engage in such business issued by the
7 commissioner under the provisions of section five, ar-
8 ticle two of this chapter, shall engage in the business of
9 banking or the trust business in the state of West Vir-
10 ginia, or shall receive or accept deposits of money, or
11 borrow money by receiving and giving credits for de-
12 posits, or by issuing certificates of deposits or certificates
13 of indebtedness, or by making and negotiating any writ-
14 ing purporting to be a bond, contract, or other obligation,
15 the performance of which requires the holder or other
16 party to make deposits of money with the issuer, or
17 receive or accept deposits by means of any other plan,
18 pretext, scheme, shift or device.

19 Nothing contained in this section shall affect the rights,
20 privileges, objects or purposes delegated to other cor-
21 porations by the general corporation law or other laws
22 of this state.

23 Any corporation or individual who violates any of the
24 provisions of this section shall be guilty of a misdemeanor,
25 and, upon conviction, shall be fined not more than five
26 thousand dollars, and, in addition to such penalty, every
27 corporation so offending shall forfeit its corporate fran-
28 chise, and every individual so offending shall be subject
29 to a further penalty by confinement in jail for not more
30 than one year.

ARTICLE 5. BANK SERVICE CORPORATIONS AND BANK SERVICES.**§31A-5-1. Definitions.**

1 For the purposes of this article: "bank services," means
2 services such as check and deposit sorting and posting,
3 computation and posting of interest and other credits
4 and charges, preparation and mailing of checks, state-
5 ments, notices and similar items, or any other clerical,
6 bookkeeping, accounting, statistical, or similar functions
7 performed for a state bank or a national banking associa-
8 tion and the sale of the services, use and products of
9 machines and equipment as permitted by section thirty-
10 seven, article four of this chapter; "bank service corpora-
11 tion" means a corporation organized under the laws of
12 this state to perform bank services for two or more
13 banking institutions, each of which owns part of the
14 capital stock of such corporation, and the sale of the
15 services, use and products of machines and equipment as
16 permitted by section thirty-seven, article four of this
17 chapter; and "invest" means any advance of funds to a
18 bank service corporation, whether by the purchase of
19 stock, the making of a loan, or otherwise, except the
20 payment for rent earned, goods sold and delivered, or
21 services rendered prior to the making of such payment.

§31A-5-2. State bank investment in bank service corporations.

1 Notwithstanding any other provision of law, any state
2 bank is hereby authorized to invest not more than ten
3 percent of its paid-in and unimpaired capital and unim-
4 paired surplus in a bank service corporation. If stock in
5 a bank service corporation has been held by two state
6 banks, or by one such bank and one national banking
7 association and one state bank or such association ceases
8 to utilize the services of the corporation and ceases to
9 hold stock in it, and leaves a state bank as the sole stock-
10 holder, the bank service corporation may nevertheless
11 continue to function as such and such state bank may
12 continue to hold stock in such corporation.

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

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

11 (a) Issuing stock to the applying bank and furnishing
12 bank services to it on the same basis as to the stock-
13 holding banks, or

14 (b) Furnishing bank services to the applying bank at
15 rates no higher than necessary to reflect fairly the cost
16 of such services, including the reasonable cost of the
17 capital provided to the corporation by the stockholding
18 banks, at the corporation's option, unless comparable
19 services at competitive overall costs are available to the
20 applying bank from another source, or unless the fur-
21 nishing of the services sought by the applying bank would
22 be beyond the practical capacity of the bank service cor-
23 poration. In any action or proceeding to enforce the
24 duty imposed by this section or for damages for the
25 breach thereof, the burden shall be upon the bank
26 service corporation to show the availability of such com-
27 parable services or that the furnishing of such services
28 would be beyond the practical capacity of the bank
29 service corporation.

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

1 No bank service corporation may engage in any ac-
2 tivity other than the performance of bank services.

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

1 No state bank may cause to be performed, by contract
2 or otherwise, any bank services for itself, whether on or
3 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

8 be kept separate and apart from the assets of such bank
9 and assets held in other fiduciary capacities;

10 (c) Secure from such nominee or nominees such en-
11 dorsements, assignments or other writings as may be
12 necessary to effect retransfer of the securities or other
13 evidences of ownership without notice, and such en-
14 dorsements, assignments or other writings shall be valid
15 and effective as of the date of delivery thereof whether
16 the nominee die before transfer is perfected, or not;

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

21 (e) Clearly show in all of its reports and accounts the
22 form of registration under which such securities or evi-
23 dences of ownership are held.

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

1 Any such bank which places property in nominee reg-
2 istration under this article shall be absolutely liable in
3 civil actions or suits for any or all loss or damage to its
4 fiduciary account or the beneficiaries thereof occasioned
5 by the acts of any of its nominees, or any of its agents,
6 employees, or other persons acting for it with respect to
7 such property, including reasonable attorney fees.

8 Any bank or its officers, employees, nominees or agents
9 placing property in nominee registration in violation of
10 any of the provisions of this article shall be guilty of a
11 misdemeanor, and, in addition to civil liability for resti-
12 tution, shall be punished by a fine of not less than fifty
13 dollars nor more than one thousand dollars.

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

1 No liability for any loss caused by the acts of the nomi-
2 nee of a bank shall attach to any transfer agent, registrar,
3 corporation, officer or agent of a corporation, or other per-
4 son, who, in compliance with the directions of any such
5 bank acting under the provisions of this article, trans-
6 fers or changes the registration of any such property.
7 The certification of the bank that it has complied with
8 the provisions of this article shall be prima facie evidence

9 of its compliance so far as any such transfer agent, regis-
10 trar, corporation, officer or agent of a corporation, or
11 other person, is concerned.

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

1 No bank shall cause or permit the use of its name or
2 the name of its nominee or nominees for the purpose of
3 registering property to evade, avoid, minimize or relieve
4 itself or any other person, firm or corporation, or the
5 property, from taxation.

ARTICLE 7. CHANGES IN STRUCTURE AND STATUS.

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

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

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

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

20 (d) During the period that such conservator remains
21 in possession of such state bank, the legal relations of
22 all parties with respect thereto shall, subject to the other
23 provisions of this section, be the same as if a receiver had
24 been appointed therefor.

