

APPROVED AND SIGNED BY THE GOVERNOR

Date 4-28-81

Time _____

No: 1658

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1981



ENROLLED

HOUSE BILL No. 1658

(By Mr. Shepherd)



Passed April 11, 1981

In Effect Ninety Days From Passage



ENROLLED

H. B. 1658

(By MR. SHEPHERD)

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

AN ACT to amend and reenact article seven, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to generally revising the state laws on receivership, conservatorship, liquidation, merger, consolidation, purchase, reorganization and closing of certain financial institutions in the state and giving the state commissioner of banking, the federal deposit insurance corporation as receiver and insurer, receivers and conservators broad general powers, duties and responsibilities with respect thereto; giving a certain purpose, rules of construction and definitions; providing for the appointment of conservators for said financial institutions and certain deposits and withdrawals during conservatorships and terminations of and reorganizations by conservatorships; requiring certain inventories; providing for the appointment of receivers for said financial institutions and their bonds and certificates; permitting certain suits against stockholders, closings and temporary emergency takeovers of financial institutions by said commissioner and certain court orders for said commissioner; requiring said commissioner to appoint said federal deposit insurance corporation as receiver in particular cases and making special provisions for said corporation's receivership; allowing said corporation certain subrogation rights, the emergency sale of assets, the right to go to circuit court and other broad authority; providing for certain hearings and notices; discharging said commissioner from liability in certain cases; relating to when receivers may borrow from federal lending

agencies and others; providing for the reorganization, purchase, merger and consolidation of and by said financial institutions and the conversions of national banks to state banks; giving the West Virginia board of banking and financial institutions certain authority with respect thereto; providing for the continuing effect of certain obligations and liens; allowing the voluntary liquidation of financial institutions; providing for the involuntary liquidation of said institutions in certain cases; relating to revocations of certificates, permits and licenses of certain financial institutions; providing for the assignment, assumption and termination of certain executory contracts and unexpired leases; specifying when said contracts or leases may not be terminated or modified; providing for the payment of the expenses and debts of said institutions, claims thereupon and the order of priority thereof; requiring the submission of certain claims to receivers, notices by mailing and publication and notice and proof of claim forms; relating to the loss, rejection and payment of said claims; providing a hearing procedure for contested claims and other disputed matters to be heard and decided by hearing examiners with judicial review thereof; relating to the exclusivity of said powers and procedures; and giving the circuit courts of the state certain general and limited jurisdiction with respect to certain matters.

Be it enacted by the Legislature of West Virginia:

That article seven, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, to read as follows:

ARTICLE 7. REGULATION OF FAILING FINANCIAL INSTITUTIONS.

§31A-7-1. Purpose; construction.

- 1 (a) The purpose of this article is to:
- 2 (1) To the maximum extent possible, protect and preserve
- 3 the assets of depositors, shareholders and other creditors
- 4 in the financial institutions of this state;
- 5 (2) Maintain the financial integrity, stability and account-
- 6 ability of the financial institutions of this state;
- 7 (3) Strengthen and make more effective the authority of

8 the state commissioner of banking to protect and preserve
9 such assets and maintain such integrity, stability and account-
10 ability;

11 (4) Permit the federal deposit insurance corporation in all
12 appropriate cases to act as receiver for a failing financial
13 institution; and

14 (5) Make more practical and more flexible the conser-
15 vatorship and receivership provisions of this article dealing
16 with financial institutions that are substantially impaired, have
17 failed or appear to be about to fail.

18 (b) The provisions of this article are intended to be re-
19 medial and protective, and they shall be liberally construed
20 to carry out such intent and the purpose of this article.

§31A-7-2. Definitions.

1 As used in this article:

2 (a) "Commissioner" means the commissioner of banking of
3 West Virginia and any authorized deputy or employee thereof;

4 (b) "Federal law" means all the provisions of Title XII of
5 the United States Code and all rules and regulations promul-
6 gated pursuant thereto;

7 (c) "Financial institution" means any bank, building and
8 loan association, industrial bank, industrial loan company,
9 supervised lender, credit union and any other person, firm
10 or corporation doing business under the jurisdiction and
11 supervision of the commissioner of banking of West Virginia;

12 (d) A financial institution is "about to be insolvent" when
13 it would be unable to meet the demands of its depositors or
14 to make adequate provision for the timely payment of its
15 depositors if it were immediately closed for the purpose of
16 liquidation;

17 (e) A financial institution is "insolvent" when it is un-
18 able to pay its debts to its depositors and other creditors in
19 the ordinary and usual course of business or when it is in a
20 state of balance sheet insolvency; and

21 (f) "Balance sheet insolvency" exists when the assets of

22 a financial institution are less than its liabilities, exclusive of
23 capital. For the purposes of ascertaining balance sheet insol-
24 vency, assets shall be valued at their book value, unless the
25 commissioner of banking determines that the assets are insuf-
26 ficient to meet liabilities within a reasonable time making pro-
27 bable the liquidation of assets; and if any such determination
28 is made, the assets shall be valued at fair market value.

**§31A-7-3. Conservatorships for financial institutions; appointment,
powers and duties; deposits and withdrawals during
conservatorship; termination; reorganization.**

1 (a) Whenever the commissioner considers it necessary in
2 order to protect or preserve the assets of any financial
3 institution in this state for the benefit of the depositors and
4 other creditors thereof, he may appoint a conservator for
5 such financial institution. The conservator may be an employee
6 of the state department of banking and shall give such bond
7 and security as the commissioner considers proper.

