

APPROVED AND SIGNED BY THE GOVERNOR

Date 4-29-81

Time _____

No: 414

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1981



ENROLLED

Committee Substitute for
SENATE BILL NO. 414

(By Mr. Nelson)



PASSED April 11, 1981

In Effect ninety days from Passage

OFFICE
SECY. OF STATE

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COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 414
(MR. NELSON, *original sponsor*)

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

AN ACT to amend and reenact sections two and three, article three, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to giving the West Virginia board of banking and financial institutions certain emergency banking powers and allowing said board, in certain instances where it finds that the financial condition of a bank is such as to constitute an imminent peril to its depositors, savings account holders, customers or creditors, without notice, examination, investigation or hearing, to enter an order approving or disapproving certain applications to incorporate and organize a state banking institution and without notice or hearing to enter an order approving or disapproving the request of any state bank to purchase or merge and consolidate with another state banking institution or with a national banking association to form a resulting state bank; definitions; permitting operation of banking business from separate premises under the same name, in certain circumstances, upon a finding of imminent peril; restrictions.

Be it enacted by the Legislature of West Virginia:

That sections two and three, article three, 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 3. BOARD OF BANKING AND FINANCIAL INSTITUTIONS.

§31A-3-2. General powers and duties.

- 1 (a) In addition to other powers conferred by this chapter,
- 2 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 code;
 - 8 (3) Advise the commissioner in all matters within his
 - 9 jurisdiction;
 - 10 (4) Study the organization, programs and services of
 - 11 financial institutions and the laws relating thereto in this state
 - 12 and in other jurisdictions, and to report and recommend to
 - 13 the governor and the Legislature all such changes and
 - 14 amendments in laws, policies and procedures relating thereto
 - 15 as may be by it deemed proper; and
 - 16 (5) Grant permission and authority to a financial
 - 17 institution:
 - 18 (A) To participate in a public agency hereafter created
 - 19 under the laws of this state or of the United States, the
 - 20 purpose of which is to afford advantages or safeguards to
 - 21 financial institutions or to depositors therein, and to comply
 - 22 with all lawful requirements and conditions imposed upon
 - 23 such participants;
 - 24 (B) To engage in any financial institution activity,
 - 25 services, procedures and practices in which financial
 - 26 institutions of the same type subject to the jurisdiction of the
 - 27 federal government may hereafter be authorized by federal
 - 28 laws, rules or regulations to engage, notwithstanding any
 - 29 contrary provision of this code: *Provided*, That no such
 - 30 permission or authority shall be granted to any banking
 - 31 institution to install or maintain any branch bank or engage in
 - 32 business at any place other than its principal office in this
 - 33 state in contravention of the provisions of section twelve,
 - 34 article eight of this chapter;
 - 35 (C) To pay interest on demand deposits of the United
 - 36 States or any agency thereof, if the payment of such interest
 - 37 shall be permitted under any applicable federal law, rule or
 - 38 regulation.
 - 39 Any permission and authority granted by the board
 - 40 pursuant to this subdivision (5) shall cease and terminate

41 upon the adjournment of the next regular session of the
42 Legislature, unless the Legislature shall at such session enact
43 legislation authorizing the financial institution participation,
44 activity, services and procedures or payment of interest with
45 respect to which such permission and authority was granted,
46 in which event such permission and authority shall continue
47 in effect until the effective date of such legislation.

48 (b) The board shall further have the power, by entering
49 appropriate orders, to:

50 (1) Restrict the withdrawal of deposits from any financial
51 institution when in the judgment of the board extraordinary
52 circumstances make such restrictions necessary for the
53 protection of creditors of and depositors in the affected
54 institution;

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

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

70 (4) Revoke the certificate of authority, permit, certificate
71 or license of any state banking institution to engage in
72 business in this state if such institution shall fail or refuse to
73 comply with any order of the commissioner entered pursuant
74 to the provisions of paragraphs (A) or (B), subdivision (14),
75 subsection (c), section four, article two of this chapter, or at
76 the board's election to direct the commissioner to apply to
77 any court having jurisdiction for a prohibitory or mandatory
78 injunction or other appropriate remedy to compel obedience
79 to such order;

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

83 regulation or order, or who willfully disregards or fails to
84 comply with any order of the board or commissioner made
85 and entered in accordance with the provisions of this chapter
86 or who is dishonest or grossly incompetent in the conduct of
87 financial institution business.

88 (6) Approve or disapprove the application of any state
89 bank to purchase the business and assets and assume the
90 liabilities of, or merge or consolidate with, another state
91 banking institution in accordance with the provisions of
92 section five, article seven of this chapter: *Provided*, That
93 nothing contained in this subdivision shall be construed as
94 permitting any banking institution to install or maintain any
95 branch bank or to take any other action or engage in any other
96 practice prohibited by section twelve, article eight of this
97 chapter, except as permitted by subdivision (8) of this
98 subsection (b);

99 (7) Approve or disapprove the application of any state
100 bank to purchase the business and assets and assume the
101 liabilities of a national banking association, or merge or
102 consolidate with a national banking association to form a
103 resulting state bank in accordance with the provisions of
104 section five, article seven of this chapter: *Provided*, That
105 nothing contained in this subdivision shall be construed as
106 permitting any banking institution to install or maintain any
107 branch bank or to take any other action or engage in any other
108 practice prohibited by section twelve, article eight of this
109 chapter, except as permitted by subdivision (8) of this
110 subsection (b); and