25 (e) All expenses of any such conservatorship shall be
26 paid out of the assets of such state bank and shall be
27 a lien thereon, which shall be prior to any other lien. The

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

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

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

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

67 (i) Deposits received while the state bank is in the
68 hands of a conservator shall: (1) Be kept on hand in

69 cash, or (2) be deposited with a federal reserve bank or
70 deposited with such banking institution as the commis-
71 sioner of banking may, in his discretion, designate, or (3)
72 be invested in the direct obligations of the United States
73 or the state of West Virginia or the funded obligations of
74 any political subdivision of this state approved by the
75 commissioner of banking.

76 (j) In any reorganization of any state bank under a
77 plan of a kind which, by its own terms or under existing
78 law, requires the consent, as the case may be, of deposi-
79 tors and other creditors, or of stockholders, or of both
80 depositors and other creditors, and stockholders, such re-
81 organization shall become effective only when the com-
82 missioner of banking shall be satisfied that the plan of
83 reorganization is fair and equitable to all depositors,
84 other creditors and stockholders, and that the plan is in
85 the public interest and shall have approved the plan sub-
86 ject to such conditions, restrictions and limitations as
87 he may prescribe; and when, after reasonable notice
88 of such reorganization, as the case may require, deposi-
89 tors and other creditors of such banking institution rep-
90 resenting at least seventy-five percent in amount of its
91 total deposits and other liabilities; or stockholders own-
92 ing at least two-thirds in amount of its outstanding capi-
93 tal stock; or both depositors and other creditors repre-
94 senting at least seventy-five percent in amount of the
95 total deposits and other liabilities and stockholders own-
96 ing at least two-thirds in amount of its outstanding capital
97 stock, shall have consented in writing to the plan of re-
98 organization. Claims of depositors or other creditors
99 which will be satisfied in full under the plan of reorgani-
100 zation shall not be included among the total deposits and
101 other liabilities of said banking institution in determining
102 the seventy-five percent thereof as above provided.

103 (k) When such reorganization becomes effective, all
104 books, records, and assets of the bank shall be disposed
105 of in accordance with the provisions of the plan and the
106 affairs of the bank shall be conducted by its board of
107 directors in the manner provided by the plan and under
108 the conditions, restrictions and limitations which may
109 have been prescribed by the banking commissioner. In

110 any reorganization which shall have been approved and
111 shall have become effective as provided herein, all de-
112 positors and other creditors and stockholders of such
113 bank, whether or not they shall have consented to such
114 plan of reorganization, shall be fully and in all respects
115 subject to and bound by its provisions, and claims of
116 all depositors and other creditors shall be treated as if
117 they had consented to such plan of reorganization.

118 (1) Fifteen days after the affairs of a state bank shall
119 have been turned back to its board of directors by the
120 conservator, either with or without a reorganization as
121 provided in subsection (j) of this section, the provisions
122 of subsections (h) and (i) of this section shall no longer
123 be effective. Before the conservator shall turn back the
124 affairs of the institution to its board of directors he shall
125 publish a notice, in form approved by the commissioner,
126 stating the date on which the affairs of the banking in-
127 stitution will be returned to its board of directors and
128 that the said provisions of subsections (h) and (i) will
129 not be effective fifteen days after such date. Such notice
130 shall be published as a Class I legal advertisement in
131 compliance with the provisions of article three, chapter
132 fifty-nine of this code, and the publication area for such
133 publication shall be the county in which such bank is
134 located. On the date of the publication of such notice
135 the conservator shall send a copy of such notice by regi-
136 stered mail to the last known address of every person
137 who is a depositor as shown by the records of the in-
138 stitution. The conservator shall send similar notice in like
139 manner to every person making a deposit in such insti-
140 tution under subsection (h) after the date of such news-
141 paper publication and before the time when the affairs
142 of the bank are returned to its directors.

143 (m) Nothing in this section shall be construed to im-
144 pair in any manner any powers of the governor or the
145 commissioner of banking.

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

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

1 If the commissioner of banking shall ascertain from
2 any source that the capital of any financial institution is
3 substantially impaired, and any such institution, upon
4 notice from him, does not promptly make good such im-
5 pairment, or if the commissioner shall ascertain from any
6 source that any such financial institution is insolvent, he
7 shall have authority to appoint an employee of the de-
8 partment of banking receiver thereof to take charge of
9 the papers, books, records, moneys and assets of every
10 description of such institution; and immediately upon
11 taking charge of any such institution, the commissioner
12 of banking and a representative of such institution desig-
13 nated by the directors thereof shall make in triplicate a
14 complete inventory of all assets and an itemized list of
15 all liabilities of such institution. The original and two
16 copies of such list shall be subscribed and sworn to by
17 the persons making the same and the original shall be
18 retained by the commissioner and one copy shall be fur-
19 nished such receiver and one copy to such institution, and
20 such receiver, upon assuming office, shall open and keep
21 such books and records as are prescribed by the commis-
22 sioner of banking.

23 In addition to all other powers vested in him, such re-
24 ceiver shall have all the powers vested in special receiv-
25 ers by general law. The receiver, with the approval of
26 the commissioner of banking, shall institute and prosecute
27 any action or actions necessary to obtain possession of any
28 property and to sell and dispose of the same and to collect
29 all obligations due such institution and wind up the affairs
30 of such institution. The receiver in such action, or by
31 separate actions, with the approval of the commissioner
32 of banking, shall enforce against the officers, directors
33 and stockholders any liability incurred by them and exist-
34 ing in favor of the creditors of such institution, and collect
35 from such officers, directors and stockholders any sums
36 for which they are liable as aforesaid. He shall also
37 defend any actions brought against such institution.

38 If it shall appear that the assets of any such insolvent
39 financial institution are not sufficient to pay in full all of
40 its creditors and depositors, without waiting to administer
41 the assets of such institution, or delaying for any other
42 cause, the receiver, with the approval of the commis-
43 sioner, shall forthwith institute any action or actions
44 necessary to collect from each of the several stockholders
45 of such institution all sums for which they are severally
46 liable to such institution, for the benefit of its creditors.
47 Any action or proceeding instituted by the receiver under
48 this or any other section of this article may be instituted
49 in the receiver's name, the name of the commissioner of
50 banking or the name of the financial institution, as the
51 commissioner may direct.