8 (b) The conservator, under the direction of the commis-
9 sioner, shall take possession of the papers, books, records and
10 assets of every description of such financial institution and
11 take such other action as is necessary to conserve such assets
12 pending further disposition of the business of the institution.
13 Immediately upon taking charge of the financial institution,
14 the conservator, in conjunction with a representative of the
15 institution designated by the directors thereof, shall make in
16 triplicate a complete inventory of all assets of the institution
17 and an itemized list of all its liabilities. The original and two
18 copies of the list shall be subscribed and sworn to by the
19 persons making them. The original shall be filed with the
20 commissioner as soon as practicable. One such copy shall
21 be furnished to the institution, and the other copy shall be
22 retained by the conservator.

23 (c) A conservator has all the rights, powers, duties, re-
24 sponsibilities and privileges that receivers have under this
25 article and is subject to all obligations to which such receivers
26 are subject.

27 (d) During the period that a conservator remains in posses-
28 sion of a financial institution, the legal relations of all parties

29 with respect thereto shall, subject to the other provisions
30 of this section, be the same as if a receiver had been appointed
31 therefor under other pertinent provisions of this article.

32 (e) All reasonable and necessary expenses actually incurred
33 in the course of any such conservatorship shall be paid out
34 of the assets of the financial institution and are a lien on such
35 assets, which lien has priority over any other lien. The
36 conservator shall be paid a reasonable compensation, to be
37 fixed by the commissioner, for his services but such compensa-
38 tion must not exceed the amount that would be paid to
39 employees of the state department of banking for similar
40 services.

41 (f) If the commissioner becomes satisfied that such a
42 course of action may be pursued safely and that it is in the
43 public interest, he may, in his discretion, terminate the
44 conservatorship and permit the financial institution to resume
45 the transaction of its business subject to such terms, condi-
46 tions, restrictions and limitations as he imposes or the com-
47 missioner may appoint a receiver pursuant to section four of
48 this article to take over the property and affairs of the
49 institution.

50 (g) While a financial institution is in the hands of
51 a conservator, the commissioner may require the conserva-
52 tor to set aside and make available for withdrawal by de-
53 positors and payment to other creditors, on a ratable basis,
54 such amounts as in the opinion of the commissioner may
55 be used safely for such purpose, subject to such priorities
56 and preferences as are provided by law. The com-
57 missioner may, in his discretion permit the conservator to re-
58 ceive deposits, and such deposits are not subject to any limita-
59 tion as to payment or withdrawal. Such deposits shall be
60 segregated and shall not be used either to liquidate any in-
61 debtedness of the financial institution existing at the time
62 that the conservator was appointed for it or any subsequent in-
63 debtedness incurred for the purpose of liquidating any indebt-
64 edness of such institution existing at the time the conservator
65 was appointed.

66 Deposits received while a financial institution is in the

67 hands of a conservator shall: (1) Be kept on hand in cash
68 or (2) be deposited with a federal reserve bank or deposited
69 with such financial institution as the commissioner in his
70 discretion designates or (3) be invested in direct obligations
71 of the United States or the state of West Virginia or in funded
72 obligations of any political subdivision of this state approved
73 by the commissioner.

74 (i) In any reorganization of any financial institution under
75 a plan of a kind that by its own terms or under existing law
76 requires the consent, as the case may be, of depositors and
77 other creditors, or of stockholders, or of both depositors and
78 other creditors and stockholders, such reorganization shall
79 become effective only when the commissioner is satisfied
80 that the plan of reorganization is fair and equitable to all
81 depositors, other creditors and stockholders and that it is
82 in the public interest and has approved the plan subject to
83 such conditions, restrictions and limitations as he imposes,
84 and when, after reasonable notice of such reorganization, as
85 the case may be, depositors and other creditors of such
86 financial institution representing at least seventy-five percent
87 in amount of its total deposits and other liabilities; or stock-
88 holders owning at least two thirds in amount of its outstanding
89 capital stock; or both depositors and other creditors represent-
90 ing at least seventy-five percent in amount of the total
91 deposits and other liabilities and stockholders owning at
92 least two thirds in amount of its outstanding capital stock
93 have consented in writing to the plan of reorganization. Claims
94 of depositors or other creditors which will be satisfied in
95 full under the plan of reorganization shall not be included
96 among the total deposits and other liabilities of the financial
97 institution in determining the seventy-five percent thereof as
98 above provided.

99 (j) When any such reorganization becomes effective, all
100 books, records, and assets of the financial institution shall be
101 disposed of in accordance with the provisions of the plan and
102 the affairs of the financial institution shall be conducted by
103 its board of directors in the manner provided by the plan and
104 under such conditions, restrictions and limitations that have
105 been imposed by the commissioner. In any such reorganization

106 that has been approved and has become effective as provided
107 herein, all depositors and other creditors and stockholders
108 of the financial institution, whether or not they have consented
109 to the plan of reorganization, are fully and in all respects
110 subject to and bound by its provisions, and the claims of all
111 depositors and other creditors shall be treated as if they had
112 consented to such plan of reorganization.

