

APPROVED AND SIGNED BY THE GOVERNOR

Date 3-25-82

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# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1982



# ENROLLED

*Committee Substitute for*  
SENATE BILL NO. 331

(By Mr. McGraw, Mr. President)



PASSED March 13, 1982

In Effect ninty days from Passage



**ENROLLED**  
COMMITTEE SUBSTITUTE  
FOR  
**Senate Bill No. 331**

(BY MR. MCGRAW, MR. PRESIDENT, *original sponsor*)

[Passed March 13, 1982; in effect ninety days from passage.]

AN ACT to amend and reenact section two, article one, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section four, article two of said chapter; to amend and reenact sections two and three, article three of said chapter; to amend and reenact section seven, article seven of said chapter; to amend and reenact sections twelve and twelve-a, article eight of said chapter; to further amend said article by adding thereto a new section, designated section twelve-b; and to amend said chapter by adding thereto two new articles, designated articles eight-a and eight-b, all relating to general definitions; defining "branch bank"; relating to general powers and duties of the commissioner of banking of West Virginia; authorizing said commissioner to adopt rules and regulations applicable to consumer loans and credit sales; authorizing said commissioner to approve or disapprove applications to change the location of the principal office of state banking institutions; general powers and duties of the West Virginia board of banking and financial institutions; authorizing said board to approve the reorganization, purchase, merger or consolidation of like financial institutions; authorizing said board to approve or disapprove applications for branch banks; providing that branch banks may be established by the purchase of assets of or merger or consolidation with another banking institution, or

by the construction, lease or acquisition of branch bank facilities in an unbanked area; defining "unbanked area"; relating to hearings and orders; permitting banks to establish and maintain branch banks subject to certain limitations and restrictions; setting forth procedures for authorization of branch banks by said board; prescribing fees for examination and investigation of applications for branch banks; authorizing limited off-premises banking facilities; messenger services, armored car service or other courier or delivery service permitted with certain limitations; granting to banking institutions having their principal offices in the state, individually or jointly with one or more other banking institutions or federally insured financial institutions having their principal offices in this state, or any combination thereof, the right to install, operate and engage in banking transactions by means of one or more customer bank communication terminals; providing that such terminals shall not be considered to be branch banks or branch offices, agencies or places of business or off-premises walk-in or drive-in banking facilities; defining "customer bank communication terminal" and "point of sale terminal"; requiring that a bank which installs a customer bank communication terminal make the same available for use by customers of other banking institutions with certain exceptions; prohibiting installation and operation of a customer bank communication terminal by any financial institution which does not have its principal office in this state; exempting the operation of customer-bank communication terminals involved in a non-exclusive access interchange system from the definition of branching; allowing acquisition of the capital stock of one or more banks by a bank holding company if said board does not disapprove such acquisition within ninety days following submission of reports respecting such action with certain exceptions; prescribing fees for examination and investigation of such proposed action; defining "company", "subsidiary", "successor" and "bank holding company"; providing exceptions for the prior notification of said board; providing for the registration and reporting of bank holding companies; prescribing annual registration fees for bank holding companies; providing criminal penalties for violation of certain provisions; community reinvestment; requiring the commissioner and the board to encourage financial institutions to meet the credit needs of their local communities; defining "application for a

deposit facility”; requiring the commissioner or board to assess reinvestment in the community in considering applications for a deposit facility; and commissioner to promulgate rules and regulations.

*Be it enacted by the Legislature of West Virginia:*

That section two, article one, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section four, article two of said chapter be amended and reenacted; that sections two and three, article three of said chapter be amended and reenacted; that section seven, article seven of said chapter be amended and reenacted; that sections twelve and twelve-a, article eight of said chapter be amended and reenacted; that said article eight be further amended by adding thereto a new section, designated section twelve-b; and that said chapter be amended by adding thereto two new articles, designated articles eight-a and eight-b, all to read as follows:

**ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.**

**§31A-1-2. Definitions.**

1 As used in this chapter, unless the context in which used  
2 plainly requires a different meaning:

3 (a) The word “action,” in the sense of a judicial  
4 proceeding, means any proceeding in a court of competent  
5 jurisdiction in which rights are adjudicated and determined  
6 and shall embrace and include recoupment, counterclaim,  
7 setoff and other related, similar and summary proceedings;

8 (b) The words “bank” and “banking institution” mean a  
9 corporation heretofore or hereafter chartered to conduct a  
10 banking business under the laws of West Virginia or an  
11 association heretofore or hereafter authorized to conduct a  
12 banking business in West Virginia under the laws of the  
13 United States and having its principal office in this state and  
14 shall embrace and include a trust company or an institution  
15 combining banking and trust company facilities, functions  
16 and services so chartered or authorized to conduct such  
17 business in this state, and shall include industrial banks  
18 authorized by article seven, chapter thirty-one of this code,  
19 subject to the limitations therein imposed on such industrial  
20 banks and further subject to the limitations imposed thereon  
21 in this article;

22 (c) The term "banking business" means the functions,  
23 services and activities contained, detailed and embraced in  
24 sections thirteen and fourteen of article four of this chapter  
25 and as elsewhere defined by law;

26 (d) The word "board" means the West Virginia board of  
27 banking and financial institutions;

28 (e) The words "branch bank" mean an office or other place  
29 at which a bank performs any or all banking business. For  
30 purposes of this chapter, a branch bank does not include:

31 (1) A bank's principal place of business;

32 (2) Any limited off-premises walk-in or drive-in banking  
33 facility authorized by subdivision (2), subsection (a), section  
34 twelve, article eight of this chapter; and

35 (3) Any customer bank communication terminals  
36 installed and operated pursuant to section twelve-b, article  
37 eight of this chapter.

38 (f) The words "commissioner" or "commissioner of  
39 banking" mean the commissioner of banking of West  
40 Virginia;

41 (g) The word "community" means a city, town or other  
42 incorporated area, or, where not so incorporated, a trading  
43 area;

44 (h) The word "department" means the department of  
45 banking of West Virginia;

46 (i) The words "deputy commissioner" or "deputy  
47 commissioner of banking" mean the deputy commissioner of  
48 banking of West Virginia;

49 (j) The word "fiduciary" means any trustee, agent,  
50 executor, administrator, curator, committee, guardian or  
51 conservator, special commissioner, receiver, trustee in  
52 bankruptcy, assignee for creditors, or any holder of a similar  
53 position of trust or responsibility;

54 (k) The words "financial institutions" mean banks,  
55 building and loan associations, industrial banks, industrial  
56 loan companies, supervised lenders, credit unions and all  
57 other similar institutions, whether persons, firms or  
58 corporations, which are by law under the jurisdiction and  
59 supervision of the commissioner of banking;

60 (l) The word "officer" when referring to any financial  
61 institution, means any person designated as such in the  
62 bylaws and includes, whether or not so designated, any  
63 executive officer, the chairman of the board of directors, the  
64 chairman of the executive committee, and any trust officer,

