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# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1984

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# ENROLLED

Com. Sub. for  
HOUSE BILL No. 1675

(By Mr. Del. William .....)

— ● —

Passed ..... March 9, ..... 1984

In Effect ..... Ninety Days From ..... Passage



**ENROLLED**  
**COMMITTEE SUBSTITUTE**  
**FOR**  
**H. B. 1675**  
**(By DELEGATE GILLIAM)**

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[Passed March 9, 1934; in effect ninety days from passage.]

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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 two, article three of said chapter; to amend and reenact sections eight, twenty, twenty-five and twenty-six, article four of said chapter; to amend and reenact section twelve, article eight of said chapter; to further amend said article eight by adding thereto a new section, designated section twelve-c; to amend and reenact sections one and four, article eight-a of said chapter; to amend article eighteen, chapter forty-seven by adding thereto a new section, designated section four-a, all relating to general definitions; defining a "bankers' bank"; redefining "branch bank"; relating to the general powers and duties of the West Virginia board of banking and financial institutions; authorizing said board to approve or disapprove applications to incorporate and organize bankers' banks; further authorizing said board to exempt a bankers' bank from the provisions of chapter thirty-one-a; relating to qualifying shares of the directors of state-chartered banks; relating to stockholder examining committees; relating to limitations on dividend payments; exemptions from such limitations if approved by the commissioner of banking; relating to limitations on a state-chartered banking institution's

investment in a bankers' bank; relating to the establishment of branch banks; phasing in removal of limitations and restrictions on branch banking; removing provisions that limit any bank to ten percent of the total deposits of all banking institutions in this state; relating to loan origination offices; said offices being permissible if loans approved and made at bank's principal office or branch bank; relating to elimination of certain restrictions on bank holding companies, including provision that limits any bank holding company to ten percent of the total deposits of all banking institutions in this state and the provision that prohibits a bank holding company from acquiring a savings and loan association or other depository institution; relating to statement of purpose of Legislature with regard to limitation of acquisition of twenty percent of total deposits in state.

*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 two, article three of said chapter be amended and reenacted; that sections eight, twenty, twenty-five and twenty-six, article four of said chapter be amended and reenacted; that section twelve, 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-c; that sections one and four, article eight-a of said chapter be amended and reenacted; and that article eighteen, chapter forty-seven be amended by adding thereto a new section, designated section four-a, all to read as follows:

## **CHAPTER 31A. BANKS AND BANKING.**

### **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 proceed-  
4 ing, means any proceeding in a court of competent jurisdiction  
5 in which rights are adjudicated and determined and shall em-  
6 brace, and include recoupment, counterclaim, setoff and other  
7 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  
14 and shall embrace and include a trust company or an institu-  
15 tion 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 words "bankers' bank" mean a banking institution,  
23 insured by the Federal Deposit Insurance Corporation, the  
24 stock of which is owned exclusively by banks and other  
25 depository institutions, and such banking institution and all  
26 subsidiaries thereof are engaged exclusively in providing ser-  
27 vices for banks and other depository institutions and their  
28 officers, directors and employees;

29 (d) The term "banking business" means the functions,  
30 services and activities contained, detailed and embraced in  
31 sections thirteen and fourteen, article four of this chapter,  
32 and as elsewhere defined by law;

33 (e) The word "board" means the West Virginia board of  
34 banking and financial institutions;

35 (f) The words "branch bank" mean an office or other  
36 place at which a bank performs any or all banking business.  
37 For purposes of this chapter, a branch bank does not in-  
38 clude:

39 (1) A bank's principal place of business:

40 (2) Any customer bank communication terminals installed  
41 and operated pursuant to section twelve-b, article eight of  
42 this chapter; and

43 (3) Any loan origination office authorized by section  
44 twelve-c, article eight of this chapter:



45 (g) The words "commissioner" or "commissioner of bank-  
46 ing" mean the commissioner of banking of West Virginia;

47 (h) The word "community" means a city, town or other  
48 incorporated area, or, where not so incorporated, a trading  
49 area;

50 (i) The word "department" means the department of bank-  
51 ing of West Virginia;

52 (j) The words "deputy commissioner" or "deputy com-  
53 missioner of banking" mean the deputy commissioner of  
54 banking of West Virginia;

55 (k) The word "fiduciary" means any trustee, agent, execu-  
56 tor, administrator, curator, committee, guardian or conserva-  
57 tor, special commissioner, receiver, trustee in bankruptcy,  
58 assignee for creditors, or any holder of a similar position of  
59 trust or responsibility;

