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

81 MAY 1 PL: 13 RECEIVED
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.

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

1. Regulate its own procedure and practice;
2. Promulgate reasonable rules and regulations to implement any provision of this article, such rules and regulations to be promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code;
3. Advise the commissioner in all matters within his jurisdiction;
4. Study the organization, programs and services of financial institutions and the laws relating thereto in this state and in other jurisdictions, and to report and recommend to the governor and the Legislature all such changes and amendments in laws, policies and procedures relating thereto as may be by it deemed proper; and
5. Grant permission and authority to a financial institution:
   A. To participate in a public agency hereafter created under the laws of this state or of the United States, the purpose of which is to afford advantages or safeguards to financial institutions or to depositors therein, and to comply with all lawful requirements and conditions imposed upon such participants;
   B. To engage in any financial institution activity, services, procedures and practices in which financial institutions of the same type subject to the jurisdiction of the federal government may hereafter be authorized by federal laws, rules or regulations to engage, notwithstanding any contrary provision of this code: Provided, That no such permission or authority shall be granted to any banking institution to install or maintain any branch bank or engage in business at any place other than its principal office in this state in contravention of the provisions of section twelve, article eight of this chapter;
   C. To pay interest on demand deposits of the United States or any agency thereof, if the payment of such interest shall be permitted under any applicable federal law, rule or regulation.

Any permission and authority granted by the board pursuant to this subdivision (5) shall cease and terminate
upon the adjournment of the next regular session of the Legislature, unless the Legislature shall at such session enact legislation authorizing the financial institution participation, activity, services and procedures or payment of interest with respect to which such permission and authority was granted, in which event such permission and authority shall continue in effect until the effective date of such legislation.

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

1. Restrict the withdrawal of deposits from any financial institution when in the judgment of the board extraordinary circumstances make such restrictions necessary for the protection of creditors of and depositors in the affected institution;

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

3. Approve or disapprove applications to incorporate and organize state banking institutions in accordance with the provisions of sections six and seven, article four of this chapter;

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

5. Suspend or remove a director, officer or employee of any financial institution who is or becomes ineligible to hold 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
percent of total outstanding voting stock with the bank
whose business and assets are being purchased and liabilities
assumed or with whom such applicant bank is being merged.
(9) No provision of this section shall be construed to alter,
reduce or modify the rights of shareholders, or obligations of
a banking institution in regard to its shareholders, as set forth
in section one hundred seventeen, article one, chapter
thirty-one of this code and section five, article seven of this
chapter and other applicable provisions of this code.
§31A-3-3. Hearings and orders; entry of order without notice
and hearing; definitions.
(a) Subject to the provisions of subsections (e), (f) and (g)
of this section, notice and hearing shall be provided in
advance of the entry of any order by the board.
(1) Such notice shall be given to the financial institution or
person with respect to whom the hearing is to be conducted
in accordance with the provisions of section two, article
seven, of chapter twenty-nine-a of this code, and such hearing
and the administrative procedures in connection therewith
shall be governed by all of the provisions of article five,
chapter twenty-nine-a of this code, and shall be held at a time
and place set by the board, but shall not be held less than ten
nor more than thirty days after such notice is given. A hearing
may be continued by the board on its own motion or for good
cause shown.
(2) At any such hearing a party may represent himself or
be represented by an attorney at law admitted to practice
before any circuit court of this state.
(b) After any such hearing and consideration of all of the
testimony and evidence, the board shall make and enter an
order deciding the matters with respect to which such
hearing was conducted, which order shall be accompanied by
findings of fact and conclusions of law as specified in section
three, article five, chapter twenty-nine-a of this code, and a
copy of such order and accompanying findings and
conclusions shall be served upon all parties to such hearing,
and their attorneys of record, if any.
(c) In the case of an application for the board’s approval to
incorporate and organize a banking institution in this state, as
provided in subdivision (3), subsection (b), section two of this
article, the board shall, upon receipt of any such application,
provide notice to all banking institutions, which in the
manner hereinafter provided, have requested notice of any such action. The request by any such banking institution to receive such notice shall be in writing and shall request the board to notify it of the receipt by the board of any application to incorporate and organize a banking institution in this state. A banking institution may, within ten days after receipt of such notice, file a petition to intervene and shall, if it so files such petition, thereupon become a party to any hearing relating thereto before the board.

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

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

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

(g) Whenever the board shall find that the financial condition of a state banking institution or national banking association constitutes an imminent peril to its depositors, savings account holders, other customers or creditors, it may forthwith without compliance with the provisions of section six or seven, article four of this chapter and without notice or hearing enter an order approving or disapproving an application to incorporate a state banking institution which is
being formed to purchase the business and assets or assume
the liabilities of, or both, or merge or consolidate with, such
state banking institution or national banking institution the
financial condition of which constitutes an imminent peril to
its depositors, savings account holders, other customers or
creditors. Immediately upon the entry of such order, certified
copies thereof shall be served upon all persons affected
thereby and upon demand such persons shall be entitled to a
hearing thereon at the earliest practicable time.

(h) Definitions.

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

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

(3) A banking institution is “insolvent” when it is unable
to pay its debts to its depositors and other creditors in the
ordinary and usual course of business.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

R. P. Bayhler  
Chairman Senate Committee

J. E. Whitlow  
Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

J. E. Stiles  
Clerk of the Senate

C. Blankenship  
Clerk of the House of Delegates

W. R. McShaw  
President of the Senate

J. H. Lee, Jr.  
Speaker House of Delegates

The within _______  
this the ______day of ________, 1981.

John D. Chapman  
Governor