113 (k) Fifteen days after the affairs of the financial institution
114 have been returned to its board of directors by the conservator,
115 either with or without a reorganization as provided in sub-
116 section (i) of this section, the provisions of subsections (g)
117 and (h) of this section shall no longer be effective. Before
118 the conservator returns the affairs of the institution to its
119 board of directors, he shall publish a notice, in such form
120 as the commissioner approves, stating the date on which
121 the affairs of the financial institution will be returned to its
122 board of directors and that the provisions of subsections (g)
123 and (h) of this section will not be effective fifteen days after
124 such date. The notice shall be published as a Class I legal
125 advertisement in compliance with the provisions of article
126 three, chapter fifty-nine of this code, and the publication
127 area for such publication shall be the county in which the
128 financial institution is located. On the date of the publication
129 of such notice, the conservator shall send a copy of such
130 notice by registered mail to the last known address of every
131 person who is a depositor as shown by the records of the
132 institution. The conservator shall send a similar notice in
133 like manner to every person making a deposit in such insti-
134 tution under said subsection (g) after the date of such newspaper
135 publication and before the time when the affairs of the
136 institution are returned to its directors.

137 (l) The provisions of this section shall not under any
138 circumstances be construed to impair in any way any powers
139 of the governor or the commissioner provided elsewhere by
140 law with respect to any matter covered by this section.

141 (m) The commissioner may prescribe such rules and regu-
142 lations, not inconsistent with the provisions of this article, as
143 he considers necessary or convenient to carry out the pro-
144 visions of this section.

§31A-7-4. Receiverships for financial institutions; appointment; general powers, duties and authority; actions against stockholders; bond and certificate; temporary emergency takeover by commissioner; closing of institution; court order for commissioner to act.

1 (a) If the commissioner ascertains from any source that
2 the capital of any financial institution is substantially im-
3 paired and such institution, after receiving notice from the
4 commissioner, does not promptly make good such impairment
5 to the satisfaction of the commissioner, or if the commissioner
6 ascertains from any source that any financial institution is
7 insolvent or reasonably appears about to be insolvent, the
8 commissioner shall appoint a receiver to take full and ex-
9 clusive possession and control of and title to the books,
10 records, papers, moneys, assets, business and all other things
11 of the financial institution. Such title shall pass to and vest
12 in the receiver by operation of law without the execution of
13 any instruments of conveyance, assignment, transfer or en-
14 dorsement. The commissioner shall give the receiver a cer-
15 tificate of appointment. Immediately upon taking such posses-
16 sion and control, the receiver shall establish and maintain such
17 books, records and procedures for accountability as the
18 commissioner prescribes and may exercise all the powers,
19 duties and authority provided for in this article.

20 Immediately upon taking charge of the financial institution,
21 the receiver, in conjunction with a representative of the
22 institution designated by the directors thereof, shall make in
23 triplicate a complete inventory of all assets of the institution
24 and an itemized list of all its liabilities. The original and
25 two copies of the list shall be subscribed and sworn to by
26 the persons making them. The original shall be filed with
27 the commissioner as soon as practicable. One such copy shall
28 be furnished to the institution, and the other copy shall be
29 retained by the receiver.

30 (b) In any case where a receiver is to be appointed
31 pursuant to subsection (a) of this section, if the involved
32 financial institution has deposits insured by the federal deposit
33 insurance corporation and if such corporation is required or
34 otherwise willing to be receiver for the institution, the com-

35 commissioner shall appoint the federal deposit insurance cor-
36 poration as receiver for that financial institution.

37 (c) A receiver appointed under any provision of this
38 article has the following general powers, duties and respon-
39 sibilities:

40 (1) To take full and exclusive possession and control of
41 and title to the papers, books, records, moneys, assets,
42 business and all other things of every description and location
43 of the financial institution and to collect all debts, dues and
44 claims belonging to the financial institution;

45 (2) To sue upon and defend all rights, actions, issues,
46 questions, claims and other matters involving the financial
47 institution;

48 (3) To exercise all fiduciary functions of the financial
49 institution as of the date of the commencement of the re-
50 ceivership;

51 (4) To borrow such sums of money as are reasonable and
52 necessary in aiding any liquidation of the financial institution
53 and, in connection therewith, to secure any such borrowing
54 by the pledge, hypothecation or mortgage of the assets of the
55 institution;

56 (5) Subject to the approval of the circuit court of the
57 county in which the principal office of the financial institution
58 is located in any case where the federal deposit insurance
59 corporation is the receiver and subject to the approval of the
60 commissioner in every other case, to sell any real, personal
61 or mixed property of the financial institution and to compro-
62 mise and settle any bad or doubtful debts due to or from
63 the financial institution;

64 (6) In any case where the federal deposit insurance cor-
65 poration is the receiver, to do all acts and undertakings
66 permitted or required by federal law;

67 (7) To take all necessary or convenient actions, including
68 the bringing of any administrative action before the com-
69 missioner or a hearing examiner or any action in any court
70 of competent jurisdiction, to ascertain any matter concerning

71 the depositors or creditors of the financial institution relative
72 to the receivership of the institution or to proceed against
73 any officer, director or stockholder of the institution to
74 ascertain or enforce any liability thereof or for the determina-
75 tion or adjudication of any other matter involving the in-
76 stitution; and

77 (8) To do all other acts and undertakings, not inconsistent
78 with the provisions of this article, necessary or convenient to
79 carry out the provisions of this article or to effectively ac-
80 complish the intent and purpose of this article.