60 (l) The words "financial institutions" mean banks, build-  
61 ing and loan associations, industrial banks, industrial loan  
62 companies, supervised lenders, credit unions and all other  
63 similar institutions, whether persons, firms or corporations,  
64 which are by law under the jurisdiction and supervision of  
65 the commissioner of banking;

66 (m) The word "officer" when referring to any financial  
67 institution, means any person designated as such in the by-  
68 laws and includes, whether or not so designated, any execu-  
69 tive officer, the chairman of the board of directors, the  
70 chairman of the executive committee, and any trust officer,  
71 assistant vice president, assistant treasurer, assistant secretary,  
72 assistant trust officer, assistant cashier, assistant comptroller,  
73 or any other person who performs the duties appropriate  
74 to those offices, and the terms "executive officer" as herein  
75 used, when referring to banking institutions, mean an  
76 officer of a bank whose duties involve regular, active and  
77 substantial participation in the daily operations of such insti-  
78 tution and who, by virtue of his position, has both a voice  
79 in the formulation of the policy of the bank and responsibility  
80 for implementation of the policy, such responsibility of and  
81 functions performed by the individual, and not his title or

82 office, being determinative of whether he is an "executive  
83 officer";

84 (n) The words "person" or "persons" mean any individual,  
85 partnership, society, association, firm, institution, company,  
86 public or private corporation, state, governmental agency,  
87 bureau, department, division or instrumentality, political sub-  
88 division, county commission, municipality, trust, syndicate,  
89 estate or any other legal entity whatsoever, formed, created  
90 or existing under the laws of this state or any other jurisdic-  
91 tion;

92 (o) The words "safe-deposit box" mean a safe-deposit box,  
93 vault or other safe-deposit receptacle maintained by a lessor  
94 bank, and the rules relating thereto apply to property or  
95 documents kept therein in the bank's vault under the joint con-  
96 trol of lessor and lessee;

97 (p) The words "state bank" or "state banking institution"  
98 mean a bank chartered under the laws of West Virginia, as  
99 distinguished from a national banking association; and

100 (q) The words "trust business" mean the functions, services  
101 and activities contained, detailed and embraced in section  
102 fourteen, article four of this chapter, and as elsewhere defined  
103 by law and as may be included within the meaning of the  
104 term "banking business."

### ARTICLE 3. BOARD OF BANKING AND FINANCIAL INSTITUTIONS.

#### §31A-3-2. General powers and duties.

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

3 (1) Regulate its own procedure and practice;

4 (2) Promulgate reasonable rules and regulations to imple-  
5 ment any provision of this article, such rules and regulations  
6 to be promulgated in accordance with the provisions of article  
7 three, chapter twenty-nine-a of this code;

8 (3) Advise the commissioner in all matters within his juris-  
9 diction;

10 (4) Study the organization, programs and services of fi-

11 nancial 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 amend-  
14 ments in laws, policies and procedures relating thereto as may  
15 be by it deemed proper; and

16 (5) Grant permission and authority to a financial insti-  
17 tution:

18 (A) To participate in a public agency hereafter created un-  
19 der the laws of this state or of the United States, the purpose  
20 of which is to afford advantages or safeguards to financial in-  
21 stitutions or to depositors therein, and to comply with all  
22 lawful requirements and conditions imposed upon such par-  
23 ticipants;

24 (B) To engage in any financial institution activity, services,  
25 procedures and practices in which financial institutions of the  
26 same type subject to the jurisdiction of the federal govern-  
27 ment may hereafter be authorized by federal laws, rules or  
28 regulations to engage, notwithstanding any contrary provision  
29 of this code; and

30 (C) To pay interest on demand deposits of the United States  
31 or any agency thereof, if the payment of such interest shall  
32 be permitted under any applicable federal law, rule or regula-  
33 tion.

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

48 tion of creditors of and depositors in the affected institutions;

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

59 (3) Approve or disapprove applications to incorporate and  
60 organize state banking institutions in accordance with the pro-  
61 visions of sections six and seven, article four of this chapter;

62 (4) Approve or disapprove applications to incorporate and  
63 organize state-chartered bankers' banks in accordance with the  
64 provisions of sections six and seven, article four of this chap-  
65 ter;

66 (5) Exempt a bankers' bank from any provision of this  
67 chapter if the board finds that such provision is inconsistent  
68 with the purpose for which a bankers' bank is incorporated  
69 and organized and that the welfare of the public or any bank-  
70 ing institution or other financial institution would not be  
71 jeopardized thereby;