65 assistant vice president, assistant treasurer, assistant  
 66 secretary, assistant trust officer, assistant cashier, assistant  
 67 comptroller, or any other person who performs the duties  
 68 appropriate to those offices, and the terms "executive officer"  
 69 as herein used, when referring to banking institutions, means  
 70 an officer of a bank whose duties involve regular, active and  
 71 substantial participation in the daily operations of such  
 72 institution and who, by virtue of his position, has both a voice  
 73 in the formulation of the policy of the bank and responsibility  
 74 for implementation of the policy, such responsibility of and  
 75 functions performed by the individual, and not his title or  
 76 office, being determinative of whether he is an "executive  
 77 officer";

78 (m) The words "person" or "persons" mean any  
 79 individual, partnership, society, association, firm, institution,  
 80 company, public or private corporation, state, governmental  
 81 agency, bureau, department, division or instrumentality,  
 82 political subdivision, county commission, municipality, trust,  
 83 syndicate, estate or any other legal entity whatsoever, formed,  
 84 created or existing under the laws of this state or any other  
 85 jurisdiction;

86 (n) The words "safe-deposit box" mean a safe-deposit box,  
 87 vault or other safe-deposit receptacle maintained by a lessor  
 88 bank, and the rules relating thereto apply to property or  
 89 documents kept therein in the bank's vault under the joint  
 90 control of lessor and lessee;

91 (o) The words "state bank" or "state banking institution"  
 92 mean a bank chartered under the laws of West Virginia, as  
 93 distinguished from a national banking association; and

94 (p) The words "trust business" mean the functions,  
 95 services and activities contained, detailed and embraced in  
 96 section fourteen of article four of this chapter and as  
 97 elsewhere defined by law and as may be included within the  
 98 meaning of the term "banking business."

## **ARTICLE 2. DEPARTMENT OF BANKING.**

### **§31A-2-4. Jurisdiction of commissioner; powers, etc., of department transferred to commissioner; powers and duties of commissioner.**

1 (a) Subject to the powers vested in the board by article  
 2 three of this chapter, the commissioner shall have  
 3 supervision and jurisdiction over state banks (other than  
 4 those banks excepted by the provisions of section eleven of

5 this article), industrial loan companies, building and loan  
6 associations, supervised lenders, credit unions, and all other  
7 persons now or hereafter made subject to his supervision or  
8 jurisdiction. All powers, duties, rights and privileges vested  
9 in the department are hereby vested in the commissioner. He  
10 shall be the chief executive officer of the department of  
11 banking and shall be responsible for the department's  
12 organization, services and personnel, and for the orderly and  
13 efficient administration, enforcement and execution of the  
14 provisions of this chapter and all laws vesting authority or  
15 powers in or prescribing duties or functions for the  
16 department or the commissioner.

17 (b) The commissioner shall:

18 (1) Maintain the office for the department at the state  
19 capitol, and there keep a complete record of all the  
20 department's transactions, of the financial conditions of all  
21 financial institutions and such records of the activities of  
22 other persons as the commissioner may deem important.  
23 Notwithstanding any other provision of the code of West  
24 Virginia, heretofore or hereafter enacted, the records relating  
25 to the financial condition of any financial institution and any  
26 information contained therein shall be confidential for the  
27 use of the commissioner and authorized personnel of the  
28 department of banking. No person shall divulge any  
29 information contained in any such records except in response  
30 to a valid subpoena or subpoena duces tecum issued  
31 pursuant to law. The commissioner shall have and may  
32 exercise reasonable discretion as to the time, manner and  
33 extent the other records in his office and the information  
34 contained therein shall be available for public examination.

35 (2) Require all financial institutions to comply with all the  
36 provisions of this chapter and other applicable laws, or any  
37 rule and regulation promulgated or order issued thereunder.

38 (3) Investigate all alleged violations of this chapter and all  
39 other laws which he is required to enforce and of any rule and  
40 regulation promulgated or order issued thereunder.

41 (c) In addition to all other authority and powers vested in  
42 the commissioner by provisions of this chapter and other  
43 applicable laws, the commissioner is authorized and  
44 empowered:

45 (1) To provide for the organization of the department and  
46 the procedures and practices thereof and implement the same  
47 by the promulgation of rules and regulations and forms as

48 appropriate, which rules and regulations shall be  
49 promulgated in accordance with article three, chapter  
50 twenty-nine-a of this code;

51 (2) Employ, direct, discipline, discharge and establish  
52 qualifications and duties for all personnel for the department,  
53 including, but not limited to, examiners, assistant examiners,  
54 conservators and receivers, to establish the amount and  
55 condition of bonds for such thereof as he deems appropriate  
56 and to pay the premiums thereon, and if he so elects, to have  
57 all such personnel subject to and under the classified service  
58 of the state personnel department;

59 (3) To cooperate with organizations, agencies, committees  
60 and other representatives of financial institutions of the state  
61 in connection with schools, seminars, conferences and other  
62 meetings to improve the responsibilities, services and  
63 stability of the financial institutions;

64 (4) In addition to the examinations required by section six  
65 of this article, to inspect, examine and audit the books,  
66 records, accounts and papers of all financial institutions at  
67 such times as circumstances in his opinion may warrant;

68 (5) To call for and require all such data, reports and  
69 information from financial institutions under his jurisdiction,  
70 at such times and in such form, content and detail, deemed  
71 necessary by him in the faithful discharge of his duties and  
72 responsibilities in the supervision of the financial  
73 institutions;

74 (6) Subject to the powers vested in the board by article  
75 three of this chapter, to supervise the location, organization,  
76 practices and procedures of financial institutions and,  
77 without limitation on the general powers of supervision  
78 thereof, to require financial institutions to:

79 (A) Maintain their accounts consistent with such  
80 regulations as he may prescribe and in accordance with  
81 generally accepted accounting practices;

82 (B) Observe methods and standards which he may  
83 prescribe for determining the value of various types of assets;

84 (C) Charge off the whole or any part of an asset which at  
85 the time of his action could not lawfully be acquired;

86 (D) Write down an asset to its market value;

87 (E) Record or file writings creating or evidencing liens or  
88 other interests in property;

89 (F) Obtain financial statements from prospective and  
90 existing borrowers;

91 (G) Obtain insurance against damage and loss to real  
92 estate and personal property taken as security;

93 (H) Maintain adequate insurance against such other risks  
94 as he may deem and determine to be necessary and  
95 appropriate for the protection of depositors and the public;

96 (I) Maintain an adequate fidelity bond or bonds on its  
97 officers and employees;

98 (J) Take such other action as may in his judgment be  
99 required of the institution in order to maintain its stability,  
100 integrity and security as required by law and all rules and  
101 regulations promulgated by him; and

102 (K) Verify any or all asset or liability accounts.