81 (d) In any case where the federal deposit insurance cor-
82 poration is not the receiver, if the assets of an insolvent
83 financial institution are not sufficient to pay in full all its
84 depositors and creditors, without waiting to administer the
85 assets of the institution and without delaying for any other
86 cause but only after having first obtained the approval of
87 the commissioner therefor, the receiver shall immediately
88 institute all civil actions necessary for the benefit of the
89 depositors and creditors to collect from the stockholders of
90 the financial institution all amounts for which the stockholders
91 are jointly or severally liable to the institution. According to
92 the direction of the commissioner, any such action may be
93 instituted and maintained in the name of the receiver, the
94 financial institution or the commissioner.

95 (e) Before entering upon the discharge of any function
96 under this article, each receiver other than the federal de-
97 posit insurance corporation shall enter into a bond in favor
98 of the state of West Virginia in an amount and penalty
99 fixed by the commissioner, with corporate surety authorized
100 to do business in this state and approved by the commissioner,
101 conditioned upon the faithful discharge of his duties as
102 receiver and upon his fully accounting for and handing over
103 as required by law all properties, moneys, funds and other
104 things that come into the possession or control, or both, of
105 the receiver and his agents, attorneys and other representatives.
106 Such bond and the certificate of appointment shall be recorded
107 in the office of the clerk of the county commission of the
108 county in which the principal office of the financial institu-
109 tion is located.

110 (f) The provisions of section three of this article do not
111 in any way inhibit or proscribe the appointment of a receiver
112 under this section, and, whenever a receiver is appointed under
113 this section, any conservatorship theretofore appointed for
114 the same financial institution shall by operation of law im-
115 mediately terminate.

116 (g) On a temporary emergency basis, when the com-
117 missioner has ascertained that the capital of a financial in-
118 stitution has become substantially impaired and the institution
119 has failed, refused or neglected to make good such impairment
120 to the commissioner's satisfaction or when the commissioner
121 has ascertained that a financial institution is insolvent or
122 reasonably appears about to be insolvent, the commissioner
123 may immediately give written or oral notice of such finding
124 to the involved financial institution and shall immediately
125 thereupon take and retain full and exclusive possession and
126 control of the business and property of the institution and
127 close such institution until a receiver has been appointed for
128 the institution in accordance with the provisions of subsection
129 (a) of this section or until the institution has been permitted
130 by the commissioner to resume its regular business, one or the
131 other of which must be done by the commissioner within
132 thirty days of the actual taking of such possession and
133 control. When the commissioner closes an institution, he
134 shall place an appropriate sign to that effect at the main
135 entrance of the financial institution. Effective as of the
136 closing of the institution a judgment lien, attachment lien
137 or any voluntary or involuntary lien of any kind shall not
138 attach in any way to any asset or other property of the
139 institution and the directors, officers and agents of the
140 institution shall not have any authority to act in any way
141 on behalf of the institution or to convey, transfer, assign,
142 pledge, mortgage or encumber any asset or other property
143 thereof. Any attempt by any director, officer or agent of
144 the financial institution to convey, transfer, assign, pledge,
145 mortgage or encumber or otherwise establish any lien upon
146 any asset or other property of the financial institution
147 or in any maner to prefer any depositor, creditor, shareholder,
148 director, officer, agent or any other person, firm or corpora-

149 tion after the posting of such notice or in contemplation thereof
150 is void.

151 (h) In any case where a financial institution is insolvent
152 or reasonably appears about to be insolvent and where the
153 commissioner has failed, refused or neglected to act under the
154 provisions of this section, any stockholder, depositor or creditor
155 of the financial institution may petition the circuit court of the
156 county in which the principal office of the institution is
157 located to order the commissioner to proceed in accordance
158 with the other pertinent provisions of this section, and the
159 court shall expeditiously hear and decide such matter and
160 assume jurisdiction and render a prompt decision with respect
161 to such matter. Any such petitioner shall give notice of the
162 contents of the petition and day, time and place of the hear-
163 ing by personal service upon the commissioner in the manner
164 prescribed by the West Virginia rules of civil procedure not
165 less than five days before the hearing date. Upon such
166 hearing, if the court finds that the condition of the involved
167 financial institution is that it is insolvent or reasonably
168 appears about to be insolvent and that the commissioner has
169 unreasonably failed, refused or neglected to act thereupon,
170 then the court shall order the commissioner to proceed in
171 accordance with the other pertinent provisions of this section.
172 If the commissioner fails, refuses or neglects to comply
173 with such court order and such order has become final, such
174 failure, refusal or neglect constitutes grounds for the com-
175 missioner's removal from office.

176 (i) Any finding made pursuant to this section by the com-
177 missioner that a financial institution is insolvent or reasonably
178 appears about to be insolvent is conclusive as to all parties
179 affected by such finding, including any court considering the
180 matter.

181 (j) With the consent of the commissioner or by court order,
182 as necessary, a financial institution may voluntarily submit
183 itself to receivership or conservatorship under the provisions
184 of this article.

§31A-7-5. Provisions applicable to federal deposit insurance corporation only; certificate; discharge of commissioner of banking; emergency sale of assets; subrogation rights; limited court jurisdiction; hearings and notice.

1 (a) The provisions of this section apply only to those
2 cases in which the commissioner has appointed the federal
3 deposit insurance corporation (hereinafter referred to as
4 the "corporation") as receiver for a financial institution.