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

82 (7) Suspend or remove a director, officer or employee of  
83 any financial institution who is or becomes ineligible to hold  
84 such position under any provision of law or rule and regula-

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

90 (8) To receive from state banking institutions applications  
91 to establish branch banks by the purchase of the business and  
92 assets and assumption of the liabilities of, or merger or con-  
93 solidation with, another banking institution, or by the con-  
94 struction, lease or acquisition of branch bank facilities in an  
95 unbanked area; examine and investigate such applications, to  
96 hold hearings thereon, and to approve or disapprove such  
97 applications, all in accordance with section twelve, article  
98 eight of this chapter;

99 (9) Approve or disapprove the application of any state  
100 bank to purchase the business and assets and assume the lia-  
101 bilities of, or merge or consolidate with, another state banking  
102 institution in accordance with the provisions of section seven,  
103 article seven of this chapter;

104 (10) Approve or disapprove the application of any state  
105 bank to purchase the business and assets and assume the lia-  
106 bilities of a national banking association, or merge or con-  
107 solidate with a national banking association to form a result-  
108 ing state bank in accordance with the provisions of section  
109 seven, article seven of this chapter;

110 (11) In addition to any authority granted pursuant to  
111 section twelve, article eight of this chapter, incident to the  
112 approval of an application pursuant to subdivision (7) or sub-  
113 division (8) of this subsection (b), permit the bank the appli-  
114 cation of which is so approved to operate its banking business  
115 under its name from the premises of the bank the business and  
116 assets of which have been purchased and the liabilities of  
117 which have been assumed by such applicant bank or with  
118 which such applicant bank has merged or consolidated:  
119 *Provided*, That such permission may be granted only if the  
120 board has made the findings required by subsection (f), sec-  
121 tion three of this article and such applicant bank has no com-  
122 mon directors or officers nor common ownership of stock ex-

123 ceeding ten percent of total outstanding voting stock with  
124 the bank whose business and assets are being purchased and  
125 liabilities assumed, or with whom such applicant bank is be-  
126 ing merged; and

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

#### ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

##### §31A-4-8. Directors, their qualifications and oaths.

1 For every state-chartered banking institution there shall  
2 be a board of not less than five nor more than twenty-five  
3 directors, who shall meet at least once each month and who  
4 shall have power to do, or cause to be done, all things that  
5 are proper to be done by the banking institution; and a  
6 majority of whom shall at all times be residents of this state.  
7 Every such director shall own capital stock in the banking in-  
8 stitution of which he is a director. Said director must own  
9 shares in the aggregate par value of not less than five hundred  
10 dollars, an exception being that if a bank holding company  
11 has control of that banking institution, shares owned by a  
12 director of the subsidiary bank in the controlling bank holding  
13 company will satisfy the requirements of this section: *Pro-*  
14 *vided*, That the director owns, in his own right, common or  
15 preferred stock of the controlling bank holding company in  
16 an amount equal to or greater than any one of the following:  
17 (i) Aggregate par value of five hundred dollars; (ii) aggregate  
18 shareholders' equity of five hundred dollars; or (iii) aggregate  
19 fair market value of five hundred dollars. Determination  
20 of the fair market value of the controlling bank holding com-  
21 pany's stock shall be based upon the value of that stock on the  
22 date it was purchased or on the date the person became a direc-  
23 tor, whichever is greater. If a bank holding company controls  
24 more than one bank subsidiary, a director owning at least five  
25 hundred dollars of the shares of a bank holding company is  
26 qualified, if otherwise permitted by applicable law, to serve



27 as a director of every bank subsidiary controlled by that  
28 bank holding company. Before entering on the discharge of  
29 his duties as such director, he shall take an oath that he  
30 will, so far as the duty devolves upon him, diligently and  
31 honestly administer the affairs of the banking institution,  
32 and that he will not knowingly or willingly permit to be  
33 violated any of the provisions of the laws of this state  
34 relative to banking and banking institutions, and that the  
35 stock standing in his name upon the books of the banking  
36 institution is not hypothecated or pledged in any way as  
37 security for loans obtained from or debts owing to the banking  
38 institution of which he is a director, and that the number  
39 of shares necessary to qualify a stockholder to be a director  
40 are not now, and shall not at any time while he serves  
41 as a director, be pledged or hypothecated in any manner  
42 for any debt or obligation of the director, or any other  
43 person; which oath subscribed by him and certified by the  
44 officer before whom it was taken shall be filed and  
45 preserved in the office of the commissioner of banking.  
46 Should a director fail to subscribe to the oath herein pro-  
47 vided within sixty days after notice of his election, or at  
48 any time after qualifying as such, sell or dispose of, or  
49 in any manner hypothecate or pledge as security for a debt  
50 or obligation, such qualifying shares, or any number  
51 thereof, necessary for his qualification, thereupon the remain-  
52 ing directors shall elect another director in his stead. No  
53 person shall serve as a director of any banking institution who  
54 has evidenced personal dishonesty and unfitness to serve as  
55 such director by his conduct or practice with another financial  
56 institution which resulted in a substantial financial loss or  
57 damage thereto or who has been convicted of any crime in-  
58 volving personal dishonesty.

