WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1981

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ENROLLED

HOUSE BILL No. 1565

(By Mr. Niebeluschat and Mr. Karvas)

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Passed April 11, 1981

In Effect From Passage
ENROLLED

H. B. 1565

(By MR. WIEDEBUSCH and MR. KARRAS)

[Passed April 11, 1981; in effect from passage.]

AN ACT to amend and reenact section five, article two, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one hundred two, one hundred nine and one hundred ten, article four, chapter forty-six-a of said code, all relating to banks and banking; certificates of authority and licenses of financial institutions; presumption of convenience and advantage granted supervised lender in certain instances when applying for certificate of authority to operate as an industrial loan company; West Virginia consumer credit protection act; dual business authority to operate as a supervised lender given banking institutions and licensees under the West Virginia industrial bank and industrial loan company act and the West Virginia secondary mortgage act; presumption of convenience and advantage granted industrial loan company in certain instances when applying for certificate of authority to operate as a supervised lender.

Be it enacted by the Legislature of West Virginia:

That section five, article two, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections one hundred two, one hundred nine and one hundred ten, article four, chapter forty-six-a of said code be amended and reenacted, all to read as follows:
CHAPTER 31A. BANKS AND BANKING.

ARTICLE 2. DEPARTMENT OF BANKING.

§31A-2-5. Certificate or license to engage in business required; application for and issuance of license; presumption granted supervised lender in certain instances when applying for certificate of authority to operate as industrial loan company; filing of amendments to charter and bylaws and to foreign statutes; who may engage in banking business in state.

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

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

(c) If the application be that of a banking institution, the commissioner of banking shall examine the information, documents and statements submitted and, if he finds that such banking institution has adopted bylaws which provide practical, safe, just and equitable rules and methods for the management of its business and it has complied in all respects with the provisions of this chapter and other applicable laws, he shall issue to it a certificate or license permitting it to engage in business. If the application be that of a financial institution other than a banking institution, the commissioner of banking shall examine the information, documents and
statements submitted, and, if he finds that such financial
institution has adequate resources for the proposed business
and has provided practical, safe, just and equitable rules
and methods for the management of its business, and it has
complied in all respects with the provisions of this chapter
and other applicable laws, and that the public convenience
and advantage will be promoted by the issuance of a cer-
tificate or license thereto, he shall issue to it a certificate or
license permitting it to engage in business: Provided, That
any supervised lender which is operating in good standing in
accordance with the provisions of article four, chapter forty-
six-a shall be presumed to have established that the public
convenience and advantage will be promoted in regard to
its application for a certificate of authority to operate as
an industrial loan company as defined in article seven, chapter
thirty-one of this code in the same location for which it is
licensed as a supervised lender. Such certificate or license
shall be preserved and displayed in the place of business of
such banking or other financial institution.

(d) In addition to the requirements of subsection (b) of this
section, every foreign corporation applying for a license or
certificate to engage in the business of a financial institution
in this state shall file with the commissioner of banking a
copy of the laws of the jurisdiction under which it is organized
which pertain to its organization and powers and the conduct
of its business. The commissioner shall examine the informa-
tion, documents and statements submitted by such foreign
corporation and if he finds that they provide practical, safe,
just and equitable rules and methods for the management of
the business of the corporation, that it has adequate resources
for the proposed business and it has complied in all respects
with the provisions of this chapter and other applicable laws,
and that the public convenience and advantage will be pro-
moted by the issuance of a license or certificate thereto, he
shall issue to such corporation a certificate or license per-
mitting it to engage in business in this state, which certificate
or license shall authorize such corporation to engage in the
business of the type of financial institution specified therein,
until the thirtieth day of the following June. Thereafter a
new certificate or license shall be secured annually by any
such foreign corporation. The fee for the original and each
additional license or certificate issued to a foreign corporation
shall be one hundred dollars, unless otherwise provided by
statute. A verified statement of the financial condition of
every such foreign corporation shall be filed with the com-
misssioner before the issuance of each annual certificate or
license. Such certificate or license shall be preserved and
displayed in the place of business of such corporation. 

(e) No amendment of the charter or bylaws of any domestic
or foreign corporation engaging in business in this state as
a financial institution shall become effective until the pro-
posed change shall have been submitted to and approved by
the commissioner of banking; but, if the commissioner does
not disapprove such proposed change within twenty days
after it is received by him, it shall be deemed to have been
approved. A certified copy of the amendment of any statute
of another state governing such a foreign corporation shall be
filed with the commissioner of banking by such foreign cor-
poration within thirty days after such amendment becomes
effective in such other state.

(f) Nothing contained in this code shall authorize any per-
son to engage in the banking business in this state except
corporations chartered to conduct a banking business under
the laws of West Virginia and which hold a license or certifi-
cate to do so issued under this section or associations autho-
rized to conduct a banking business in West Virginia under
the laws of the United States and having their principal place
of business in this state.

CHAPTER 46A. WEST VIRGINIA CONSUMER CREDIT
AND PROTECTION ACT.

ARTICLE 4. SUPERVISED LENDERS.

§46A-4-102. License to make supervised loans; presumption
granted industrial loan company in certain instances.

(1) The commissioner shall receive and act on all applica-
tions for licenses to make supervised loans under this chapter.
Applications shall be under oath, be filed in the manner
prescribed by the commissioner, and contain the informa-
tion the commissioner requires by rule to make an evaluation of the financial responsibility, experience, character and fitness of the applicant, and the findings required of him before he may issue a license. At the time of the filing of the application, the sum of two hundred fifty dollars shall be paid to the commissioner as an investigation fee.