5 (b) When it has been appointed by the commissioner as
6 the receiver for a financial institution pursuant to the pro-
7 visions of section four of this article, the corporation shall
8 immediately take full and exclusive possession and control
9 of and title to the books, records, papers, moneys, assets,
10 business and all other things of the financial institution.
11 Immediately upon taking charge of the financial institution,
12 the corporation, in conjunction with a representative of the
13 institution designated by the directors thereof, shall make
14 in triplicate a complete inventory of all assets of the institution
15 and an itemized list of all its liabilities. The original and two
16 copies of the list shall be subscribed and sworn to by the per-
17 sons making them. The original shall be filed with the
18 commissioner as soon as practicable. One such copy shall be
19 furnished to the institution, and the other copy shall be re-
20 tained by the corporation. Such title shall pass to and
21 vest in the corporation by operation of law without the
22 execution of any instruments of conveyance, assignment,
23 transfer or endorsement. The commissioner shall file a certi-
24 ficate of the corporation's appointment and acceptance as
25 soon thereafter as possible and have such certificate recorded
26 with the clerk of the county commission of the county in
27 which the principal office of the financial institution is located.
28 There shall not be any bond required of the corporation.
29 Upon the filing of such certificate, the commissioner is for-
30 ever and fully relieved from all responsibility and liability
31 with respect to the affairs of the financial institution.

32 (c) As receiver the corporation may liquidate and other-
33 wise handle the affairs of the financial institution in accordance
34 with this section and the other pertinent provisions of this

35 article and shall have all the powers, duties and authority
36 given a receiver under all pertinent provisions of this article.

37 (d) When the affairs of a financial institution have come
38 under the possession and control of the corporation as
39 receiver for purposes of liquidation, with the consent of
40 the circuit court of the county in which the principal office
41 of the financial institution is located and without approval
42 of the stockholders of the institution, the corporation may sell
43 all or any part of the institution's assets, real and personal, to
44 another financial institution, a national bank, the corporation
45 or any successor institution or the corporation may borrow
46 from itself, to the extent permitted by federal law, any amount
47 necessary to facilitate the assumption of deposit liabilities by
48 a newly chartered or existing financial institution, assigning any
49 part or all of the assets of the financial institution as security
50 for such loan.

51 (e) Whenever the corporation pays or makes available for
52 payment the insured deposit liabilities of a closed financial
53 institution or a financial institution under receivership, the
54 corporation is subrogated to all of the rights of the owners
55 of the deposits against the financial institution in the same
56 manner and to the same extent as subrogation of the corpora-
57 tion is provided for in sections 1811 through 1832, inclusive,
58 of Title XII of the United States code and all rules and
59 regulations promulgated pursuant thereto.

60 (f) Where the corporation has become receiver of a
61 financial institution and is proceeding under other pertinent
62 provisions of this article, the commissioner does not have
63 any jurisdiction or authority with respect to the corporation and
64 the corporation may resolve all doubts, difficulties and other
65 matters concerning its receivership and obtain all convenient
66 or necessary approvals and other determinations from the
67 circuit court of the county in which the principal office of the
68 financial institution is located.

**§31A-7-6. When receiver may borrow from federal lending agen-
cies and others.**

1 With the written consent of the commissioner, any re-
2 ceiver of a financial institution appointed under the provisions

3 of this article may borrow money from and contract for
4 loans with any finance or lending agency of the United
5 States government or any other responsible agency or person
6 for the purpose of furnishing immediate relief to or aiding in
7 the reorganization, liquidation or reopening of such financial
8 institution, protecting and preserving the assets in charge
9 of the receiver, expediting the making of distributions and the
10 payment of dividends to depositors and other creditors of
11 the institution, providing for the expenses of administration
12 and liquidation or its merger or consolidation with another
13 financial institution, and paying the claims of secured creditors
14 where the security is deemed by the receiver and the com-
15 missioner to be of a value in excess of the debt so secured and
16 to be for the preservation of the assets of such institution; and
17 to pledge, hypothecate, assign or transfer to any such respon-
18 sible agency or person any assets or securities belonging to the
19 institution as collateral security for the payment of all such
20 loans, subject to such reasonable terms and conditions imposed
21 by and agreed upon between the parties.

22 All acts of the receiver or the commissioner under this
23 section are valid, binding and effective to transfer to any
24 such responsible agency or person, and any successors and
25 assigns thereof, assets and securities in accordance with
26 the terms of any such contract of pledge, transfer or assign-
27 ment.

28 The commissioner and receiver are not under any circum-
29 stances under any personal obligation to repay any such
30 loan and may take any action necessary or convenient to
31 consummate such loan and to provide for the repayment
32 thereof and to give bond, with sufficient corporate surety
33 authorized to do business in this state, the amount of bond
34 to be set by and the surety to be approved by the com-
35 missioner, for the faithful performance of all undertakings
36 in connection therewith. The authority herein conferred upon
37 a receiver for the procuring and obtaining of such loans in-
38 cludes the authority to renew them from time to time, with
39 the written consent of the commissioner.

40 An accurate record of all securities and exact copies of
41 all notes withdrawn from the files of the financial institution

42 to be pledged as collateral for borrowed money under the
43 provisions of this section shall be kept in the files of such
44 institution at all times.

**§31A-7-7. Reorganization, purchase, merger or consolidation of
and by financial institutions; conversion of national
bank to state bank; obligations remain effective.**

1 Subject to the other provisions of this section, in any volun-
2 tary or involuntary proceeding to liquidate a financial insti-
3 tution for which a receiver has been appointed under this
4 article, such institution, with the written consent of the com-
5 missioner, may reorganize, reclaim possession of its assets
6 and continue in business.