**§31A-4-20. Stockholders' annual meeting; financial statement; ap-  
pointment, duties and report of examining com-  
mittee; employment of accountants; examiners may  
require presence of executive or examining com-  
mittee.**

1 The stockholders of each state banking institution shall  
2 meet annually and at such annual meeting it shall be the

3 duty of the cashier or other executive officer of such bank-  
 4 ing institution to prepare and submit to the stockholders a  
 5 clear and concise statement of the financial condition of  
 6 the corporation as of the close of business on the last day of  
 7 the month next preceding. At such meeting, the stockholders  
 8 present in person or by proxy shall elect an examining com-  
 9 mittee composed of not less than three nor more than five  
 10 persons, each of whom shall be a stockholder either in such  
 11 banking institution, or, if such banking institution is con-  
 12 trolled by a bank holding company, in that bank holding  
 13 company. At such time or times as it may be directed to do  
 14 so by the written request of the board of directors or the  
 15 commissioner of banking, such committee shall immediately  
 16 proceed to examine the condition of the bank and, upon  
 17 completion of such examination, shall file its report in writ-  
 18 ing with the board of directors. Such report shall set forth  
 19 in detail all items included in the assets of the bank which  
 20 the committee has reason to believe are not of the value  
 21 at which they appear on the books and records of the bank,  
 22 and shall give the value of each of such items according  
 23 to its judgment. The board of directors shall cause such  
 24 report to be retained as a part of the records of the bank  
 25 and shall transmit a duly authenticated copy thereof to the  
 26 commissioner of banking. With the consent and approval  
 27 of the stockholders, such committee may employ registered  
 28 or certified public accountants to make such examination  
 29 or make the same in conjunction with any official examina-  
 30 tion made by any supervisory authority. Any official ex-  
 31 aminer of the department of banking may require the presence  
 32 of the examining committee on the executive committee dur-  
 33 ing his examination.

**§31A-4-25. Dividends; limitations; penal provisions.**

1 (a) The directors of any state-chartered banking in-  
 2 stitution may quarterly, semiannually or annually, declare  
 3 a dividend of so much of the net profits of that banking  
 4 institution as they shall judge expedient, except that until  
 5 the surplus fund of such banking institution shall equal  
 6 its common stock, no dividends shall be declared unless there  
 7 has been carried to the surplus fund not less than one-



8 tenth part of that banking institution's net profits of the  
9 preceding half year in the case of quarterly or semiannual  
10 dividends, or not less than one-tenth part of its net profits  
11 of the preceding two consecutive half-year periods in the  
12 case of annual dividends;

13 (b) The prior approval of the commissioner of banking  
14 shall be required if the total of all dividends declared by  
15 such banking institution in any calendar year shall exceed  
16 the total of its net profits of that year combined with its  
17 retained net profits of the preceding two years;

18 (c) For the purpose of this section the term "net pro-  
19 fits" shall mean the remainder of all earnings from current  
20 operations plus actual recoveries on loans and investments  
21 and other assets, after deducting from the total thereof, all  
22 current operation expenses, actual losses and all federal and  
23 state taxes;

24 (d) Any director voting to declare any dividend, in viola-  
25 tion of the provisions of this section, shall be personally liable  
26 to the creditors of such banking institution for any loss  
27 occasioned thereby, and shall be guilty of a misdemeanor.

**§31A-4-26. Limitation on loans and extensions of credit; limitation  
on investments; loans to officers and employees of  
banks and banking department; exceptions; valua-  
tion of securities.**

1 (a) (1) The total loans and extensions of credit by a state-  
2 chartered banking institution to a person outstanding at one  
3 time and not fully secured, as determined in a manner consis-  
4 tent with subdivision (2) of this subsection, by collateral hav-  
5 ing a market value at least equal to the amount of the loan or  
6 extension of credit shall not exceed fifteen percent of the  
7 unimpaired capital and unimpaired surplus of that state-  
8 chartered banking institution.