103 (7) Subject to the powers vested in the board by article  
104 three of this chapter, to receive from any person or persons  
105 and to consider any request, petition or application relating to  
106 the organization, location, conduct, services, policies and  
107 procedures of any financial institution and to act thereupon  
108 in accordance with any provisions of law applicable thereto;

109 (8) In connection with the investigations required by  
110 subdivision (3), subsection (b) of this section, to issue  
111 subpoenas and subpoenas duces tecum, administer oaths,  
112 examine persons under oath, and hold and conduct hearings,  
113 any such subpoenas or subpoenas duces tecum to be issued,  
114 served and enforced in the manner provided in section one,  
115 article five, chapter twenty-nine-a of this code. Any person  
116 appearing and testifying at such a hearing may be  
117 accompanied by an attorney employed by him;

118 (9) To issue declaratory rulings in accordance with the  
119 provisions of section one, article four, chapter twenty-nine-a  
120 of this code;

121 (10) To study and survey the location, size and services of  
122 financial institutions, the geographic, industrial, economic  
123 and population factors affecting the agricultural, commercial  
124 and social life of the state, and the needs for reducing,  
125 expanding or otherwise modifying the services and facilities  
126 of financial institutions in the various parts of the state, and to  
127 compile and keep current data thereon to aid and guide him  
128 in the administration of the duties of his office;

129 (11) To implement all of the provisions of this chapter  
130 (except the provisions of article three) and all other laws  
131 which he is empowered to administer and enforce by the  
132 promulgation of rules and regulations in accordance with the  
133 provisions of article three, chapter twenty-nine-a of this code;

134 (12) To implement the provisions of chapter forty-six-a of  
135 this code applicable to consumer loans and consumer credit  
136 sales by the promulgation of rules and regulations in  
137 accordance with the provisions of article three, chapter  
138 twenty-nine-a of this code so long as said rules and  
139 regulations do not conflict with any rules and regulations  
140 promulgated by the state's attorney general;

141 (13) To foster and encourage a working relationship  
142 between the department of banking and financial  
143 institutions, credit, consumer, mercantile and other  
144 commercial and finance groups and interests in the state in  
145 order to make current appraisals of the quality, stability and  
146 availability of the services and facilities of financial  
147 institutions;

148 (14) To provide to financial institutions and the public  
149 copies of the West Virginia statutes relating to financial  
150 institutions, suggested drafts of bylaws commonly used by  
151 financial institutions, and such other forms and printed  
152 materials as may be found by him to be helpful to financial  
153 institutions, their shareholders, depositors and patrons, and  
154 to make reasonable charges therefor;

155 (15) To delegate the powers and duties of his office, other  
156 than the powers and duties in this subsection hereinafter  
157 excepted, to qualified department personnel, who shall act  
158 under the direction and supervision of the commissioner and  
159 for whose acts he shall be responsible, but the commissioner  
160 may delegate to the deputy commissioner of banking and to  
161 no other department personnel the following powers, duties  
162 and responsibilities, all of which are hereby granted to and  
163 vested in the commissioner and for all of which the  
164 commissioner shall likewise be responsible:

165 (A) To order any person to cease violating any provision or  
166 provisions of this chapter or other applicable law or any rule  
167 and regulation promulgated or order issued thereunder;

168 (B) To order any person to cease engaging in any unsound  
169 practice or procedure which may detrimentally affect any  
170 financial institution or depositor thereof; and

171 (C) To revoke the certificate of authority, permit or license  
172 of any financial institution except a banking institution in  
173 accordance with the provisions of section thirteen of this  
174 article;

175 (16) To receive from state banking institutions

176 applications to change the locations of their principal offices  
177 and to approve or disapprove such applications; and  
178 (17) To take such other action as he may deem necessary  
179 to enforce and administer the provisions of this chapter  
180 (except the provisions of article three) and all other laws  
181 which he is empowered to administer and enforce, and to  
182 apply to any court of competent jurisdiction for appropriate  
183 orders, writs, processes and remedies.

**ARTICLE 3. BOARD OF BANKING AND FINANCIAL INSTI-  
TUTIONS.**

**§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;

30 (C) To pay interest on demand deposits of the United  
31 States or any agency thereof, if the payment of such interest

32 shall be permitted under any applicable federal law, rule or  
33 regulation.

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

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

45 (1) Restrict the withdrawal of deposits from any financial  
46 institution when in the judgment of the board extraordinary  
47 circumstances make such restrictions necessary for the  
48 protection of creditors of and depositors in the affected  
49 institution;

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

61 (3) Approve or disapprove applications to incorporate and  
62 organize state banking institutions in accordance with the  
63 provisions of sections six and seven, article four of this  
64 chapter;

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

- 75 (5) Suspend or remove a director, officer or employee of  
76 any financial institution who is or becomes ineligible to hold  
77 such position under any provision of law or rule and  
78 regulation or order, or who willfully disregards or fails to  
79 comply with any order of the board or commissioner made  
80 and entered in accordance with the provisions of this chapter  
81 or who is dishonest or grossly incompetent in the conduct of  
82 financial institution business;
- 83 (6) To receive from state banking institutions applications  
84 to establish branch banks by the purchase of the business and  
85 assets and assumption of the liabilities of, or merger or  
86 consolidation with, another banking institution, or by the  
87 construction, lease or acquisition of branch bank facilities in  
88 an unbanked area; examine and investigate such  
89 applications, to hold hearings thereon, and to approve or  
90 disapprove such applications, all in accordance with section  
91 twelve, article eight of this chapter;
- 92 (7) Approve or disapprove the application of any state  
93 bank to purchase the business and assets and assume the  
94 liabilities of, or merge or consolidate with, another state  
95 banking institution in accordance with the provisions of  
96 section seven, article seven of this chapter: *Provided*, That  
97 nothing contained in this subdivision shall be construed as  
98 permitting any banking institution to engage in any other  
99 practice prohibited by section twelve, article eight of this  
100 chapter, except as permitted by subdivision (9) of this  
101 subsection (b);
- 102 (8) Approve or disapprove the application of any state  
103 bank to purchase the business and assets and assume the  
104 liabilities of a national banking association, or merge or  
105 consolidate with a national banking association to form a  
106 resulting state bank in accordance with the provisions of  
107 section seven, article seven of this chapter: *Provided*, That  
108 nothing contained in this subdivision shall be construed as  
109 permitting any banking institution to engage in any other  
110 practice prohibited by section twelve, article eight of this  
111 chapter, except as permitted by subdivision (9) of this  
112 subsection (b); and
- 113 (9) In addition to any authority granted pursuant to  
114 section twelve, article eight of this chapter, incident to the  
115 approval of an application pursuant to subdivision (7) or  
116 subdivision (8) of this subsection (b), permit the bank the  
117 application of which is so approved to operate its banking

118 business under its name from the premises of the bank the  
 119 business and assets of which have been purchased and the  
 120 liabilities of which have been assumed by such applicant  
 121 bank or with which such applicant bank has merged or  
 122 consolidated: *Provided*, That such permission may be  
 123 granted only if the board has made the findings required by  
 124 subsection (f), section three of this article and such applicant  
 125 bank has no common directors or officers nor common  
 126 ownership of stock exceeding ten percent of total  
 127 outstanding voting stock with the bank whose business and  
 128 assets are being purchased and liabilities assumed or with  
 129 whom such applicant bank is being merged.