52 In connection with the administration of the assets of
53 any such institution, any such receiver may bring an
54 action in the circuit court of the county where such insti-
55 tution is located, to ascertain the several depositors and
56 creditors of such institution and the amounts and priorities
57 of their respective claims. In any such action instituted
58 by a receiver the financial institution and all the stock-
59 holders thereof and all of the creditors and depositors
60 thereof, or a representative number of such creditors and
61 depositors determined in accordance with the provisions
62 of rule 23 of the West Virginia rules of civil procedure,
63 shall be made parties defendant and all persons who
64 theretofore filed proofs of claims against such institution
65 with the commissioner of banking or receiver or there-
66 after file such proofs of claim in such action shall be
67 deemed defendants as though they had been specifically
68 named as defendants therein. The court shall refer the
69 cause to a commissioner of that court who shall thereupon
70 cause to be published a notice to all depositors and credi-
71 tors of such financial institution requiring them to present
72 their claims to such court commissioner for allowance.
73 Such notice shall be published as a Class II legal adver-
74 tisement in compliance with the provisions of article
75 three, chapter fifty-nine of this code, and the publication
76 area for such publication shall be the county wherein the
77 suit is pending. After publication of such notice is com-
78 pleted, such court commissioner shall proceed as promptly

79 as possible to ascertain and report the several depositors
80 and creditors of such institution and the amounts and
81 priorities of their respective claims, proven before him.
82 All claims as shall have been duly proved and allowed
83 by the receiver or the commissioner of banking, before
84 the decree of reference, may be allowed and reported by
85 the court commissioner without further proof, unless the
86 same shall be contested and disallowed for proper cause.
87 The court commissioner shall also ascertain and report
88 what funds and assets of such institution have come into
89 the hands of the receiver, what disposition has been made
90 of such assets, and what dividends, if any, have been paid.
91 The court shall enter such orders and decrees and take
92 such proceedings as are proper to ascertain the several
93 depositors and creditors of such financial institution, and
94 adjudicate their respective rights and direct the distribu-
95 tion of the assets and funds in the hands of the receiver
96 and confirm any distribution made under orders of the
97 commissioner of banking, and may confirm any and all
98 sales made by such receiver of property and assets of
99 such financial institution and settle the accounts of
100 such receiver. Any creditor whose claim is not pre-
101 sented and allowed before any decree of distribution
102 becomes final shall be forever barred from partici-
103 pating in the funds distributed under such decree, or
104 theretofore distributed and confirmed by such decree,
105 and shall have no claim by reason of such distribution
106 against any creditor sharing therein or against the com-
107 missioner of banking, the receiver, or any surety upon
108 the receiver's bond. Any claim which shall have been
109 proved and allowed after any dividend or distribution
110 has been made by the receiver shall be paid dividends
111 equal or proportionate in amount to those already re-
112 ceived by the other creditors of the same rank and
113 priority, if the funds and assets in the hands of the re-
114 ceiver are sufficient therefor, before such other creditors
115 receive any further dividend or distribution.

116 In any such action brought by the receiver for the pur-
117 pose of ascertaining the several depositors and creditors
118 of such institution, as hereinbefore provided, the receiver
119 may also proceed against the officers, directors and stock-

120 holders of the institution to enforce their individual lia-
121 bilities as hereinabove provided, or for the adjudication of
122 any other pertinent matter involved in the administra-
123 tion of the assets and affairs of such institution.

124 All of the assets of any such insolvent institution shall
125 be administered under, applied and paid out through the
126 orders of the commissioner of banking or a court of
127 competent jurisdiction, as herein provided. The costs and
128 expenses of the receivership and of any action or actions
129 brought by the receiver under the direction of the com-
130 missioner of banking shall be entitled to priority of pay-
131 ment out of the assets of such institution.

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

142 If the assets of any such institution, including any sums
143 collected from the stockholders, shall more than suffice
144 to pay all of the creditors of the institution who have
145 presented and proved, or caused to be allowed, their
146 several demands, the surplus shall be disbursed as fol-
147 lows: First in the case of a banking institution, to the
148 stockholders, who have paid in any sums upon their
149 extraordinary liability as stockholders, pro rata up to
150 the respective amounts paid by each of them. Second,
151 if anything shall remain thereafter it shall be paid to the
152 stockholders of the institution in proportion to the num-
153 ber of shares owned by them respectively.

154 The salary of such receiver for the time devoted to such
155 receivership and all expenses incurred by such receiver
156 in the discharge of his duties, including reasonable fees
157 paid for legal services, shall be paid out of the assets of
158 such institution as a part of the costs of the receivership.
159 No other compensation shall be paid to such officer for
160 acting as receiver of such institution.

161 The receiver of any such financial institution, before
162 entering upon the discharge of his duties, or receiving
163 into his possession any of the assets of such institution,
164 shall enter into bond in favor of the state of West Vir-
165 ginia, in a penalty fixed by and with corporate surety
166 authorized to transact business in this state, approved by
167 the commissioner, conditioned for the faithful discharge
168 of his duties as receiver, and for accounting for and pay-
169 ing over, as required by law, all properties, moneys and
170 funds which shall come into the hands of such receiver,
171 his agents, attorneys or representatives. The bond and
172 certificate of appointment of such receiver shall be re-
173 corded in the office of the clerk of the county court of the
174 county in which such institution is situated, and a certi-
175 fied copy thereof shall be forthwith transmitted by the
176 receiver to the commissioner of banking.

177 Upon the appointment of a receiver for a banking insti-
178 tution engaged in business in this state and authorized to
179 exercise trust powers, such trust powers and authority
180 shall end, and for every case where such banking institu-
181 tion has acted as fiduciary, such receiver shall immedi-
182 ately make a final settlement before the court in which
183 such banking institution qualified as such fiduciary, which
184 settlement shall cover all matters not included in a prior
185 settlement, if any. Thereupon, such court shall proceed
186 as is provided in section six, article five, chapter forty-
187 four of this code, and no formal revoking or annulling
188 order shall be necessary.

189 Nothing in this section shall impair the right of any
190 court in any action, on a proper showing, to appoint a
191 receiver for any such institution, in cases where the com-
192 missioner of banking has failed, refused or neglected
193 to act.