(2) No license shall be issued to a supervised financial organization other than to one licensed under the provisions of the “West Virginia Industrial Bank and Industrial Loan Company Act” as contained in article seven, chapter thirty-one of this code, or to one licensed under the provisions of the West Virginia secondary mortgage loan act as contained in article seventeen, chapter thirty-one of this code; or to any banking institution as defined by the provisions of section two, article one, chapter thirty-one-a of this code: Provided, That the limitation of licensing contained in this subsection shall not prevent any supervised financial organization from making supervised loans when the applicable state or federal statute, law, rule or regulation permits. No license shall be issued to any person unless the commissioner upon investigation, finds that the financial responsibility, experience, character and fitness of the applicant, and of the members thereof (if the applicant is a copartnership or association) and of the officers and directors thereof (if the applicant is a corporation), are such as to command the confidence of the community and to warrant belief that the business will be operated honestly, fairly and efficiently, within the purposes of this chapter, and the applicant has available for the operation of the business at the specified location assets of at least two thousand dollars, and that allowing the applicant to engage in business will promote the convenience and advantage of the community in which the business of the applicant is to be conducted: Provided, That any industrial loan company which is operating in good standing in accordance with the provisions of article four, chapter forty-six-a of this code shall be presumed to have established that the public convenience and advantage will be promoted in regard to its application for a license to make supervised loans in the same location for which it is licensed as an industrial loan company.
(3) Upon written request, the applicant is entitled to a hearing on the question of his qualifications for a license if (a) the commissioner has notified the applicant in writing that his application has been denied, or (b) the commissioner has not issued a license within sixty days after the application for the license was filed. A request for a hearing may not be made more than fifteen days after the commissioner has mailed a writing to the applicant notifying him that the application has been denied and stating in substance the commissioner's findings supporting denial of the application.

(4) Not more than one place of business shall be maintained under the same license, but the commissioner may issue more than one license to the same licensee upon compliance with all the provisions of this article governing an original issuance of a license, for each such new license. Each license shall remain in full force and effect until surrendered, suspended or revoked.

(5) Upon giving the commissioner at least fifteen day's prior written notice, a licensee may (a) change the location of any place of business located within a municipality to any other location within that same municipality, or (b) change the location of any place of business located outside of a municipality to a location no more than five miles from the originally licensed location, but in no case may a licensee move any place of business located outside a municipality to a location within a municipality. A licensee may not move the location of any place of business located within a municipality to any other location outside of that municipality.

(6) A licensee may conduct the business of making supervised loans only at or from a place of business for which he holds a license and not under any other name than that stated in the license. A sale or lease in which credit is granted pursuant to a lender credit card does not violate this subsection.

(7) A license issued under the provisions of this section shall not be transferable or assignable.
§46A-4-109. Restrictions on interest in land as security; assignment of earnings to supervised lender prohibited; when security interest on household furniture not valid; prohibitions as to renegotiation of loan discharged in bankruptcy.

1 (1) A supervised lender may not contract for an interest in land as security. A security interest taken in violation of this subsection is void: Provided, That this subsection shall not be construed as prohibiting one licensed to make loans under the provisions of the “West Virginia Industrial Bank and Industrial Loan Company Act” as set forth in the provisions of article seven, chapter thirty-one of this code, or the West Virginia secondary mortgage loan act as set forth in the provisions of article seventeen, chapter thirty-one, from taking an interest in land as security for loans made pursuant to either of those acts.

2 (2) Notwithstanding the provisions of section one hundred sixteen, article two of this chapter, no supervised lender shall take any assignment of or order for payment of any earnings to secure any loan made by any supervised lender under this article. An assignment or order taken in violation of this subsection is void.

3 (3) No supervised lender may take a security interest in household furniture then in the possession and use of the borrower, unless the security agreement creating such security interest be in writing, signed in person by the borrower, and if the borrower is married, signed in person by both husband and wife: Provided, That the signature of both husband and wife shall not be required when they have been living separate and apart for a period of at least five months prior to the making of such security agreement. A security interest taken in violation of this subsection is void.

4 (4) A supervised lender may not renegotiate the original loan, or any part thereof, or make a new contract covering the original loan, or any part thereof, with any borrower, who has received a discharge in bankruptcy of the original loan or any balance due thereon at the time of said discharge from any court of the United States of America exercising juris-
sion in insolvency and bankruptcy matters, unless said supervised lender shall pay to and deliver to the borrower the full amount of the loan shown on said note, promise to pay, or security, less any deductions for charges herein specifically authorized.

§46A-4-110. Conduct of business other than making loans.

1 No licensee shall conduct the business of making loans under the provisions of this article within any office, room or place of business in which any other business is solicited or engaged in, or in association or conjunction therewith, except as may be authorized in writing by the commissioner upon his finding that the character of such other business is such that the granting of such authority would not facilitate evasions of this article or of the rules and regulations lawfully made hereunder, except nothing herein shall prohibit the licensee from purchasing installment sales contracts or the sale or provision of insurance authorized by section one hundred nine, article three of this chapter, or from making loans authorized under the provisions of the West Virginia secondary mortgage loan act as set forth in article seventeen, chapter thirty-one of this code, or from making loans authorized under the provisions of the “West Virginia Industrial Bank and Industrial Loan Company Act” as set forth in article seven, chapter thirty-one of this code.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

R. P. Keyser
Chairman Senate Committee

Tony E. Whitlow
Chairman House Committee

Originated in the House.

Takes effect from passage.

J. B. Mitchell
Clerk of the Senate

C. B. Blankenship
Clerk of the House of Delegates

Martin Matheny
President of the Senate

Charles S. Sayre
Speaker House of Delegates

The within is approved this the 20

day of April, 1981.

John J. Ide
Governor