9 (2) The total loans and extensions of credit by a state-  
10 chartered banking institution to a person outstanding at one  
11 time and fully secured by readily marketable collateral hav-  
12 ing a market value, as determined by reliable and contin-  
13 uously available price quotations, at least equal to the amount

14 of the funds outstanding shall not exceed ten percent of the  
 15 unimpaired capital and unimpaired surplus of that state-  
 16 chartered banking institution. This limitation shall be separate  
 17 from and in addition to the limitation contained in subdivision  
 18 (1) of this subsection.

19 (3) For the purposes of this subsection:

20 (A) The term "loans and extensions of credit" shall in-  
 21 clude all direct or indirect advances of funds to a person made  
 22 on the basis of any obligation of that person to repay the  
 23 funds or repayable from specific property pledged by or on  
 24 behalf of the person and to the extent specified by the com-  
 25 missioner of banking, such terms shall also include any lia-  
 26 bility of a state-chartered banking institution to advance funds  
 27 to or on behalf of a person pursuant to a contractual com-  
 28 mitment; and

29 (B) The term "person" shall include an individual, part-  
 30 nership, society, association, firm, institution, company, public  
 31 or private corporation, state, governmental agency, bureau,  
 32 department, division or instrumentality, political subdivision,  
 33 county commission, municipality, trust, syndicate, estate or  
 34 any other legal entity whatsoever, formed, created or existing  
 35 under the laws of this state or any other jurisdiction.

36 (4) The limitations contained in this subsection shall be sub-  
 37 ject to the following exceptions:

38 (A) Loans or extensions of credit arising from the discount  
 39 of commercial or business paper evidencing an obligation to  
 40 the person negotiating it with recourse shall not be subject to  
 41 any limitation based on capital and surplus;

42 (B) The purchase of bankers' acceptances of the kind de-  
 43 scribed in section thirteen of the Federal Reserve Act and  
 44 issued by other banks shall not be subject to any limitation  
 45 based on capital and surplus;

46 (C) Loans and extensions of credit secured by bills of lad-  
 47 ing, warehouse receipts or similar documents transferring or  
 48 securing title to readily marketable staples shall be subject to  
 49 a limitation of thirty-five percent of capital and surplus in  
 50 addition to the general limitations if the market value of the

51 staples securing each additional loan or extension of credit at  
52 all times equals or exceeds one hundred fifteen percent of the  
53 outstanding amount of such loan or extension of credit. The  
54 staples shall be fully covered by insurance whenever it is  
55 customary to insure such staples;

56 (D) Loans or extensions of credit secured by bonds, notes,  
57 certificates of indebtedness or treasury bills of the United  
58 States or by other such obligations fully guaranteed as to  
59 principal and interest by the United States or by bonds, notes,  
60 certificates of indebtedness which are general obligations of  
61 the state of West Virginia or by other such obligations fully  
62 guaranteed as to principal and interest by the state of West  
63 Virginia, shall not be subject to any limitation based on capi-  
64 tal and surplus;

65 (E) Loans or extensions of credit to or secured by uncon-  
66 ditional takeout commitments or guarantees of any depart-  
67 ment, agency, bureau, board, commission or establishment of  
68 the United States or of the state of West Virginia or any cor-  
69 poration wholly owned directly or indirectly by the United  
70 States shall not be subject to any limitation based on capital  
71 and surplus;

72 (F) Loans or extensions of credit secured by a segregated  
73 deposit account in the lending bank shall not be subject to  
74 any limitation based on capital and surplus;

75 (G) Loans or extensions of credit to any banking  
76 institution or to any receiver, conservator or other agent  
77 in charge of the business and property of such banking  
78 institution or other federally insured depository institution,  
79 when such loans or extensions of credit are approved by  
80 the commissioner of banking, shall not be subject to any  
81 limitation based on capital and surplus;

82 (H) (i) Loans and extensions of credit arising from the  
83 discount of negotiable or nonnegotiable installment consumer  
84 paper which carries a full recourse endorsement or uncon-  
85 ditional guarantee by the person transferring the paper shall  
86 be subject under this section to a maximum limitation equal  
87 to twenty-five percent of such capital and surplus, notwith-

88 standing the collateral requirements set forth in subdivision  
89 (2) of this subsection.