194 In the administration of the assets of banking institu-
195 tions by receivers appointed pursuant to this article, hav-
196 ing deposits of money belonging to the state of West Vir-
197 ginia, no greater rate of interest, notwithstanding the pro-
198 visions of the contracts relative to interest between such
199 banking institutions and the state of West Virginia, shall
200 be paid on such deposits than that paid for the same period

201 or periods on the same class or classes of such deposits
202 by banking institutions operating in the usual course of
203 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
2 the assets of a state banking institution in conservatorship
3 or receivership its assets shall be appraised in the man-
4 ner herein provided and a copy filed with the commis-
5 sioner of banking. The commissioner shall not approve
6 or consent to the reorganization, consolidation, merger
7 or sale of the business of such banking institution in
8 conservatorship or receivership until an appraisal shall
9 have been made and published as provided in this sec-
10 tion. Appraisal shall be made on the basis of present true
11 and actual value by three appraisers one of whom shall
12 be the conservator or receiver, one a representative of
13 such banking institution designated by its board of di-
14 rectors, and the third a representative of the depositors,
15 who was a depositor at the time the conservator or re-
16 ceiver was appointed and shall not have disposed of
17 his claim, to be designated by the commissioner of bank-
18 ing upon the nomination in writing of a majority in
19 amount of depositors or assigns if such nomination is filed
20 with the commissioner not later than two weeks after
21 the filing of the inventory in the receivership or con-
22 servatorship. If no such nomination is made, the com-
23 missioner shall designate the depositors' representative
24 in his discretion. In the event of disagreement as to a
25 valuation the determination of any two of the appraisers
26 shall be final. A copy or a summary of the completed
27 appraisal shall be published, in form approved by the
28 commissioner of banking, as a Class I legal advertisement
29 in compliance with the provisions of article three, chapter
30 fifty-nine of this code, and the publication area for such
31 publication shall be the county in which the banking
32 institution is located. The expense of appraisal and pub-
33 lication shall be deemed part of the cost of the con-
34 servatorship or receivership and shall include reasonable
35 compensation allowed the appraisers, other than a con-
36 servator or receiver, by the commissioner of banking.

§31A-7-4. Receivers may borrow from federal lending agencies and others; procedures.

1 Any receiver of a banking institution, heretofore or
2 hereafter appointed under provisions of this chapter, if
3 there be no proceeding instituted as authorized by law
4 by such receiver in any court in this state against such
5 banking institution and its stockholders, with the consent
6 in writing of the commissioner of banking, and if there
7 be a proceeding instituted as authorized by law by such
8 receiver in any court in this state against such banking
9 institution and its stockholders, with the consent in writ-
10 ing of the commissioner of banking and the approval
11 of the court, and any receiver of a banking institution
12 heretofore or hereafter appointed by any court in this
13 state in connection with any proceeding in such court
14 against such banking institution, with the consent in writ-
15 ing of the commissioner of banking and the approval of
16 the court, is hereby authorized and empowered to borrow
17 money from and contract for loans with any federal
18 finance or lending agency, created and existing under
19 any act of the Congress of the United States, or any
20 other agencies or persons, for the purpose of furnishing
21 immediate relief to or aiding in the reorganization or
22 liquidation or reopening of such banking institution, pro-
23 tecting and preserving the assets in charge of the re-
24 ceiver, expediting the making of distributions and the
25 payment of dividends to depositors and other creditors
26 of the institution, providing for the expenses of adminis-
27 tration and liquidation or its merger or consolidation
28 with another banking institution, and paying the claims
29 of secured creditors where the security is deemed by
30 the receiver and the commissioner of banking to be of
31 a value in excess of the debt so secured and to be for the
32 preservation of the assets of such banking institution;
33 and to pledge, hypothecate, assign or transfer to any
34 such agency or other person any assets or securities be-
35 longing to the banking institution as collateral security
36 for the payment of any and all such loans, subject to
37 terms and conditions imposed and agreed upon between
38 the parties.

39 All acts of the receiver or commissioner of banking
40 hereunder are hereby declared to be legal, valid and
41 binding and effective to transfer to any such agencies
42 or persons, their respective successors and assigns, assets
43 and securities in accordance with the terms of the con-
44 tract of pledge, transfer or assignment.

45 The commissioner of banking and receiver of any such
46 banking institution shall be under no personal obliga-
47 tion to repay any such loans so made and shall have
48 power to take any and all action necessary or proper
49 to consummate such loans and to provide for the repay-
50 ment thereof and to give bond, when required, for the
51 faithful performance of all undertakings in connection
52 therewith.

53 The authority herein conferred on a receiver of a bank-
54 ing institution for the procuring and obtaining of such
55 loans includes authority to renew the same from time to
56 time, with the consent in writing of the commissioner
57 of banking.

58 An accurate record of all securities and exact copies
59 of all notes withdrawn from the files of such banking
60 institution, to be pledged as aforesaid as collateral for
61 borrowed money, shall be kept in the files of such
62 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.**

1 In any voluntary or compulsory proceeding to liqui-
2 date a state banking institution, such banking institution,
3 if the proceeding be not in court, with the consent in
4 writing of the commissioner of banking, and if the pro-
5 ceeding be in court with the consent in writing of the
6 commissioner of banking and the approval of the court,
7 may reorganize, reclaim possession of its assets, and con-
8 tinue in business.

9 Any state banking institution may at any time, with the
10 approval of the board, purchase the business and assets
11 and assume the liabilities of, or merge or consolidate with,
12 another state banking institution, the terms and condi-
13 tions of any such purchase, merger or consolidation to be

14 first approved by the board. With the approval of the
15 board and compliance with all applicable laws of this
16 state and the United States, any state banking institution
17 may purchase the business and assets and assume the
18 liabilities of a national banking association, or merge or
19 consolidate with a national banking association to form
20 a resulting state bank, the terms and conditions of any
21 such purchase, merger or consolidation to be first ap-
22 proved by the board. With the approval of the board and
23 compliance with all applicable laws of this state and the
24 United States a national banking association may con-
25 vert into a state bank. After any such purchase, merger
26 or consolidation, no other corporation shall be allowed
27 to take or use the name of any institution participating
28 in such purchase, merger or consolidation.