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

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

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, 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 thereof 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 (7) and (8) 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.

## **ARTICLE 7. REGULATION OF FAILING FINANCIAL INSTI- TUTIONS.**

### **§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  
2 voluntary or involuntary proceeding to liquidate a financial

3 institution for which a receiver has been appointed under this  
4 article, such institution, with the written consent of the  
5 commissioner, may reorganize, reclaim possession of its  
6 assets and continue in business.

7 Any financial institution may at any time, but only with the  
8 approval of the West Virginia board of banking and financial  
9 institutions in the case of a state banking institution and with  
10 the approval of the commissioner in the case of all other  
11 financial institutions, purchase the business and assets and  
12 assume the liabilities of or merge or consolidate with another  
13 like financial institution. With the approval of the West  
14 Virginia board of banking and financial institutions and in  
15 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  
22 approval of the West Virginia board of banking and financial  
23 institutions and in compliance with all applicable laws of this  
24 state and the United States, a national banking association  
25 may convert into a state bank. After any such purchase,  
26 merger or consolidation, no other association or corporation  
27 may take or use the name of any financial institution  
28 participating in such purchase, merger or consolidation.

29 Unless in conflict with a law of the United States of  
30 America, at the completion of any purchase, merger or  
31 consolidation permitted by this section and whether such  
32 financial institution is organized under the laws of this state  
33 or of the United States, the purchasing, merged or  
34 consolidated institution is substituted by operation of law in  
35 the place and stead of each of the participating financial  
36 institutions in all fiduciary relationships, titles, properties,  
37 offices, appointments, rights, powers, duties, obligations and  
38 liabilities of each participating financial institution as trustee,  
39 agent, executor, administrator, guardian, depository,  
40 registrar, transfer agent or other fiduciary and every other  
41 capacity, office or position of each of the participating  
42 financial institutions is by operation of law vested in and  
43 devolved upon the purchasing, merged or consolidated  
44 institution. Such purchasing, merged or consolidated  
45 institution shall take, receive, accept, hold, administer and  
46 discharge all grants, gifts, bequests, devises, conveyances,

47 trusts, powers and appointments made by deed, deed of trust,  
 48 will, agreement, order of court or otherwise to, in favor of or  
 49 in the name of any such participating institution, whether  
 50 made, executed or entered before or after such purchase,  
 51 merger or consolidation and whether to vest or become  
 52 effective before or after such purchase, merger or  
 53 consolidation, as fully and to the same effect as if the  
 54 purchasing, merged or consolidated institution had been  
 55 named in such deed, deed of trust, will, agreement, order or  
 56 other instrument instead of such participating institution. All  
 57 acts taken or performed in its own name or in the name of or  
 58 in behalf of any financial institution participating in any such  
 59 purchase, merger or consolidation by any purchasing,  
 60 merged or consolidated institution as trustee, agent,  
 61 executor, administrator, guardian, depository, registrar,  
 62 transfer agent or other fiduciary are as good, valid and  
 63 effective as if this section had been applicable thereto at the  
 64 time of such taking or performance.

**ARTICLE 8. HEARINGS; ADMINISTRATIVE PROCEDURES; JUDICIAL REVIEW; UNLAWFUL ACTS; PENALTIES.**

**§31A-8-12. Certain limitations and restrictions imposed on branch banks; procedure for authorization of branch banks; authorization of limited off-premises banking facilities; penalties for violation of section.**

1 (a) No banking institution shall:  
 2 (1) Establish or maintain any branch bank, except as  
 3 otherwise permitted by this section; or  
 4 (2) Engage in business at any place other than at its  
 5 principal office in this state, at a branch bank in this state  
 6 permitted by this section or at a customer bank  
 7 communication terminal permitted by section twelve-b of  
 8 this article: *Provided*, That at any time any such banking  
 9 institution and any branch bank established by the purchase  
 10 of the business and assets and assumption of the liabilities of,  
 11 or merger or consolidation with, another banking institution,  
 12 may operate one and only one off-premises walk-in or  
 13 drive-in banking facility, on or in conjunction with or entirely  
 14 separate from a parking lot for the customers of such banking  
 15 institution, for the purpose of receiving bank deposits of all  
 16 kinds, cashing checks, making change, selling and issuing  
 17 money orders and travelers checks and receiving payments

18 on loans, savings and rental accounts, and for no other  
19 purposes, provided such off-premises banking facility is  
20 located within two thousand feet of the banking house  
21 premises or branch bank premises of the banking institution  
22 operating such off-premises facility measured between the  
23 nearest points of the banking house premises and the  
24 premises on which such off-premises banking facility is  
25 located. Such off-premises banking facility shall be in  
26 addition to any branch bank permitted by this section.

27 (b) Except for a bank holding company, it shall be  
28 unlawful for any individual, partnership, society, association,  
29 firm, institution, trust, syndicate, public or private  
30 corporation, or any other legal entity, or combination of  
31 entities acting in concert, to directly or indirectly own,  
32 control or hold with power to vote, twenty-five percent or  
33 more of the voting shares of each of two or more banks, or to  
34 control in any manner the election of a majority of the  
35 directors of two or more banks.

36 (c) A branch bank may be established in accordance with  
37 subsection (d) of this section either by:

38 (1) The construction, lease or acquisition of branch bank  
39 facilities in an unbanked area; or

40 (2) The purchase of the business and assets and  
41 assumption of the liabilities of, or merger or consolidation  
42 with, another banking institution.

43 Notwithstanding any other provision of this chapter to the  
44 contrary, subject to and in furtherance of the board's  
45 authority under the provisions of subdivision (6), subsection  
46 (b), section two, article three of this chapter, and subsection  
47 (k) of this section, the board may approve or disapprove the  
48 application of any state banking institution to establish a  
49 branch bank.

50 (d) During the five-year period beginning ninety days  
51 from the effective date of this act, a banking institution may  
52 establish:

53 (1) Not more than three branch banks by the purchase of  
54 the business and assets and assumption of the liabilities of, or  
55 merger or consolidation with, another banking institution;  
56 and

57 (2) In addition to the forgoing, a banking institution may  
58 establish one branch by the construction, lease or acquisition  
59 of a facility in an unbanked area within the county in which is  
60 situate its principal office. Not more than two branches may

61 be established in this manner in each unbanked area. For  
62 purposes of this section an area is an “unbanked area” if no  
63 banking institution or branch bank created by merger and  
64 consolidation exists within the limits of an incorporated  
65 municipality.

66 (e) The principal office of a banking institution on the  
67 effective date of this act shall continue to be the principal  
68 office of such banking institution for purposes of establishing  
69 branch banks under this section, notwithstanding any  
70 subsequent change in the location of such banking  
71 institution’s principal office.

