

APPROVED AND SIGNED BY THE GOVERNOR

Date 4-28-81

Time _____

Mo: 1565

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1981

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ENROLLED

HOUSE BILL No. 1565

(By Mr. Niedelbusch + Mr. Karras)

— ● —

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.

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

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

19 (c) If the application be that of a banking institution, the
20 commissioner of banking shall examine the information, docu-
21 ments and statements submitted and, if he finds that such
22 banking institution has adopted bylaws which provide prac-
23 tical, safe, just and equitable rules and methods for the
24 management of its business and it has complied in all respects
25 with the provisions of this chapter and other applicable laws,
26 he shall issue to it a certificate or license permitting it to
27 engage in business. If the application be that of a financial
28 institution other than a banking institution, the commissioner
29 of banking shall examine the information, documents and

30 statements submitted, and, if he finds that such financial
31 institution has adequate resources for the proposed business
32 and has provided practical, safe, just and equitable rules
33 and methods for the management of its business, and it has
34 complied in all respects with the provisions of this chapter
35 and other applicable laws, and that the public convenience
36 and advantage will be promoted by the issuance of a cer-
37 tificate or license thereto, he shall issue to it a certificate or
38 license permitting it to engage in business: *Provided*, That
39 any supervised lender which is operating in good standing in
40 accordance with the provisions of article four, chapter forty-
41 six-a shall be presumed to have established that the public
42 convenience and advantage will be promoted in regard to
43 its application for a certificate of authority to operate as
44 an industrial loan company as defined in article seven, chapter
45 thirty-one of this code in the same location for which it is
46 licensed as a supervised lender. Such certificate or license
47 shall be preserved and displayed in the place of business of
48 such banking or other financial institution.

49 (d) In addition to the requirements of subsection (b) of this
50 section, every foreign corporation applying for a license or
51 certificate to engage in the business of a financial institution
52 in this state shall file with the commissioner of banking a
53 copy of the laws of the jurisdiction under which it is organized
54 which pertain to its organization and powers and the conduct
55 of its business. The commissioner shall examine the informa-
56 tion, documents and statements submitted by such foreign
57 corporation and if he finds that they provide practical, safe,
58 just and equitable rules and methods for the management of
59 the business of the corporation, that it has adequate resources
60 for the proposed business and it has complied in all respects
61 with the provisions of this chapter and other applicable laws,
62 and that the public convenience and advantage will be pro-
63 moted by the issuance of a license or certificate thereto, he
64 shall issue to such corporation a certificate or license per-
65 mitting it to engage in business in this state, which certificate
66 or license shall authorize such corporation to engage in the
67 business of the type of financial institution specified therein,
68 until the thirtieth day of the following June. Thereafter a
69 new certificate or license shall be secured annually by any

70 such foreign corporation. The fee for the original and each
71 additional license or certificate issued to a foreign corporation
72 shall be one hundred dollars, unless otherwise provided by
73 statute. A verified statement of the financial condition of
74 every such foreign corporation shall be filed with the com-
75 missioner before the issuance of each annual certificate or
76 license. Such certificate or license shall be preserved and
77 displayed in the place of business of such corporation.

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

90 (f) Nothing contained in this code shall authorize any per-
91 son to engage in the banking business in this state except
92 corporations chartered to conduct a banking business under
93 the laws of West Virginia and which hold a license or certifi-
94 cate to do so issued under this section or associations autho-
95 rized to conduct a banking business in West Virginia under
96 the laws of the United States and having their principal place
97 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 (1) The commissioner shall receive and act on all applica-
2 tions for licenses to make supervised loans under this chapter.
3 Applications shall be under oath, be filed in the manner
4 prescribed by the commissioner, and contain the informa-

5 tion the commissioner requires by rule to make an evaluation
6 of the financial responsibility, experience, character and fitness
7 of the applicant, and the findings required of him before he
8 may issue a license. At the time of the filing of the applica-
9 tion, the sum of two hundred fifty dollars shall be paid to the
10 commissioner as an investigation fee.