29 Unless in conflict with a law of the United States of
30 America, at the completion of any purchase, merger or
31 consolidation, whether heretofore or hereafter effected
32 under any past, present or future law of this state or of
33 the United States of America, and whether such bank-
34 ing institution be organized under the provisions of the
35 laws of this state or of the United States of America,
36 or both, the purchasing, merged or consolidated banking
37 institution shall be deemed to have been substituted by
38 operation of law in the place and stead of each of the
39 participating institutions in all fiduciary relationships, and
40 all and singular the titles, properties, offices, appoint-
41 ments, rights, powers, duties, obligations and liabilities
42 of each participating institution as trustee, agent, exe-
43 cutor, administrator, guardian, depository, registrar,
44 transfer agent or other fiduciary or in any other capacity,
45 office or position shall be deemed to have become vested
46 in and devolved upon the purchasing, merged or con-
47 solidated institution, and such purchasing, merged or con-
48 solidated institution shall be entitled to take, receive, ac-
49 cept, hold, administer and discharge any and all grants,
50 gifts, bequests, devises, conveyances, trusts, powers and
51 appointments made by deed, deed of trust, will, agree-
52 ment, order of court or otherwise to, in favor of, or in
53 the name of, any such participating institution, whether
54 made, executed or entered before or after such purchase,

55 merger or consolidation, and whether to vest or become
56 effective before or after such purchase, merger or con-
57 solidation, as fully and to the same effect as if the pur-
58 chasing, merged or consolidated institution had been
59 named in such deed, deed of trust, will, agreement, order
60 or other instrument instead of another participating in-
61 stitution; and all acts heretofore taken or performed in
62 its own name or in the name of, or in behalf of, any in-
63 stitution participating in any such purchase, merger or
64 consolidation by any purchasing, merged or consolidated
65 institution as trustee, agent, executor, administrator,
66 guardian, depository, registrar, transfer agent, or other
67 fiduciary shall be as good, valid, and effectual as if this
68 section had been in force at the time of the taking or per-
69 formance of such acts.

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

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

1 If the commissioner of banking shall revoke the certifi-
2 cate of authority, permit or license of any financial insti-
3 tution other than a state bank, or if the board shall revoke
4 such certificate, permit or license of a state bank and any
5 such financial institution or state bank shall, within a
6 reasonable time, fail to comply with the laws of the state
7 and the requirements of the commissioner or board, and
8 thereby fail to secure a new certificate of authority, per-
9 mit or license to continue in business, it shall be the duty
10 of the commissioner of banking to compel any such offend-
11 ing financial institution or state bank to go into liquida-
12 tion, wind up its affairs and surrender its charter. In any
13 such case the attorney general, at the request of the com-
14 missioner of banking, shall institute an action in the
15 circuit court of the county in which the business of the
16 offending financial institution or state bank is located,
17 in the name of the state of West Virginia, to wind up the
18 affairs and dissolve such financial institution or state

19 bank, and such court shall have jurisdiction to make and
20 enter all necessary and proper orders and to wind up the
21 affairs and dissolve the financial institution or state bank
22 as in the case of insolvent corporations.

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

§31A-7-7. Federal agency as receiver or liquidator.

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

9 In the event of such closing the commissioner of bank-
10 ing may tender to such corporation the appointment as
11 receiver or liquidator of such banking institution, and, if
12 the corporation accepts said appointment, the corpora-
13 tion shall have and possess all the powers and privileges
14 provided by the laws of this state with respect to a re-
15 ceiver or liquidator respectively of a banking institution,
16 its depositors and other creditors, and be subject to all
17 the duties of such receiver or liquidator, except insofar

18 as such powers, privileges or duties are in conflict with
19 the provisions of the federal reserve act or the federal
20 deposit insurance corporation act and any amendments
21 thereto.

22 When a banking institution shall have been closed, as
23 herein contemplated, and the federal deposit insurance
24 corporation shall pay or make available for payment the
25 insured deposit liabilities of such closed institution, the
26 corporation, whether or not it shall have become receiver
27 or liquidator of such closed banking institution, as herein
28 provided, shall be subrogated to all rights against such
29 closed banking institution of the owners of such deposits
30 in the same manner and to the same extent as subrogation
31 of the corporation is provided for under the federal de-
32 posit insurance act and amendments thereto, but the
33 rights of depositors and other creditors of the closed in-
34 stitution shall be determined in accordance with the ap-
35 plicable provisions of the laws of this state.

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

**ARTICLE 8. HEARINGS, ADMINISTRATIVE PROCEDURES, JUDI-
CIAL REVIEW, UNLAWFUL ACTS, PENALTIES.**

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

1 (a) Any person who is adversely affected by any
2 order, demand, action, refusal, failure to act, denial or
3 requirement of the commissioner (other than the pro-
4 mulgation of rules and regulations which promulgation
5 shall be in accordance with the provisions of article three,
6 chapter twenty-nine-a of this code) shall be entitled
7 to a hearing thereon before the commissioner or a hearing
8 examiner appointed by him, if such person files with the
9 commissioner a written demand for such hearing within
10 ten days after receiving written notice of such order, de-
11 mand, action, refusal, failure to act, denial or requirement
12 or within ten days after receiving knowledge thereof

13 through the application or implementation thereof or by
14 any other means, whichever event shall first occur.

15 (b) Upon receipt of a demand for such hearing the
16 commissioner shall set a time and place therefor not less
17 than ten and not more than thirty days thereafter. Said
18 hearing may be continued by the commissioner upon
19 his own motion or for good cause shown by the person
20 demanding the same.

21 (c) All of the pertinent provisions of article five,
22 chapter twenty-nine-a of this code shall apply to and
23 govern the hearing and the administrative procedures in
24 connection with and following such hearing.

25 (d) Any such hearings shall be conducted by the com-
26 missioner or a hearing examiner appointed by him. For
27 the purpose of conducting such hearings the commissioner
28 or such hearing examiner shall have the power and
29 authority to issue subpoenas and subpoenas duces tecum
30 which shall be issued and served within the time, for the
31 fees and shall be enforced and governed as provided in
32 section one, article five of said chapter twenty-nine-a.