72 (f) It shall be unlawful for any banking institution to  
73 establish any branch bank by the purchase of the business  
74 and assets and assumption of the liabilities of, or merger or  
75 consolidation with, another banking institution if such  
76 establishment would cause the combined deposits of the  
77 resulting banking institution to exceed ten percent of the  
78 total deposits of all banking institutions in this state as  
79 determined by the latest available reports of condition as  
80 compiled by the Federal Deposit Insurance Corporation.

81 (g) Any banking institution which is authorized to  
82 establish branch banks pursuant to this section may provide  
83 the same banking services and exercise the same powers at  
84 each such branch bank as may be provided and exercised at  
85 its principal banking house.

86 (h) The board shall, upon receipt of any application to  
87 establish a branch bank, provide notice of such application to  
88 all banking institutions. A banking institution may, within  
89 ten days after receipt of such notice, file a petition to  
90 intervene and shall, if it so files such petition, thereupon  
91 become a party to any hearing relating thereto before the  
92 board.

93 (i) The commissioner shall prescribe the form of the  
94 application for a branch bank and shall collect an  
95 examination and investigation fee of one thousand dollars for  
96 each filed application for a branch bank that is to be  
97 established by the construction, lease or acquisition of a  
98 branch bank facility in an unbanked area and two thousand  
99 five hundred dollars for a branch bank that is to be  
100 established by the purchase of the business and assets and  
101 assumption of the liabilities of, or merger or consolidation  
102 with another banking institution. The board shall complete  
103 the examination and investigation within ninety days from

104 the date on which such application and fee are received,  
105 unless the board requests in writing additional information  
106 and disclosures concerning the proposed branch bank from  
107 the applicant banking institution, in which event such  
108 ninety-day period shall be extended for an additional period  
109 of thirty days plus the number of days between the date of  
110 such request and the date such additional information and  
111 disclosures are received.

112 (j) Upon completion of the examination and investigation  
113 with respect to such application, the board shall, if a hearing  
114 be required pursuant to subsection (k) of this section,  
115 forthwith give notice and hold a hearing pursuant to the  
116 following provisions:

117 (1) Notice of such hearing shall be given to the banking  
118 institution with respect to which the hearing is to be  
119 conducted in accordance with the provisions of section two,  
120 article seven of chapter twenty-nine-a of this code, and such  
121 hearing and the administrative procedures in connection  
122 therewith shall be governed by all of the provisions of article  
123 five, chapter twenty-nine-a of this code, and shall be held at a  
124 time and place set by the board but shall not be less than ten  
125 nor more than thirty days after such notice is given.

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

129 (3) After such hearing and consideration of all the  
130 testimony and evidence, the board shall make and enter an  
131 order approving or disapproving the application, which order  
132 shall be accompanied by findings of fact and conclusions of  
133 law as specified in section three, article five, chapter  
134 twenty-nine-a of this code, and a copy of such order and  
135 accompanying findings and conclusions shall be served upon  
136 all parties to such hearing, and their attorneys of record, if  
137 any.

138 (k) No state banking institution may establish a branch  
139 bank until the board, following an examination,  
140 investigation, notice and hearing, enters an order approving  
141 an application for that branch bank: *Provided*, That no such  
142 hearing shall be required with respect to any application to  
143 establish a branch bank which is approved by the board  
144 unless a banking institution has timely filed a petition to  
145 intervene pursuant to subsection (h) of this section. The order  
146 shall be accompanied by findings of fact that:

147 (1) Public convenience and advantage will be promoted  
148 by the establishment of the proposed branch bank;

149 (2) Local conditions assure reasonable promise of  
150 successful operation of the proposed branch bank and of  
151 those banks and branches thereof already established in the  
152 community;

153 (3) Suitable physical facilities will be provided for the  
154 branch bank; and

155 (4) The applicant state banking institution satisfies such  
156 reasonable and appropriate requirements as to sound  
157 financial condition as the commissioner or board may from  
158 time to time establish by regulation.

159 (l) Any party who is adversely affected by the order of the  
160 board shall be entitled to judicial review thereof in the  
161 manner provided in section four, article five, chapter  
162 twenty-nine-a of this code. Any such party adversely affected  
163 by a final judgment of a circuit court following judicial review  
164 as provided in the foregoing sentence may seek review  
165 thereof by appeal to the supreme court of appeals in the  
166 manner provided in article six, chapter twenty-nine-a of this  
167 code.

168 (m) Pursuant to the resolution of its board of directors and  
169 with the prior approval of the commissioner, a state banking  
170 institution may discontinue the operation of a branch bank  
171 upon at least thirty days' prior public notice given in such  
172 form and manner as the commissioner prescribes.

173 (n) Any violation of any provision of this section shall  
174 constitute a misdemeanor offense punishable by applicable  
175 penalties as provided in section fifteen, article eight of this  
176 chapter.

**§31A-8-12a. Banking from mobile units prohibited; prohibition  
not to include messenger services; limitation of  
messenger services.**

1 It is illegal for any banking institution, building and loan  
2 association, industrial loan company or supervised lender to  
3 conduct its business in a facility that is a mobile unit not  
4 permanently attached to the real estate upon which it is  
5 located, except that such mobile units may be used as  
6 temporary banking quarters pending construction of a  
7 permanent bank building on the same or adjacent property  
8 thereto if a charter for said bank has previously been  
9 approved. This section shall not be construed or interpreted

10 to prohibit a financial institution from providing messenger  
11 services to its customers by which items are received by mail,  
12 armored car service or other courier or delivery service for  
13 subsequent deposit: *Provided*, That all such messenger  
14 services are confined to the territorial boundaries of the  
15 county in which the principal office of such financial  
16 institution is located or within twenty-five miles of the  
17 principal office of such financial institution.

**§31A-8-12b. Installation and operation of customer bank  
communication terminals permitted.**

1 (a) Any banking institution as defined in section two,  
2 article one of this chapter, individually or jointly with one or  
3 more other banking institutions or other federally insured  
4 financial institutions having their principal offices in this  
5 state, or any combination thereof, may upon thirty days prior  
6 written notice filed with the commissioner, install, operate  
7 and engage in banking business by means of one or more  
8 customer bank communication terminals. Any banking  
9 institution which installs and operates a customer bank  
10 communication terminal:

11 (1) Shall make such customer bank communication  
12 terminal available for use by other banking institutions; and

13 (2) May make such customer bank communication  
14 terminal available for use by other federally insured financial  
15 institutions, all in accordance with regulations promulgated  
16 by the commissioner. Such customer bank communication  
17 terminals shall not be considered to be branch banks or  
18 branch offices, agencies or places of business or off-premises  
19 walk-in or drive-in banking facilities; nor shall the operation  
20 of such customer bank communication terminals to  
21 communicate with and permit financial transactions to be  
22 carried out through a non-exclusive access interchange  
23 system be considered to make any banking institution which  
24 is part of such a non-exclusive access interchange system to  
25 have illegal branch banks or branch offices, agencies or  
26 places of business or off-premises walk-in or drive-in banking  
27 facilities.