11 (2) No license shall be issued to a supervised financial
12 organization other than to one licensed under the provisions
13 of the "West Virginia Industrial Bank and Industrial Loan
14 Company Act" as contained in article seven, chapter thirty-
15 one of this code, or to one licensed under the provisions of the
16 West Virginia secondary mortgage loan act as contained in
17 article seventeen, chapter thirty-one of this code, or to any
18 banking institution as defined by the provisions of section two,
19 article one, chapter thirty-one-a of this code: *Provided*, That
20 the limitation of licensing contained in this subsection shall not
21 prevent any supervised financial organization from making
22 supervised loans when the applicable state or federal statute,
23 law, rule or regulation permits. No license shall be issued
24 to any person unless the commissioner upon investigation,
25 finds that the financial responsibility, experience, charac-
26 ter and fitness of the applicant, and of the members there-
27 of (if the applicant is a copartnership or association)
28 and of the officers and directors thereof (if the applicant
29 is a corporation), are such as to command the confidence of
30 the community and to warrant belief that the business will be
31 operated honestly, fairly and efficiently, within the purposes
32 of this chapter, and the applicant has available for the opera-
33 tion of the business at the specified location assets of at least
34 two thousand dollars, and that allowing the applicant to
35 engage in business will promote the convenience and advantage
36 of the community in which the business of the applicant is to
37 be conducted: *Provided*, That any industrial loan company
38 which is operating in good standing in accordance with the
39 provisions of article four, chapter forty-six-a of this code
40 shall be presumed to have established that the public con-
41 venience and advantage will be promoted in regard to its
42 application for a license to make supervised loans in the
43 same location for which it is licensed as an industrial loan
44 company.

45 (3) Upon written request, the applicant is entitled to a
46 hearing on the question of his qualifications for a license
47 if (a) the commissioner has notified the applicant in writing
48 that his application has been denied, or (b) the commissioner
49 has not issued a license within sixty days after the application
50 for the license was filed. A request for a hearing may not be
51 made more than fifteen days after the commissicner has mailed
52 a writing to the applicant notifying him that the application
53 has been denied and stating in substance the commissioner's
54 findings supporting denial of the application.

55 (4) Not more than one place of business shall be main-
56 tained under the same license, but the commissioner may
57 issue more than one license to the same licensee upon
58 compliance with all the provisions of this article governing
59 an original issuance of a license, for each such new license.
60 Each license shall remain in full force and effect until sur-
61 rendered, suspended or revoked.

62 (5) Upon giving the commissioner at least fifteen day's prior
63 written notice, a licensee may (a) change the location of any
64 place of business located within a municipality to any other
65 location within that same municipality, or (b) change the
66 location of any place of business located outside of a munici-
67 pality to a location no more than five miles from the originally
68 licensed location, but in no case may a licensee move any
69 place of business located outside a municipality to a location
70 within a municipality. A licensee may not move the location
71 of any place of business located within a municipality to any
72 other location outside of that municipality.

73 (6) A licensee may conduct the business of making super-
74 vised loans only at or from a place of business for which he
75 holds a license and not under any other name than that stated
76 in the license. A sale or lease in which credit is granted pur-
77 suant to a lender credit card does not violate this subsection.

78 (7) A license issued under the provisions of this section
79 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
2 in land as security. A security interest taken in violation of
3 this subsection is void: *Provided*, That this subsection shall
4 not be construed as prohibiting one licensed to make loans
5 under the provisions of the "West Virginia Industrial Bank
6 and Industrial Loan Company Act" as set forth in the pro-
7 visions of article seven, chapter thirty-one of this code, or
8 the West Virginia secondary mortgage loan act as set forth
9 in the provisions of article seventeen, chapter thirty-one, from
10 taking an interest in land as security for loans made pursuant
11 to either of those acts.

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

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

28 (4) A supervised lender may not renegotiate the original
29 loan, or any part thereof, or make a new contract covering
30 the original loan, or any part thereof, with any borrower, who
31 has received a discharge in bankruptcy of the original loan
32 or any balance due thereon at the time of said discharge from
33 any court of the United States of America exercising juris-

34 diction in insolvency and bankruptcy matters, unless said
35 supervised lender shall pay to and deliver to the borrower the
36 full amount of the loan shown on said note, promise to pay,
37 or security, less any deductions for charges herein specifically
38 authorized.

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

1 No licensee shall conduct the business of making loans
2 under the provisions of this article within any office, room
3 or place of business in which any other business is solicited
4 or engaged in, or in association or conjunction therewith,
5 except as may be authorized in writing by the commissioner
6 upon his finding that the character of such other business is
7 such that the granting of such authority would not facilitate
8 evasions of this article or of the rules and regulations lawfully
9 made hereunder, except nothing herein shall prohibit the
10 licensee from purchasing installment sales contracts or the
11 sale or provision of insurance authorized by section one
12 hundred nine, article three of this chapter, or from making
13 loans authorized under the provisions of the West Virginia
14 secondary mortgage loan act as set forth in article seventeen,
15 chapter thirty-one of this code, or from making loans autho-
16 rized under the provisions of the "West Virginia Industrial
17 Bank and Industrial Loan Company Act" as set forth in
18 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. Kayser
Chairman Senate Committee

Tony E. Whitlow
Chairman House Committee

Originated in the House.

Takes effect from passage.

David C. Willis
Clerk of the Senate

C. Blankenship
Clerk of the House of Delegates
Wm. R. Hahn
President of the Senate

John H. Lee, Jr.
Speaker House of Delegates

The within *is approved* this the *20*
day of *April*, 1981.

John H. Lee, Jr.
Governor

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SECY. OF STATE