33 (e) The person demanding such hearing may rep-
34 resent himself thereat or be represented by an attorney
35 at law admitted to practice before any circuit court of
36 this state.

37 (f) After any such hearing and consideration of all
38 of the testimony, evidence and record in the case, the
39 commissioner shall render his decision in writing affirm-
40 ing, modifying or reversing the order, demand, action,
41 refusal, failure to act, denial or requirement with respect
42 to which such hearing was demanded, which decision
43 shall be accompanied by findings of fact and conclusions
44 of law as specified in section three, article five, chapter
45 twenty-nine-a of this code, and a copy of such decision
46 and accompanying findings and conclusions shall be
47 served upon the person demanding such hearing, and his
48 attorney of record, if any.

§31A-8-2. Judicial review; appeals to supreme court of appeals.

1 (a) Any person adversely affected by any decision
2 of the commissioner made and entered after a hearing as
3 provided in section one of this article shall be entitled to

4 judicial review thereof in the manner provided in sec-
5 tion four, article five, chapter twenty-nine-a of this code.

6 (b) Any person adversely affected by a final judg-
7 ment of a circuit court following judicial review as pro-
8 vided in subsection (a) of this section may seek review
9 thereof by appeal to the supreme court of appeals in the
10 manner provided in article six, chapter twenty-nine-a of
11 this code.

§31A-8-3. Certain practices forbidden; penalties.

1 (a) It shall be unlawful for an affiliate of any corporate
2 financial institution or for an officer, director or employee
3 of any corporate financial institution or affiliate thereof:

4 (1) To solicit, accept or agree to accept, directly or
5 indirectly, from any person other than such institution,
6 any gratuity, compensation or other personal benefit for
7 any action taken or omitted by such institution or for
8 endeavoring to procure the same;

9 (2) To have any interest, directly or indirectly, in the
10 proceeds of a purchase or sale made by such institution,
11 unless such purchase or sale is expressly authorized by
12 provisions of this chapter and is approved in advance by
13 vote of a majority of all directors of such institution, any
14 interested director taking no part in such vote; or

15 (3) To have any interest, direct or indirect, in the
16 purchase at less than its face value of any evidence of
17 indebtedness issued by the institution.

18 (b) For purposes of this section the term "affiliate"
19 shall include:

20 (1) Any person who holds a majority of the stock of
21 such corporate financial institution or has been deter-
22 mined by the commissioner of banking to hold a con-
23 trolling interest therein, or any other corporation in
24 which such person owns a majority of the stock, or any
25 partnership in which he has an interest;

26 (2) Any corporation in which the institution or an
27 officer, director or employee thereof holds a majority of
28 the stock or any partnership in which such institution or
29 any officer, director or employee thereof has an interest;
30 and

31 (3) Any corporation of which a majority of the di-
32 rectors are officers, directors or employees of the cor-
33 porate financial institution or any corporation of which
34 officers, directors or employees thereof constitute a ma-
35 jority of the directors of the corporate financial institu-
36 tion.

37 (c) Any person who violates any provisions of this
38 section shall be guilty of a misdemeanor and be sub-
39 ject to the penalties provided in section fifteen of this
40 article.

**§31A-8-4. Change in control of banking institution; loans on
bank stocks; required procedures; prohibitions;
penalties.**

1 (a) Whenever a change occurs with respect to the
2 outstanding voting stock of any banking institution
3 which will result in control or in a change in the con-
4 trol of such banking institution, the president or other
5 chief executive officer of such bank shall promptly re-
6 port such facts to the commissioner of banking upon ob-
7 taining knowledge of such change. As used in this sub-
8 section, the term "control" means the power to directly
9 or indirectly direct or cause the direction of the man-
10 agement or policies of the banking institution. A change
11 in ownership of voting stock which would result in di-
12 rect or indirect ownership by a stockholder or an affili-
13 ated group of stockholders of less than ten percent
14 of the outstanding voting stock shall not be considered
15 a change of control. If there is any doubt as to whether
16 a change with respect to the outstanding voting stock
17 is sufficient to result in control thereof or to effect a
18 change in the control thereof, such doubt shall be re-
19 solved in favor of reporting the facts to the commis-
20 sioner.

21 (b) Whenever a banking institution makes a loan or
22 loans, secured, or to be secured, by twenty-five percent
23 or more of the outstanding voting stock of another bank-
24 ing institution, the president or other chief executive
25 officer of the lending bank shall promptly report such
26 fact to the commissioner of banking upon obtaining
27 knowledge of such loan or loans, except that no report

28 need be made in those cases where the borrower has
29 been the owner of record of the stock for a period of
30 one year or more, or the stock is that of a newly organ-
31 ized bank prior to its opening.

32 (c) The reports required by this section shall contain
33 the following information to the extent that it is known
34 by the person making the report: (1) the number of shar-
35 es involved, (2) the names and addresses of the sellers (or
36 transferors), (3) the names and addresses of the pur-
37 chasers (or transferees), (4) the names and addresses
38 of the beneficial owners if the shares are registered in
39 another name, (5) the purchase price, (6) the total
40 number of shares owned by the sellers (or transferors),
41 the purchasers (or transferees) and the beneficial own-
42 ers both immediately before and after the transaction,
43 and in the case of a loan, (7) the name and address of
44 the borrower, (8) the amount of the loan, and (9) the
45 name of the banking institution issuing the stock secur-
46 ing the loan and the number of shares securing the
47 loan. In addition to the foregoing, such reports shall
48 contain such other information as may be available to
49 inform the commissioner of the effect of the transaction
50 upon control of the bank whose stock is involved.

51 (d) Whenever such a change as described in sub-
52 section (a) of this section occurs, such banking insti-
53 tution shall report promptly to the commissioner any
54 changes or replacements of its chief executive officer
55 or of any director which occur in the next twelve-
56 month period, including in its report a statement of the
57 past and current business and professional affiliations of
58 the new chief executive officer or directors thereof.

59 (e) It shall be unlawful for any person to purchase
60 or acquire the stock in any banking institution for pur-
61 poses of transferring, selling, lending, investing or other-
62 wise disposing of properties, funds, securities or other
63 assets of the institution in any manner jeopardizing or
64 imperiling the institution's financial condition.