90 (ii) If the bank's files or the knowledge of its officers  
91 of the financial condition of each maker of such consumer  
92 paper is reasonably adequate, and an officer of the bank  
93 designated for that purpose by the board of directors of the  
94 bank certifies in writing that the bank is relying primarily  
95 upon the responsibility of each maker for payment of such  
96 loans or extensions of credit and not upon any full or partial  
97 recourse endorsement or guarantee by the transferor, the  
98 limitations of this section as to the loans or extensions of  
99 credit of each such maker shall be the sole applicable loan  
100 limitations;

101 (I) (i) Loans and extensions of credit secured by ship-  
102 ping documents or instruments transferring or securing title  
103 covering livestock or giving a lien on livestock when the  
104 market value of the livestock securing the obligation is not  
105 at any time less than one hundred fifteen percent of the face  
106 amount of the note covered, shall be subject under this  
107 section, notwithstanding the collateral requirements set forth  
108 in subdivision (2) of this subsection, to a maximum limitation  
109 equal to twenty-five percent of such capital and surplus.

110 (ii) Loans and extensions of credit which arise from the  
111 discount by dealers in livestock of paper given in payment  
112 for livestock, which paper carries a full recourse endorsement  
113 or unconditional guarantee of the seller and which are secured  
114 by the livestock being sold, shall be subject under this section,  
115 notwithstanding the collateral requirements set forth in sub-  
116 division (2) of this subsection, to a limitation of twenty-five  
117 percent of such capital and surplus;

118 (J) Loans or extensions of credit to the student loan  
119 marketing association shall not be subject to any limitation  
120 based on capital and surplus;

121 (K) Loans or extensions of credit to a corporation own-  
122 ing the property in which that state-chartered banking in-  
123 stitution is located, when that state-chartered banking institu-  
124 tion has an unimpaired capital and surplus of not less than  
125 one million dollars or when approved in writing by the com-

126 missioner of banking, shall not be subject to any limitation  
127 based on capital and surplus.

128 (5) (A) The commissioner of banking may prescribe rules  
129 and regulations to administer and carry out the purposes of  
130 this subsection including rules or regulations to define or  
131 further define terms used in this subsection and to establish  
132 limits or requirements other than those specified in this  
133 subsection for particular classes or categories of loans or  
134 extensions of credit;

135 (B) The commissioner of banking may also prescribe rules  
136 and regulations to deal with loans or extensions of credit,  
137 which were not in violation of this section prior to the  
138 effective date of this act, but which will be in violation of  
139 this section upon the effective date of this act;

140 (C) The commissioner of banking also shall have au-  
141 thority to determine when a loan putatively made to a  
142 person shall for purposes of this subsection be attributed  
143 to another person.

144 (b) (1) Except as hereinafter provided or otherwise per-  
145 mitted by law, nothing herein contained shall authorize the  
146 purchase by a state-chartered banking institution for its own  
147 account of any shares of stock of any corporation: *Provided,*  
148 That a state-chartered banking institution may purchase and  
149 sell securities and stock without recourse, solely upon the  
150 order and for the account of customers.

151 (2) In no event shall the total amount of investment  
152 securities of any one obligor or maker held by a state-chartered  
153 banking institution for its own account, exceed fifteen percent  
154 of the unimpaired capital and unimpaired surplus of that  
155 state-chartered banking institution.

156 (3) For purposes of this subsection:

157 (A) The term "investment securities" shall include market-  
158 able obligations, evidencing indebtedness of any person in  
159 the form of stocks, bonds, notes and/or debentures; "in-  
160 vestment securities" may be further defined by regulation of  
161 the commissioner of banking; and

162 (B) The term "person" shall include any individual, part-  
 163 nership, society, association, firm, institution, company, public  
 164 or private corporation, state, governmental agency, bureau,  
 165 department, division or instrumentality, political subdivision,  
 166 county commission, municipality, trust, syndicate, estate or  
 167 any other legal entity whatsoever, formed, created or existing  
 168 under the laws of this state or any other jurisdiction.

169 (4) The limitations contained in this subsection (b) shall  
 170 be subject to the following exceptions:

171 (A) Obligations of the United States;

172 (B) General obligations of any state or of any political  
 173 subdivision thereof;

174 (C) Obligations issued under authority of the Federal  
 175 Farm Loan Act, as amended, or issued by the thirteen banks  
 176 for cooperatives or any of them or the Federal Home Loan  
 177 Banks;

178 (D) Obligations which are insured by the secretary of  
 179 housing and urban development under Title XI of the National  
 180 Housing Act (12USC §§1749aaa et seq.);

181 (E) Obligations which are insured by the secretary of  
 182 housing and urban development hereafter in this sentence  
 183 referred to as the "secretary" pursuant to section 207 of  
 184 the National Housing Act (12 USC §1713), if the debentures  
 185 to be issued in payment of such insured obligations are  
 186 guaranteed as to principal and interest by the United States;