7 Such financial institution may at any time, but only with
8 the approval of the West Virginia board of banking and
9 financial institutions in the case of a state banking institution
10 and with the approval of the commissioner in the case of all
11 other financial institutions, purchase the business and assets
12 and assume the liabilities of or merge or consolidate with
13 another like financial institution. With the approval of the
14 West Virginia board of banking and financial institutions and
15 in compliance with all applicable laws of this state and the
16 United States, any state banking institution may purchase the
17 business and assets and assume the liabilities of a national
18 banking association or merge or consolidate with a national
19 banking association to form a resulting state bank, the terms
20 and conditions of any such assumption, purchase, merger or
21 consolidation to be first approved by the board. With the ap-
22 proval of the West Virginia board of banking and financial in-
23 stitutions and in compliance with all applicable laws of this
24 state and the United States, a national banking asso-
25 ciation may convert into a state bank. After any such
26 purchase, merger or consolidation, no other association
27 or corporation may take or use the name of any financial
28 institution participating in such purchase, merger or con-
29 solidation.

30 Unless in conflict with a law of the United States of Ameri-
31 ca, at the completion of any purchase, merger or consolidation
32 permitted by this section and whether such financial institu-

33 tion is organized under the laws of this state or of the United
 34 States, the purchasing, merged or consolidated institution is
 35 substituted by operation of law in the place and stead of each
 36 of the participating financial institutions in all fiduciary re-
 37 lationships, titles, properties, offices, appointments, rights, pow-
 38 ers, duties, obligations and liabilities of each participating fi-
 39 nancial institution as trustee, agent, executor, administrator,
 40 guardian, depository, registrar, transfer agent or other fidu-
 41 ciary and every other capacity, office or position of each of the
 42 participating financial institutions is by operation of law vested
 43 in and devolved upon the purchasing, merged or consolidated
 44 institution. Such purchasing, merged or consolidated institution
 45 shall take, receive, accept, hold, administer and discharge all
 46 grants, gifts, bequests, devises, conveyances, trusts, powers and
 47 appointments made by deed, deed of trust, will, agreement,
 48 order of court or otherwise to, in favor of or in the name of
 49 any such participating institution, whether made, executed or
 50 entered before or after such purchase, merger or consolida-
 51 tion and whether to vest or become effective before or after
 52 such purchase, merger or consolidation, as fully and to the
 53 same effect as if the purchasing, merged or consolidated in-
 54 stitution had been named in such deed, deed of trust, will,
 55 agreement, order or other instrument instead of such parti-
 56 cipating institution. All acts taken or performed in its own
 57 name or in the name of or in behalf of any financial institu-
 58 tion participating in any such purchase, merger or consoli-
 59 dation by any purchasing, merged or consolidated institution
 60 as trustee, agent, executor, administrator, guardian, depository,
 61 registrar, transfer agent or other fiduciary are as good, valid
 62 and effective as if this section had been applicable thereto
 63 at the time of such taking or performance.

§31A-7-8. Voluntary liquidation by financial institution.

1 Any financial institution may, after thirty days' notice to
 2 the commissioner, cease to transact business and go into volun-
 3 tary liquidation and convert its assets into money and pay the
 4 money to the persons entitled thereto.

**§31A-7-9. Involuntary liquidation of financial institution after re-
 vocation of certificate of authority, permit or license.**

1 If the commissioner revokes the certificate of authority, per-

2 mit or license of any financial institution other than a state
3 bank or if the West Virginia board of banking and financial
4 institutions revokes the certificate, permit or license of a state
5 bank and such financial institution within a reasonable time
6 does not comply with the laws of the state and the requirements
7 of the commissioner or board and thereby fails to secure a new
8 certificate, permit or license to continue in business, the com-
9 missioner shall compel such financial institution to go into
10 liquidation, wind up its affairs and surrender its charter. In any
11 such case, the state attorney general, at the request of the
12 commissioner, shall institute an action in the circuit court of
13 the county in which the principal office of such financial in-
14 stitution is located, in the name of the state of West Virginia,
15 to liquidate, wind up the affairs of and dissolve such financial
16 institution, and such court shall either by itself or through the
17 commissioner or a receiver appointed by the commissioner,
18 fully liquidate, wind up the affairs of and dissolve the financial
19 institution.

§31A-7-10. Executory contracts and leases; assumption or rejection; court approval for assignments; when not terminated or modified.

1 (a) Within the six-month period immediately following the
2 recordation of his certificate of appointment with the county
3 clerk, the receiver may assume or reject any executory contract
4 or any unexpired lease of the involved financial institution.
5 Notice of the receiver's rejection of any such contract or lease
6 shall be given to the other party to such contract or lease not
7 later than fifteen days before the day the termination takes
8 effect. Sufficient notice is given when the other party to
9 the contract or lease or any authorized agent or representative
10 thereof is actually given in person written or oral notice of
11 such rejection or when the receiver has mailed notice of such
12 rejection to the other party at his last known mailing address
13 by certified or registered mail, return receipt requested. As
14 of the date any such termination takes effect, any claim of
15 the other party to the contract or lease is limited to the
16 contract payment or rent accrued up to the time of rejection
17 plus an amount equal to six months of contract payment or
18 rent if such payment or rent would have otherwise been due

19 under the contract or lease had it not been terminated. If
20 the receiver assumes any such contract or lease, he shall do
21 so at the contract or rent amount and upon all terms set
22 forth in the contract or lease and shall cure any default in
23 the contract or lease.