28 (b) Notwithstanding the provisions of subdivision (1),  
29 subsection (a) of this section, a customer bank  
30 communication terminal located on the premises of the  
31 principal office or branch bank of a banking institution or on  
32 the premises of an authorized off-premises facility need not

33 be made available for use by any other banking institution or  
34 its customers.

35 (c) For the purposes of this section “customer bank  
36 communication terminal” means any electronic device or  
37 machine, together with all associated equipment, structures  
38 and systems, including without limitation point of sale  
39 terminals, through or by means of which a customer and a  
40 banking institution may engage in any banking transactions,  
41 whether transmitted to the banking institution  
42 instantaneously or otherwise, including, without limitation,  
43 the receipt of deposits of every kind, the receipt and  
44 dispensing of cash, requests to withdraw money from an  
45 account or pursuant to a previously authorized line of credit,  
46 receiving payments payable at the bank or otherwise  
47 transmitting instructions to receive, transfer or pay funds for  
48 a customer’s benefit. All transactions initiated through a  
49 customer bank communication terminal shall be subject to  
50 verification by the banking institution.

51 (d) For the purposes of this section “point of sale  
52 terminal” means a customer bank communication terminal  
53 used for the primary purpose of either transferring funds to or  
54 from one or more deposit accounts in a banking institution or  
55 segregating funds in one or more deposit accounts in a  
56 banking institution for future transfer, or both, in order to  
57 execute transactions between a person and his customers  
58 incident to sales, including, without limitation, devices and  
59 machines which may be used to implement and facilitate  
60 check guaranty and check authorization programs.

61 (e) Except for customer bank communication terminals  
62 located on the premises of the principal office or a branch  
63 bank of the banking institution or on the premises of an  
64 authorized off-premises walk-in or drive-in banking facility, a  
65 customer bank communication terminal shall be unattended  
66 or attended by persons not employed by any banking  
67 institution utilizing the terminal: *Provided*, That

68 (1) Employees of the banking institution may be present  
69 at such terminal not located on the premises of an authorized  
70 off-premises facility solely for the purposes of installing,  
71 maintaining, repairing and servicing same; and

72 (2) For a period of time not to exceed two months after the  
73 opening of any such terminal, a banking institution may  
74 provide an employee to instruct and assist customers in the  
75 operation thereof.

76 (f) The commissioner shall prescribe by regulation the  
77 procedures and standards regarding the installation and  
78 operation of customer bank communication terminals,  
79 including, without limitation, the procedure for the sharing  
80 thereof.

**ARTICLE 8A. ACQUISITIONS OF BANK SHARES.**

**§31A-8A-1. Legislative findings and purpose.**

1 After a review of the structure of banking organizations in  
2 the state of West Virginia, and after full consideration of the  
3 complex issues involved, the Legislature hereby finds and  
4 determines that:

5 (a) Well managed and financially sound banking  
6 institutions are essential to the financial well being of the  
7 citizens, and the promotion of the future economic and  
8 industrial growth and development, of this state;

9 (b) The formation of bank holding companies will  
10 strengthen and supplement traditional banking services and  
11 facilitate the development of the type of banking institutions  
12 that are necessary for the economic and industrial growth and  
13 development of this state;

14 (c) It is in the best interests of this state and its citizens for  
15 the board to have the power and authority to disapprove the  
16 acquisition of a bank by a bank holding company when the  
17 board determines that such acquisition would result in a  
18 monopoly, substantially lessen competition, or be contrary to  
19 the best interests of the shareholders or customers of the  
20 bank involved;

21 (d) The deposits of the citizens of this state are a  
22 substantial and valuable resource which should serve the  
23 economic and industrial growth and development needs, and  
24 the consumer needs of the citizens of this state; and since the  
25 board could not effectively make a determination that the  
26 control of deposits of the citizens of this state by bank holding  
27 companies with any banking subsidiaries located outside this  
28 state would be used for the above enumerated local needs of  
29 this state's citizenry, a bank holding company with any bank  
30 subsidiary located outside this state shall be prohibited from  
31 acquiring, directly or indirectly, five percent or more of the  
32 interest in or assets of, any bank or bank holding company  
33 located in this state; and

34 (e) It is in the best interests of this state and its citizens to  
35 prevent excessive concentration or control of the deposit

36 resources of this state by prohibiting acquisitions of banks by  
37 bank holding companies which would thus control more than  
38 ten percent of this state's total banking deposits.

**§31A-8A-2. Definitions.**

1 As used in this article, unless the context in which used  
2 plainly requires a different meaning:

3 (a) "Company" means any corporation, partnership,  
4 business trust, association or similar organization, or any  
5 other trust unless by its terms it must terminate within  
6 twenty-five years or not later than twenty-one years and ten  
7 months after the death of individuals living on the effective  
8 date of the trust, but shall not include any corporation the  
9 majority of the shares of which are owned by the United  
10 States or by any state;

11 (b) "Subsidiary", with respect to a specific bank holding  
12 company, means:

13 (1) Any company twenty-five percent or more of whose  
14 voting shares (excluding shares owned by the United States  
15 or by any company wholly owned by the United States) is  
16 directly or indirectly owned or controlled by such bank  
17 holding company, or is held by it with power to vote,

18 (2) Any company the election of a majority of whose  
19 directors is controlled in any manner by such bank holding  
20 company, or

21 (3) Any company with respect to the management or  
22 policies of which such bank holding company has the power,  
23 directly or indirectly, to exercise a controlling influence, as  
24 determined by the board, after notice and opportunity for  
25 hearing;

26 (c) The term "successor" shall include any company  
27 which acquires directly or indirectly from a bank holding  
28 company shares of any bank, when and if the relationship  
29 between such company and the bank holding company is  
30 such that the transaction effects no substantial change in the  
31 control of the bank or beneficial ownership of such shares of  
32 such bank. The commissioner may, by regulation, further  
33 define the term "successor" to the extent necessary to  
34 prevent evasion of the purposes of this article.

**§31A-8A-3. Bank holding company; definition.**

1 (a) (1) Except as provided in subdivision (5) of this  
2 subsection, "bank holding company" means any company

3 which has control over any bank or over any company that is  
4 or becomes a bank holding company pursuant to this article.

5 (2) Any company has control over a bank or over any  
6 company if:

7 (A) The company directly or indirectly or acting through  
8 one or more other persons owns, controls, or has power to  
9 vote twenty-five percent or more of any class of voting  
10 securities of the bank or company;

11 (B) The company controls in any manner the election of a  
12 majority of the directors or trustees of the bank or company;  
13 or

14 (C) The board determines, after notice and a hearing  
15 pursuant to the provisions of section three, article three of  
16 this chapter, that the company directly or indirectly exercises  
17 a controlling influence over the management or policies of  
18 the bank or company.