187 (F) Obligations, participations or other instruments of  
 188 or issued by the federal national mortgage association or  
 189 the government national mortgage association, or mortgages,  
 190 obligations or other securities which are or ever have been  
 191 sold by the federal home loan mortgage corporation pursuant  
 192 to Section 305 or Section 306 of the Federal Home Loan  
 193 Mortgage Corporation Act (12 USC §1454 or §1455);

194 (G) Obligations of the federal financing bank;

195 (H) Obligations or other instruments or securities of the  
 196 student loan marketing association;



197 (I) Obligations of the environmental financing authority;

198 (J) Such obligations of any local public agency (as de-  
199 fined in Section 110(h) of the Housing Act of 1949 (42 USC  
200 §1460 (h)) as are secured by an agreement between the  
201 local public agency and the secretary of housing and urban  
202 development in which the local public agency agrees to  
203 borrow from said secretary and said secretary agrees to lend  
204 to said local public agency, moneys in an aggregate amount  
205 which (together with any other moneys irrevocably committed  
206 to the payment of interest on such obligations) will suffice  
207 to pay, when due, the interest on all installments (in-  
208 cluding the final installment) of the principal of such obliga-  
209 tions, which moneys under the terms of said agreement are  
210 required to be used for such payments;

211 (K) Obligations of a public housing agency as that term  
212 is defined in the United States Housing Act of 1937, as  
213 amended, (42 USC §§1401 et seq.) as are secured:

214 (i) By an agreement between the public housing agency  
215 and the secretary in which the public housing agency agrees  
216 to borrow from the secretary, and the secretary agrees to  
217 lend to the public housing agency, prior to the maturity of  
218 such obligations, moneys in an amount which, together with  
219 any other moneys irrevocably committed to the payment of  
220 interest on such obligations, will suffice to pay the principal  
221 of such obligations with interest to maturity thereon, which  
222 moneys under the terms of said agreement are required to be  
223 used for the purpose of paying the principal of and the  
224 interest on such obligations at their maturity;

225 (ii) By a pledge of annual contributions under an annual  
226 contributions contract between such public housing agency  
227 and the secretary if such contract shall contain the covenant  
228 by the secretary which is authorized by subsection (b), Section  
229 22 (Section 6 (g) (42 USC § 1421a(b)) of the United States  
230 Housing Act of 1937, as amended, and if the maximum  
231 sum and the maximum period specified in such contract pur-  
232 suant to said subsection (b), section 22, shall not be less than  
233 the annual amount and the period for payment which are re-

234 quisite to provide for the payment when due of all install-  
235 ments of principal and interest on such obligations; or

236 (iii) By a pledge of both annual contributions under an  
237 annual contributions contract containing the covenant by the  
238 secretary which is authorized by Section 6 (g) of the United  
239 States Housing Act of 1937 (42 USC §1437d (g)) and a loan  
240 under an agreement between the local public housing agency  
241 and the secretary in which the public housing agency agrees  
242 to borrow from the secretary, and the secretary agrees to  
243 lend to the public housing agency, prior to the maturity of  
244 the obligations involved, moneys in an amount which, to-  
245 gether with any other moneys irrevocably committed under  
246 the annual contributions contract to the payment of prin-  
247 cipal and interest on such obligations will suffice to pro-  
248 vide for the payment when due of all installments of princi-  
249 pal and interest on such obligations, which moneys under  
250 the terms of the agreement are required to be used for  
251 the purpose of paying the principal and interest on such obli-  
252 gations at their maturity; and

253 (L) Obligations of a corporation owning the property in  
254 which that state-chartered banking institution is located when  
255 that state-chartered banking institution has an unimpaired  
256 capital and surplus of not less than one million dollars or  
257 when approved in writing by the commissioner of banking.

258 (5) Notwithstanding any other provision in this subsection,  
259 a state-chartered banking institution may purchase for its  
260 own account shares of stock issued by a corporation autho-  
261 rized to be created pursuant to Title IX of the Housing and  
262 Urban Development Act of 1968 (42 USC §§3931 et seq.)  
263 and may make investments in a partnership, limited partner-  
264 ship or joint venture formed pursuant to section 907 (a) or  
265 907 (c) of that act (42 USC §3937 (a) or (c), and may  
266 purchase shares of stock issued by any West Virginia housing  
267 corporation and may make investments in loans and com-  
268 mitments for loans to any such corporation: *Provided*, That  
269 in no event shall the total amount of such stock held for its  
270 own account and such investments in loans and commitments  
271 made by the state-chartered banking institution exceed at any



272 time five percent of the unimpaired capital and unimpaired  
273 surplus of that state-chartered banking institution.