24 (b) With the approval of the circuit court of the county
25 in which the principal office of the involved financial in-
26 stitution is located, the receiver may assign to any new
27 financial institution created to carry on the business of the
28 involved financial institution any executory contract or un-
29 expired lease not in default or the default of which has been
30 cured. In any such case, before the court approves any such
31 assignment, the receiver must prove to the court and the
32 court must find that the proposed assignment involves a risk
33 no greater to the new financial institution than that under-
34 taken by the involved financial institution at the time the
35 contract or lease was originally executed.

36 (c) Notwithstanding any provision in any executory con-
37 tract or unexpired lease to the contrary, an executory contract
38 or unexpired lease of a financial institution for which a receiver
39 has been appointed under the provisions of this article may not
40 be terminated or modified in any way after the appointment
41 of the receiver solely because of a provision in such con-
42 tract or lease that is conditioned upon the appointment of a
43 receiver or conservator for the institution or upon the insol-
44 vency or financial condition of the institution at any time
45 before a distribution of its proceeds pursuant to section twelve
46 of this article.

§31A-7-11. General subrogation rights of federal deposit insurance corporation.

1 In all cases where the federal deposit insurance corporation
2 pays or makes available for payment the insured deposit
3 liabilities of a closed financial institution or a financial in-
4 stitution under receivership, the federal deposit insurance
5 corporation, whether or not it is receiver of such institution,
6 is subrogated to all of the rights of the owners of the de-
7 posits against the financial institution in the same manner
8 and to the same extent as subrogation of the corporation is

9 provided for in sections 1811 through 1832, inclusive, of
10 Title XII of the United States Code in the closing of a national
11 banking association.

**§31A-7-12. Payment of expenses and debts; order of priority;
rights of secured creditors.**

1 (a) Each receiver shall pay the expenses and just debts
2 of the involved financial institution in the manner specified
3 by this section. The receiver shall divide all claims against the
4 institution into the general classes set forth in this section with
5 the highest priority being given to the first listed class and then
6 to each subsequent class as it is ranked. All such payments
7 must be approved by the commissioner and shall be made from
8 the following general classes in accordance with the following
9 order of priority:

10 (1) First, the commissioner's costs of administration, in-
11 cluding, but not limited to, all expenses actually incurred by
12 the receiver in the course of the receivership; all expenses
13 actually incurred by the commissioner pursuant to any pro-
14 vision of this article; all costs actually incurred in the deter-
15 mination of any contested claim or other contested case under
16 this article; the payment of reasonable compensation to any
17 receiver, conservator, hearing examiner, attorney, accountant
18 or other person duly appointed or employed for the purpose of
19 carrying out any provision of this article; and all other expenses
20 expressly authorized by other provisions of this article;

21 (2) Second, wage claims for all wages due and owing
22 employees of the financial institution for the ninety-day
23 period immediately preceding the date of appointment of the
24 receiver up to an amount not to exceed one thousand five
25 hundred dollars per employee;

26 (3) Third, all depositors of the financial institution;

27 (4) Fourth, all state, federal and local taxes due for
28 the period during which the financial institution carried on
29 its business;

30 (5) Fifth, excluding all claims of shareholders of the
31 financial institution, all claims of creditors of the financial in-
32 stitution, whether by contract, judgment or otherwise; and

33 (6) Sixth, all the remaining proceeds to the shareholders
34 of the financial institution.

35 (b) Before the receiver makes any payment under sub-
36 section (a) of this section, he shall receive and approve or
37 reject all claims against the financial institution in the manner
38 provided for in section thirteen of this article. All ap-
39 proved claims shall be paid according to the order of priority
40 set in subsection (a) of this section. With respect to sub-
41 section (a) of this section, payment in full of all costs provided
42 for in subdivision (1) must be made before any payment can
43 be made in any other subdivision; next, payment in full of
44 all wage claims provided for in subdivision (2) must be made
45 before any payment can be made in any following subdivision;
46 next payment in full of all depositors provided for in subdivi-
47 sion (3) must be made before any payment can be made in any
48 following subdivision; next, payment in full of all taxes pro-
49 vided for in subdivision (4) must be made before any payment
50 can be made in any following subdivision; next, all creditors'
51 claims provided for in subdivision (5) must be made before
52 any shareholders can be paid anything; and, last, all remaining
53 proceeds shall be paid to the shareholders. If at any time
54 a situation develops in which proceeds are available to be
55 paid within a particular subdivision but such proceeds are
56 not sufficient to fully pay the creditors in that class, then
57 the receiver shall pay each creditor in that class his pro
58 rata share of the proceeds.

59 (c) The provisions of this section shall not be construed
60 or applied so as to take away or modify in any way the
61 rights of a secured creditor who has properly filed and per-
62 fected a security interest in any property of the financial
63 institution in compliance with other applicable law, except
64 that the receiver may postpone payment of a claim relating
65 thereto to allow for orderly administration.

**§31A-7-13. Submission of claims to receiver; notice by mailing
and publication; notice and proof of claim forms;
loss, rejection and payment of claims; contested
claims.**

1 (a) Within a reasonable time after taking possession and

2 control of the property and business of the financial institu-
3 tion, the receiver shall require all parties who may have
4 claims against the financial institution to present their claims
5 and provide satisfactory proof thereof within such reasonable
6 time, not to be more than sixty days from the date of receipt
7 of any mailed notice and not to be more than sixty days from
8 the date of publication of any published notice, as the re-
9 ceiver specifies.