111 (8) Notwithstanding any provision contained in section
112 twelve, article eight of this chapter or elsewhere in this code
113 to the contrary, incident to the approval of an application
114 pursuant to subdivision (6) or subdivision (7) of this
115 subsection (b), permit the bank the application of which is so
116 approved to operate its banking business under its name
117 from the premises of the bank the business and assets of
118 which have been purchased and the liabilities of which have
119 been assumed by such applicant bank or with which such
120 applicant bank has merged or consolidated: *Provided*, That
121 such permission may be granted only if the board has made
122 the findings required by subsection (f), section three of this
123 article and such applicant bank has no common directors or
124 officers nor common ownership of stock exceeding ten

125 percent of total outstanding voting stock with the bank
 126 whose business and assets are being purchased and liabilities
 127 assumed or with whom such applicant bank is being merged.

128 (9) No provision of this section shall be construed to alter,
 129 reduce or modify the rights of shareholders, or obligations of
 130 a banking institution in regard to its shareholders, as set forth
 131 in section one hundred seventeen, article one, chapter
 132 thirty-one of this code and section five, article seven of this
 133 chapter and other applicable provisions of this code.

**§31A-3-3. Hearings and orders; entry of order without notice
 and hearing; definitions.**

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

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

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

18 (b) After any such hearing and consideration of all of the
 19 testimony and evidence, the board shall make and enter an
 20 order deciding the matters with respect to which such
 21 hearing was conducted, which order shall be accompanied by
 22 findings of fact and conclusions of law as specified in section
 23 three, article five, chapter twenty-nine-a of this code, and a
 24 copy of such order and accompanying findings and
 25 conclusions shall be served upon all parties to such hearing,
 26 and their attorneys of record, if any.

27 (c) In the case of an application for the board's approval to
 28 incorporate and organize a banking institution in this state, as
 29 provided in subdivision (3), subsection (b), section two of this
 30 article, the board shall, upon receipt of any such application,
 31 provide notice to all banking institutions, which in the

32 manner hereinafter provided, have requested notice of any
33 such action. The request by any such banking institution to
34 receive such notice shall be in writing and shall request the
35 board to notify it of the receipt by the board of any
36 application to incorporate and organize a banking institution
37 in this state. A banking institution may, within ten days after
38 receipt of such notice, file a petition to intervene and shall, if
39 it so files such petition, thereupon become a party to any
40 hearing relating thereto before the board.

41 (d) The board shall have the power and authority to issue
42 subpoenas and subpoenas duces tecum, administer oaths and
43 examine any person under oath in connection with any
44 subject relating to duties imposed upon or powers vested in
45 the board.

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

55 (f) Whenever the board shall find that the financial
56 condition of a state banking institution or a national banking
57 association constitutes an imminent peril to its depositors,
58 savings account holders, other customers or creditors, it may
59 forthwith without notice or hearing enter an order taking any
60 action permitted by subdivisions (6) and (7) of subsection (b),
61 section two of this article. Immediately upon entry of such
62 order, certified copies thereof shall be served upon all
63 persons affected thereby and upon demand such persons
64 shall be entitled to a hearing thereon at the earliest
65 practicable time.

66 (g) Whenever the board shall find that the financial
67 condition of a state banking institution or national banking
68 association constitutes an imminent peril to its depositors,
69 savings account holders, other customers or creditors, it may
70 forthwith without compliance with the provisions of section
71 six or seven, article four of this chapter and without notice or
72 hearing enter an order approving or disapproving an
73 application to incorporate a state banking institution which is

74 being formed to purchase the business and assets or assume
75 the liabilities of, or both, or merge or consolidate with, such
76 state banking institution or national banking institution the
77 financial condition of which constitutes an imminent peril to
78 its depositors, savings account holders, other customers or
79 creditors. Immediately upon the entry of such order, certified
80 copies thereof shall be served upon all persons affected
81 thereby and upon demand such persons shall be entitled to a
82 hearing thereon at the earliest practicable time.

83 (h) Definitions.

84 (1) The term "imminent peril" means that, because the
85 banking institution is insolvent or about to be insolvent, or
86 there is a probability that the banking institution will not be
87 able to pay its debts when they become due.

88 (2) A banking institution is "about to be insolvent" when it
89 would be unable to meet the demands of its depositors or is
90 clearly unable, without impairment of capital, by sale of
91 assets or lawful borrowings or otherwise, to realize sufficient
92 liquid assets to pay such debts for which payment is likely, in
93 the immediate future, to be due and demanded in the
94 ordinary course of business.

95 (3) A banking institution is "insolvent" when it is unable
96 to pay its debts to its depositors and other creditors in the
97 ordinary and usual course of business.

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

R. P. Baylor
Chairman Senate Committee

Jonny E. Whitlow
Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

Todd C. Willis
Clerk of the Senate

W. Blankenship
Clerk of the House of Delegates

Walter P. Shaw
President of the Senate

Walter H. Lee, Jr.
Speaker House of Delegates

The within *incurred* this the *29*
day of *April*, 1981.

John D. Sawyer
Governor

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