19 (3) For the purposes of any proceeding under subdivision  
20 (2) (C) of this subsection, there is a presumption that any  
21 company which directly or indirectly owns, controls, or has  
22 power to vote less than five percent of any class of voting  
23 securities of a given bank or company does not have control  
24 over that bank or company.

25 (4) In any administrative or judicial proceeding under this  
26 article, other than a proceeding under subdivision (2) (C) of  
27 this subsection, a company may not be held to have had  
28 control over any given bank or company at any given time  
29 unless that company, at the time in question, directly or  
30 indirectly owned, controlled, or had power to vote five  
31 percent or more of any class of voting securities of the bank or  
32 company, or had already been found to have control in a  
33 proceeding under subdivision (2) (C).

34 (5) Notwithstanding any other provision of this  
35 subsection:

36 (A) No bank and no company owning or controlling  
37 voting shares of a bank is a bank holding company by virtue  
38 of its ownership or control of shares in a fiduciary capacity,  
39 except as provided in subdivisions (2) and (3), subsection (b)  
40 of this section. For the purpose of the preceding sentence,  
41 bank shares shall not be deemed to have been acquired in a  
42 fiduciary capacity if the acquiring bank or company has sole  
43 discretionary authority to exercise voting rights with respect  
44 thereto; and

45 (B) No company is a bank holding company by virtue of  
46 its ownership or control of shares acquired in securing or  
47 collecting a debt previously contracted in good faith, until  
48 five years after the date of acquisition.

49 (6) For the purposes of this article, any successor to a bank  
50 holding company shall be deemed to be a bank holding  
51 company from the date on which the predecessor company  
52 became a bank holding company.

53 (b) For the purposes of this article:

54 (1) Shares owned or controlled by any subsidiary of a  
55 bank holding company shall be deemed to be indirectly  
56 owned or controlled by such bank holding company;

57 (2) Shares held or controlled directly or indirectly by  
58 trustees for the benefit of:

59 (A) A company,

60 (B) The shareholders or members of a company, or

61 (C) The employees (whether exclusively or not) of a  
62 company, shall be deemed to be controlled by such company;  
63 and

64 (3) Shares transferred by any bank holding company (or  
65 by the company, which, but for such transfer, would be a  
66 bank holding company) directly or indirectly to any  
67 transferee that is indebted to the transferor, or has one or  
68 more officers, directors, trustees or beneficiaries in common  
69 with or subject to control by the transferor, shall be deemed  
70 to be indirectly owned or controlled by the transferor unless  
71 the board, after notice and a hearing pursuant to the  
72 provisions of section three, article three of this chapter,  
73 determines that the transferor is not in fact capable of  
74 controlling the transferee.

**§31A-8A-4. Acquisition of bank shares; when prior notification  
of board necessary; exemptions.**

1 (a) It shall be unlawful, prior to ninety days following the  
2 date of the submission to the board of complete, true and  
3 accurate copies of the reports required under federal laws or  
4 regulations pursuant to Title 12, United States Code,  
5 §§1841-1850 (being the act of Congress entitled the Bank  
6 Holding Company Act of 1956, as amended), and the payment  
7 of an examination and investigation fee to the board of two  
8 thousand five hundred dollars:

9 (1) For any action to be taken that causes any company to  
10 become a bank holding company;

11 (2) For any action to be taken that causes any bank to  
12 become a subsidiary of a bank holding company;

13 (3) For any bank holding company to acquire direct or  
14 indirect ownership or control of any shares of any bank if,  
15 after such acquisition, such company will directly or  
16 indirectly own or control more than five percent of the voting  
17 shares of such bank;

18 (4) For any bank holding company or subsidiary thereof,  
19 other than a bank, to acquire all or substantially all of the  
20 assets of a bank;

21 (5) For any bank holding company to merge or consolidate  
22 with any other bank holding company; or

23 (6) For any bank holding company to take any action  
24 which would violate the Federal Bank Holding Company Act.

25 (b) The provisions of subsection (a) of this section shall  
26 not apply to:

27 (1) Shares acquired by a bank

28 (A) In good faith in a fiduciary capacity, except where  
29 shares are held under a trust that constitutes a company as  
30 defined in section two of this article and except as provided in  
31 subdivisions (2) and (3), subsection (b), section three of this  
32 article; or

33 (B) In the regular course of securing or collecting a debt  
34 previously contracted in good faith, but any shares acquired  
35 after the effective date of this act in securing or collecting any  
36 such previously contracted debt shall be disposed of within a  
37 period of five years from the date on which they were  
38 acquired; or

39 (2) Additional shares acquired by a bank holding  
40 company in a bank in which such bank holding company  
41 owned or controlled a majority of the voting shares prior to  
42 such acquisition. For the purpose of the preceding sentence,  
43 bank shares acquired after the effective date of this act shall  
44 not be deemed to have been acquired in good faith in a  
45 fiduciary capacity if the acquiring bank or company has sole  
46 discretionary authority to exercise voting rights with respect  
47 thereto, but in such instances acquisitions may be made  
48 without prior notice to the board if the board, upon notice and  
49 submission of information in form and content as it shall  
50 approve, filed within ninety days after the shares are  
51 acquired, approved retention or, if retention is disapproved,  
52 the acquiring bank disposes of the shares or its sole

53 discretionary voting rights within five years after issuance of  
54 the order of disapproval.

55 (c) If, within ninety days from the date of submission  
56 pursuant to subsection (a) of this section, after notice and a  
57 hearing pursuant to the provisions of section three, article  
58 three of this chapter, the board enters an order disapproving  
59 the proposed action described in subsection (a)(1), (a)(2),  
60 (a)(3), (a)(4), (a)(5) or (a)(6) of this section, it shall be unlawful to  
61 take such action. The board shall disapprove the proposed  
62 action described in subsection (a)(1), (a)(2), (a)(3), (a)(4), (a)(5)  
63 or (a)(6) of this section on the following grounds:

64 (1) The action would result in a monopoly, or would be in  
65 furtherance of any combination or conspiracy to monopolize or  
66 to attempt to monopolize the business of banking in any  
67 section of this state;

68 (2) The action would have the effect in any section of the  
69 state of substantially lessening competition, or would tend to  
70 create a monopoly or in any other manner would be in  
71 restraint of trade, unless the anticompetitive effects of the  
72 proposed action are clearly outweighed in the public interest  
73 by the probable effect of the action in meeting the  
74 convenience and needs of the community to be served; or

75 (3) Taking into consideration the financial and managerial  
76 resources and further prospects of the company or companies  
77 and the banks concerned, the action would be contrary to the  
78 best interests of the shareholders or customers of the bank  
79 whose shares are affected by such action.

80 (d) It shall be unlawful for any bank holding company to  
81 acquire shares of a bank if such acquisition would cause the  
82 combined deposits of all banks in this state with respect to  
83 which it is a bank holding company to exceed ten percent of  
84 total bank deposits in this state as determined by the latest  
85 available reports of condition as compiled by the Federal  
86 Deposit Insurance Corporation.