65 (f) Any person who violates any provision of this
66 section shall be guilty of a misdemeanor and be subject
67 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 dis-
2 count any obligation on the security of the shares of
3 its own capital stock, or be the purchaser or holder of
4 any such shares, except shares of authorized but un-
5 issued stock provided for by the charter of such bank-
6 ing institution in accordance with the provisions of
7 section four, article four of this chapter unless taken
8 as a pledge or purchased to prevent loss upon a debt
9 previously contracted lawfully and in good faith; and
10 all shares of its stock, purchased or held in such man-
11 ner, shall, within six months after the time of the pur-
12 chase or pledge, be sold or disposed of at public or pri-
13 vate sale.

14 Any banking institution and any officer thereof who
15 violates any provision of this section shall be guilty of
16 a misdemeanor and subject to penalties provided in sec-
17 tion 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
2 deposit, with or without interest, any money of the
3 United States of America, bills, checks or drafts, or
4 fraudulently receive money or money's worth in ex-
5 change for the issuance of any choses in action of such
6 institution when such institution is insolvent; and any
7 officer, director, cashier, manager, secretary, member,
8 owner, employee or stockholder of any financial insti-
9 tution who shall knowingly violate the provisions of
10 this section or be accessory to, or permit, or connive at,
11 the receiving or accepting on deposit of any such de-
12 posits or such issuance of any choses in action, shall be
13 guilty of a misdemeanor and subject to the penalties
14 provided in section fifteen of this article.

§31A-8-7. Certifying checks falsely.

1 Any officer, agent or employee of any banking insti-
2 tution who shall wilfully certify any check drawn upon
3 such banking institution, unless the person, firm or cor-
4 poration drawing the same has on deposit, in collected

5 funds subject to check, with the banking institution, at
6 the time such check is certified, an amount of money
7 equal to the amount certified in such check, or shall
8 certify such check before the amount thereof shall have
9 been regularly entered to the credit of the person draw-
10 ing the same, upon the books or deposit slips of the
11 banking institution, shall be guilty of a misdemeanor
12 and subject to the penalties provided in section fifteen
13 of this article.

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

1 Whoever, directly or indirectly, wilfully and know-
2 ingly makes or transmits to another, or circulates, or
3 counsels, aids, procures, or induces another to make,
4 transmit or circulate, any false or untrue statement,
5 rumor or suggestion derogatory to the financial condition,
6 solvency or financial standing of any banking institution,
7 or with intent to depress the value of the stocks, bonds
8 or securities of any such banking institution, directly or
9 indirectly, wilfully and knowingly makes or transmits
10 to another, circulates or counsels, aids, procures or
11 induces another to make, transmit or circulate any false
12 or untrue statement, rumor or suggestion derogatory to
13 the financial condition, or with respect to the earnings or
14 management of the business of any banking institution or
15 resorts to any fraudulent means with intent to depress
16 in value the stocks, bonds or securities of any banking
17 institution, shall be guilty of a misdemeanor and subject
18 to the penalties provided in section fifteen of this article.

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

1 Every officer, director, employee or agent of any finan-
2 cial institution who wilfully misapplies or without au-
3 thority loans any of the money, funds or credits of the
4 institution, or who, without authority from the directors,
5 issues or puts into circulation any of the notes of any
6 financial institution; or who, without authority, issues
7 or puts forth any certificate of deposit, draws any order
8 or bill of exchange, makes any acceptance, assigns any

9 note, bond, draft, bill of exchange, mortgage, deed of
10 trust, judgment or decree; or who makes or causes to be
11 made any false entry in any book, record, document, re-
12 port or statement of any financial institution, or fails to
13 make proper entries therein, with intent, in either case,
14 to injure or defraud the institution or any person, or to
15 deceive any officer of any financial institution or other
16 person, or any agent appointed to examine the affairs of
17 such financial institution, and every person who with
18 like intent, in any way aids or abets any officer, director,
19 employee or agent in the violation of this section, shall
20 be guilty of a felony.

21 Any person who shall wilfully or knowingly make or
22 cause to be made, any false statement, or exhibit any
23 falsified, forged or invalid paper, with intent to deceive
24 any person authorized to examine into the affairs of such
25 financial institution; or shall make, state or publish any
26 false statement of the financial condition of any financial
27 institution, knowing or having reason to believe the same
28 to be false, shall be deemed guilty of a felony.

29 Any officer, director, employee or agent of any financial
30 institution or any other person guilty of any felony offense
31 as provided in this section shall, upon conviction thereof,
32 be imprisoned in the penitentiary not less than one nor
33 more than five years and also, in the discretion of the
34 court, may be fined not to exceed ten thousand dollars.

§31A-8-10. Unlawful activity by bank personnel.

1 It shall be unlawful for an officer, director, employee
2 or agent of a banking institution:

3 (a) To maintain or authorize the maintenance of any
4 account of such institution in a manner which, to his
5 knowledge, does not conform to requirements of the pro-
6 visions of this chapter and any rules and regulations pro-
7 mulgated by the commissioner of banking thereunder;
8 or

9 (b) To obstruct or endeavor to obstruct a lawful
10 examination of such institution by any lawfully au-
11 thorized officer or employee of any state or federal gov-
12 ernmental supervisory department, agency or office.

§31A-8-11. Failure to make, publish or distribute reports; forfeitures.

1 Every financial institution failing to make and trans-
2 mit to the commissioner any of the reports required by
3 law or any rule and regulation or order thereunder in
4 the form prescribed by the commissioner of banking,
5 or failing to publish or distribute the reports, as so
6 required, shall forthwith be notified by the commissioner
7 of banking and, if such failure continues for ten days
8 after receipt of such notice, such delinquent institution
9 shall be subject to a penalty of one hundred dollars for
10 each day thereafter that such failure continues, such
11 penalty to be recovered by the commissioner of banking
12 and paid into the state treasury to the account of the
13 general fund.