10 (b) Notice shall be given by mailing to each known stock-
11 holder depositor, creditor and other possible claimant of the
12 institution at his last known mailing address, as shown on the
13 books of the financial institution, by certified or registered
14 mail, return receipt requested, a written notice form and proof
15 of claim form, each of which shall be prescribed by the com-
16 missioner and must be uniform for all involved parties and
17 must clearly state in plain language that, due to the precarious
18 condition of the financial institution, the receiver has been
19 appointed by the commissioner to preserve and protect the
20 assets thereof and to pay the expenses and just debts thereof
21 and that each involved party must present his claim against
22 the institution along with satisfactory proof thereof, which may
23 be done by returning to the receiver the properly filled out
24 proof of claim form accompanied by a true copy of such proof,
25 within the specified time or he will lose all rights to payment
26 upon the claim. If he does not know the mailing address of
27 an involved party or if any mailed notice is returned unde-
28 liverable, the receiver shall make a reasonable diligent effort to
29 ascertain the mailing address and whereabouts of such party
30 and, if it is ascertained, shall mail the notice form and proof
31 of claim form to such party at such address in the manner
32 herein before provided. If the receiver is not able to ascertain
33 the mailing address and whereabouts of any such party, for
34 each such party, and all heirs and assignees thereof, and also
35 for all unnown and unascertainable parties, and all heirs and
36 assignees thereof, who may have claims against the institution,
37 notice shall be given by publication of the prescribed notice
38 form and proof of claim form as a Class III-O legal advertise-
39 ment in compliance with the provisions of article three, chapter
40 fifty-nine of this code, and the publication area for such
41 publication shall be the county in which the principal office

42 of the involved financial institution is located. Any such legal
43 publication and any mailed notice shall contain such additional
44 information and statements concerning the receivership and
45 the financial institution as the commissioner requires or as the
46 receiver, with the consent of the commissioner, considers
47 necessary or advisable.

48 (c) In the case of all deliverable mailed notices, within sixty
49 days following the date set for submission of such claims and,
50 in the case of all parties for whom notice by publication has
51 been given, within sixty days following the date set for sub-
52 mission of such claims, the receiver shall approve or reject,
53 in whole or in part, the claims submitted to him. Any party
54 not submitting a claim to the receiver within the prescribed
55 time loses all rights to payment upon the claim. The receiver
56 shall notify in writing each party whose claim has been wholly
57 or partly rejected of such rejection and the reasons therefor
58 not later than fifteen days after the rejection. Within ten days
59 after receipt of such rejection notice, such party may contest
60 the rejection and obtain a fair hearing thereupon in the manner
61 provided for in section fourteen of this article. With the consent
62 of the commissioner, the receiver shall pay all valid claims in
63 the manner provided for in this article.

**§31A-7-14. Hearings upon contested claims and other adverse ac-
tions of receivers and commissioner; hearing examin-
ers; judicial review.**

1 Except to the extent another provision of this article ex-
2 pressly authorizes a person to directly take action in a
3 court of competent jurisdiction, any person who is adversely
4 affected by any whole or partial rejection of a claim provided
5 for in section thirteen of this article or by any other order,
6 demand, action, refusal, failure to act, denial or requirement
7 of the receiver under the provisions of this article for the
8 financial institution with which such person is involved and
9 any person who is adversely affected by any order, demand,
10 action, refusal, failure to act, denial or requirement of the
11 commissioner (other than the promulgation of any rules and
12 regulations, which shall be done in accordance with the perti-
13 nent provisions of chapter twenty-nine-a of this code) under
14 the provisions of this article is entitled to a hearing thereupon

15 before a hearing examiner appointed by the commissioner
16 for such purpose. Any such hearing shall be conducted and
17 decided by the hearing examiner in the time and manner
18 provided for the hearing of contested cases in article five,
19 chapter twenty-nine-a of this code, and judicial review of the
20 hearing examiner's decision may be had in the time and
21 manner provided for judicial review of contested cases in
22 section four of said article five and in article six of said
23 chapter twenty-nine-a. Each hearing examiner appointed
24 under this section shall be qualified to act as such by reason
25 of his training, education or experience, but a stockholder,
26 creditor, depositor or other person affiliated in any way,
27 directly or indirectly, with the involved financial institution
28 may not be a hearing examiner. All costs and expenses of
29 any such hearing and any judicial review thereof shall be paid
30 as part of the expenses of administration of a receivership
31 as provided for in section twelve of this article.

§31A-7-15. Exclusivity of powers and procedures of article.

1 The provisions of this article provide full and exclusive
2 powers and procedures for the conservatorship, receivership
3 and liquidation of a financial institution, and a receiver or
4 conservator for a financial institution shall not under any
5 circumstances be appointed nor shall a conservatorship, re-
6 ceivership or liquidation of a financial institution under any
7 circumstances be conducted except in the manner provided
8 for in this article.

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

R. P. Bayless

Chairman Senate Committee

Jonny E. Whetlow

Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

Jedd C. Willis

Clerk of the Senate

W. Blankenship

Clerk of the House of Delegates

Montgomery

President of the Senate

Walter G. Lee, Jr.

Speaker House of Delegates

The within *is approved* this the *28*
day of *April*, 1981.

John R. Ralston

Governor

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