87 (e) Notwithstanding any other provisions of this section,  
88 no proposed action described in subdivision (a)(1), (a)(2),  
89 (a)(3), (a)(4), (a)(5) or (a)(6) of this section shall be approved if  
90 such approval will permit any bank holding company or any  
91 subsidiary thereof to acquire, directly or indirectly, five  
92 percent or more of the interest in or assets of a bank or bank  
93 holding company located in this state if the operations of any  
94 banking subsidiary of such bank holding company are  
95 located outside this state.

96 (f) It shall be unlawful for any bank holding company to  
97 acquire any interest in a non-bank subsidiary which engages  
98 in the business of receiving deposits subject to check or to  
99 repayment upon presentation of a passbook, certificate of  
100 deposit, or other evidence of debt, or upon request of the  
101 depositor.

102 (g) Nothing contained in this section shall affect the  
103 obligation of any person or company to comply with the  
104 provisions of any order of any court or the commissioner  
105 entered prior to the effective date of this act.

**§31A-8A-5. Registration and reporting of bank holding  
companies; annual fee.**

1 (a) For the purposes of this section, other than subsection  
2 (f), a "bank holding company" shall include, in addition to a  
3 bank holding company defined in subsection (a)(1), section  
4 three of this article, any other bank holding company subject  
5 to regulation under Title 12 United States Code, §§1841-1850  
6 (being the act of Congress entitled the Bank Holding  
7 Company Act of 1956, as amended), which has acquired or  
8 established a place of business in this state or a subsidiary  
9 which has a place of business in this state.

10 (b) On the first day of July, one thousand nine hundred  
11 eighty-two, and annually thereafter on dates established by  
12 the commissioner, each bank holding company shall register  
13 with the commissioner on forms provided or prescribed by  
14 him, which shall include such information with respect to the  
15 financial condition, operation, management and  
16 inter-company relationships of the bank holding company  
17 and its subsidiaries and related matters as the commissioner  
18 may deem necessary or appropriate to carry out the purposes  
19 of this article.

20 (c) The commissioner is authorized to issue such  
21 regulations and orders as may be necessary to enable him or  
22 the board to administer and carry out the purposes of this  
23 article and prevent evasions thereof.

24 (d) The commissioner from time to time may require  
25 reports under oath to keep him informed as to whether the  
26 provisions of this article and such regulations and orders  
27 thereunder issued by him have been complied with, may  
28 make examinations of each bank holding company and each  
29 subsidiary thereof, and shall, as far as possible, use the  
30 reports of examination made by the Comptroller of the

31 Currency, Federal Deposit Insurance Corporation, or the  
32 Board of Governors of the Federal Reserve System for the  
33 purposes of this section.

34 (e) Bank holding companies and subsidiaries or affiliates  
35 thereof shall be regulated, controlled and examined by the  
36 commissioner to the same extent that he regulates, controls  
37 and examines state banks and other financial institutions  
38 under his jurisdiction. The commissioner is hereby  
39 authorized to promulgate rules and regulations and  
40 registration procedures for the regulation, examination and  
41 control of bank holding companies doing business in this  
42 state.

43 (f) On the first day of January, one thousand nine hundred  
44 eighty-three, and thereafter annually on the same date, each  
45 bank holding company shall pay an annual registration fee to  
46 the commissioner based upon the total amount of bank  
47 deposits in banks with respect to which such company is a  
48 bank holding company. The commissioner shall prescribe by  
49 regulations the annual registration fee, but such fee shall not  
50 exceed ten dollars per million dollars in deposits rounded off  
51 to the nearest million dollars. The payment of such  
52 registration fee shall be accompanied by a report on forms  
53 prescribed by the commissioner. The commissioner is  
54 authorized to issue such regulations as may be necessary to  
55 enable him to administer the collection of the registration fee.

**§31A-8A-6. Violations.**

1 Any violation of any provision of this article shall constitute  
2 a misdemeanor offense, which, upon conviction thereof, shall  
3 be punishable by applicable penalties as provided in section  
4 fifteen, article eight of this chapter.

**ARTICLE 8B. COMMUNITY REINVESTMENT ACT.**

**§31A-8B-1. Short title.**

1 This article may be cited as the "West Virginia Community  
2 Reinvestment Act."

**§31A-8B-2. Legislative findings and purpose.**

1 (a) The Legislature finds that:  
2 (1) Banking institutions are required by law to  
3 demonstrate that their deposit facilities serve the  
4 convenience and needs of the communities in which they are  
5 chartered to do business;

6 (2) The convenience and needs of communities include  
7 the need for credit services as well as deposit services; and

8 (3) Banking institutions have a continuing and affirmative  
9 obligation to help meet the credit needs of the local  
10 communities in which they are chartered.

11 (b) It is the purpose of this article to require the  
12 commissioner and the board to use their authority when  
13 examining or investigating banking institutions or their bank  
14 holding companies, to encourage such institutions to help  
15 meet the credit needs of the local communities in which they  
16 are chartered consistent with the safe and sound operation of  
17 such institutions.

**§31A-8B-3. Application for a deposit facility; definition.**

1 The term “application for a deposit facility” means an  
2 application to the commissioner or board for:

3 (a) A charter for a state bank;

4 (b) The relocation of the principal office or a branch of a  
5 state bank;

6 (c) The establishment of a branch bank in an unbanked  
7 area requiring approval under section twelve, article eight of  
8 this chapter;

9 (d) The merger or consolidation with, or the acquisition of  
10 the assets, or the assumption of the liabilities of a banking  
11 institution requiring approval under section seven, article  
12 seven of this chapter; or, the merger or consolidation with, or  
13 the acquisition of the assets, or the assumption of the  
14 liabilities of a banking institution requiring approval under  
15 section twelve, article eight of this chapter.

16 (e) The acquisition of shares in, or the assets of, a state  
17 banking institution requiring approval under article eight-a  
18 of this chapter.

**§31A-8B-4. Assessment of the institution’s reinvestment in the  
community.**

1 In connection with its examination or investigation of a  
2 banking institution or bank holding company, the  
3 commissioner or board shall:

4 (a) Assess the institution’s record of meeting the credit  
5 needs of its entire community, including low- and  
6 moderate-income neighborhoods, consistent with the safe  
7 and sound operation of such institution; and

8 (b) Take such record into account in its evaluation of an  
9 application for a deposit facility by such institution.

**§31A-8B-5. Rules and regulations.**

- 1 Regulations to carry out the purposes of this article shall be
- 2 promulgated by the commissioner.

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

*K. P. Bayler*  
Chairman Senate Committee

*Tommy E. Whitlow*  
Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

*Todd C. Wilts*  
Clerk of the Senate

*C. A. Blankenship*  
Clerk of the House of Delegates

*Warren R. Mason*  
President of the Senate

*Wm. H. Seelye, Jr.*  
Speaker House of Delegates

The within *is approved* this the *25*

day of *March*, 1982.

*John R. Rader*  
Governor



Rec. d.

MAR. 25, 1982

11:46 A.M.

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SECY. OF STATE