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

1 (a) No banking institution shall:
2 (1) Install or maintain any branch bank; or
3 (2) Engage in business at any place other than at its
4 principal office in this state.
5 (b) It shall be unlawful for any person to purchase
6 and hold stock in any banking institution for the purpose
7 of selling, negotiating or trading participation in the
8 ownership thereof either for the purpose of perfecting
9 control of one or more such banking institutions or for
10 the purpose of inducing other persons, firms or corpora-
11 tions or the general public to become participating own-
12 ers therein. Nothing herein shall prevent the ownership
13 of stock in any such banking institution by any person
14 for investment purposes.
15 (c) Any violation of any provision of this section
16 shall constitute a misdemeanor offense punishable by
17 applicable penalties as provided in section fifteen of
18 article eight of this chapter.

§31A-8-13. Banking institution not to be surety; hypothecation and other dealings with securities and assets limited.

1 No banking institution shall become or be accepted
2 as surety on any bond or undertaking required by the

3 laws or by the courts of this state or any other state, or
4 shall become surety or guarantor of any person for the
5 discharge of any duty in any position or the performance
6 of any contract or undertaking. No banking institution
7 shall pledge, hypothecate or deliver any of its assets of
8 any description whatsoever to any person to indemnify
9 him as surety for such banking institution or as surety
10 for any other person. But a bank may pledge, hypothecate,
11 deliver or deposit securities to guarantee deposits of the
12 United States, or any agency or instrumentality thereof,
13 the state of West Virginia, or any agency or instrument-
14 ality thereof, or any county, district, municipal corpora-
15 tion, or other governmental agency or instrumentality,
16 and the deposits of a bankrupt's estate made pursuant to
17 an order of a court of bankruptcy, and, with the consent in
18 writing of the commissioner of banking, may pledge,
19 hypothecate, deliver or deposit securities or assets to guar-
20 antee deposits made by receivers of closed or insolvent
21 banking institutions; and the receiver of a closed or in-
22 solvent banking institution, if the proceeding be not in
23 court, with the consent in writing of the commissioner of
24 banking, and if the proceeding be in court, with the con-
25 sent in writing of the commissioner of banking and the
26 approval of the court, may accept securities or assets of
27 a banking institution to secure deposits made by such
28 receiver. In every such case, the hypothecation of such
29 securities or assets shall be by proper legal transfer as
30 collateral security to protect and indemnify by trust any
31 and all loss in case of any default on the part of the
32 banking institution in its capacity as a depository for
33 any such deposits as aforesaid, and such collateral secur-
34 ity shall be released only by order of record of the public
35 officer or public body, or by the receiver of a closed or in-
36 solvent banking institution, if the proceeding be not in
37 court, with the consent in writing of the commissioner of
38 banking, and if the proceeding be in court, with the con-
39 sent in writing of the commissioner of banking and the ap-
40 proval of the court, when satisfied that full and faithful
41 accounting and payment of all the moneys has been made
42 under the provisions hereof. The public officer or public
43 body, or the receiver of a closed or insolvent banking insti-



44 tution, shall make ample provision for the safekeeping of
45 such hypothecated securities or assets, and the interest
46 thereof when paid shall be turned over to the bank-
47 ing institution, so long as it is not in default as afore-
48 said.

49 The foregoing shall not prevent the hypothecation of
50 the securities or assets of any banking institution to secure
51 the repayment of money borrowed from another bank-
52 ing institution.

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

1 Consistent with provisions of the federal reserve and
2 federal deposit insurance corporation laws, as enacted
3 and amended by the Congress of the United States, sub-
4 ject to any authority granted by the board pursuant to
5 section two, article three of this chapter, and notwith-
6 standing any provisions of the laws of the state of West
7 Virginia to the contrary, no banking institution shall,
8 directly or indirectly, by any device whatsoever, pay any
9 interest on any deposit which is payable on demand, in-
10 cluding deposits of public funds by any governments or
11 governmental bodies, agencies or activities.

§31A-8-15. Punishments and penalties.

1 Upon conviction for any misdemeanor offense under
2 provisions of this chapter, an offending financial institu-
3 tion shall be fined not more than five thousand dollars
4 and may, in the discretion of the court in consideration
5 of the nature of the offense, be required to forfeit its cor-
6 porate charter and franchise. Upon conviction of any in-
7 dividual, whether officer, director, agent, employee or
8 any other person connected or not connected with a
9 financial institution, of any misdemeanor offense under
10 provisions of this chapter, the offending individual shall
11 be fined not more than one thousand dollars and may,
12 in the discretion of the court, be confined in the county
13 jail for not more than twelve months.

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

1 The failure to perform any duty required of any finan-
2 cial institution or individual pursuant to provisions of
3 this chapter, or the doing of any act by any financial

4 institution or individual forbidden by the provisions of
5 this chapter, shall constitute a misdemeanor offense, ex-
6 cept any act which is made a felony offense by specific
7 language of this article.

§31A-8-17. Legal representation of the commissioner and board.

1 The board and the commissioner shall, upon request,
2 be represented by the attorney general and by his as-
3 sistants in any hearings before them, or either of them,
4 and in any actions, proceedings or appeals to which they,
5 or either of them, may be a party and shall also be repre-
6 sented in any action, proceeding or appeal in any circuit
7 court of this state by the prosecuting attorney of such
8 county, all without additional compensation.

§31A-8-18. References to code provisions.

1 Wherever in the code of West Virginia, in any act, in
2 general law or elsewhere in the law, reference is made to
3 any section, any article, any chapter or any particular
4 provision or term thereof of the code of West Virginia
5 which is repealed by the passage of this new chapter
6 thirty-one-a of the code of West Virginia, as such section,
7 article, chapter, particular provision or term thereof
8 existed immediately prior to the effective date of this
9 new chapter thirty-one-a, such reference shall henceforth
10 be read, construed and understood to mean the compar-
11 able section, article, chapter, particular provision or term
12 of this new chapter thirty-one-a.

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

William Tompos
Chairman Senate Committee

Clayton C. Davidson
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1969.

Howard Hughes
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

Lyndon B. Johnson
President of the Senate

Sam Rayburn
Speaker House of Delegates

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

Arch A. Moore Jr.
Governor



PRESENTED TO THE
GOVERNOR

Date 3/3/69

Time 3:05 p.m.

RECEIVED

MAR 10 10 47 AM '69

OFFICE OF
SECRETARY OF STATE
STATE OF WEST VIRGINIA