274 (6) Notwithstanding any other provision in this subsection,  
275 a state-chartered banking institution may purchase, for its  
276 own account, shares of stock of small business investment  
277 companies chartered under the laws of this state, which are  
278 licensed under the act of Congress known as the "Small  
279 Business Investment Act of 1958," as amended, and of  
280 business development corporations created and organized under  
281 the act of the Legislature known as the "West Virginia Busi-  
282 ness Development Corporation Act," as amended: *Provided*,  
283 That in no event shall any such state-chartered banking  
284 institution hold shares of stock in small business investment  
285 companies and/or business development corporations in any  
286 amount aggregating more than fifteen percent of the unim-  
287 paired capital and unimpaired surplus of that state-chartered  
288 banking institution.

289 (7) Notwithstanding any other provision of this subsection,  
290 a state-chartered banking institution may purchase for its  
291 own account shares of stock of a bankers' bank or a bank  
292 holding company which owns or controls such bankers' bank,  
293 but in no event shall the total amount of such stock held  
294 by such state-chartered banking institution exceed at any  
295 time fifteen percent of the unimpaired capital and unimpaired  
296 surplus of that state-chartered banking institution and in no  
297 event shall the purchase of such stock result in that state-  
298 chartered banking institution acquiring more than twenty per-  
299 cent of any class of voting securities of such bankers' bank  
300 or of the bank holding company which owns or control such  
301 bankers' bank.

302 (8) The commissioner of banking may prescribe rules  
303 and regulations to administer and carry out the purposes of  
304 this subsection, including rules and regulations to define  
305 or further define terms used in this subsection and to  
306 establish limits or requirements other than those specified  
307 in this subsection for particular classes or categories of in-  
308 vestment securities.

309 (c) No officer or director of any banking institution or

310 the commissioner of banking or any employee of the depart-  
 311 ment of banking shall borrow, directly or indirectly, from the  
 312 banking institution with which he is connected, or which  
 313 is subject to examination by the commissioner of banking,  
 314 any sum of money without the prior approval of a majority  
 315 of the board of directors or discount committee of the bank-  
 316 ing institution, or of any duly constituted committee whose  
 317 duties include those usually performed by a discount com-  
 318 mittee, embodied in a resolution adopted by a majority vote  
 319 of such board or committee, exclusive of the director to  
 320 whom the loan is made. If any officer, clerk or other employee  
 321 of any bank shall own or control a majority of the stock of  
 322 any other corporation, a loan to such corporation shall,  
 323 for the purpose of this section, constitute a loan to such of-  
 324 ficer, clerk or other employee.

325 (d) Securities purchased by a banking institution shall be  
 326 entered upon the books of the bank at actual cost. For the  
 327 purpose of calculating the undivided profits applicable to the  
 328 payment of dividends, securities shall not be valued at a  
 329 valuation exceeding their present cost as determined by amor-  
 330 tization, that is, by deducting from the cost of a security  
 331 purchased at a premium, and charging to profit and loss a  
 332 sum sufficient to bring it to par at maturity.

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

**§31A-8-12. Procedure for authorization of branch banks; penalties for violation of section.**

1 (a) No banking institution shall engage in business at any  
 2 place other than at its principal office in this state, at a  
 3 branch bank in this state permitted by this section, at a  
 4 customer bank communication terminal permitted by section  
 5 twelve-b of this article, or at any loan origination office  
 6 permitted by section twelve-c of this article.

7 Any banking institution which on January one, one thousand  
 8 nine hundred eighty-four, was authorized to operate an off-  
 9 premises walk-in or drive-in facility, pursuant to the law  
 10 then in effect, may, as of the effective date of this act,  
 11 operate such facility as a branch bank and it shall not be

12 necessary, for the continued operation of such branch bank,  
13 to obtain additional approvals, notwithstanding the provisions  
14 of subsection (d) of this section and subdivision (6), sub-  
15 section (b), section two, article three of this chapter.

16 (b) Except for a bank holding company, it shall be un-  
17 lawful for any individual, partnership, society, association,  
18 firm, institution, trust, syndicate, public or private corpora-  
19 tion, or any other legal entity, or combination of entities  
20 acting in concert, to directly or indirectly own, control or  
21 hold with power to vote, twenty-five percent or more of the  
22 voting shares of each of two or more banks, or to control  
23 in any manner the election of a majority of the directors of  
24 two or more banks.

25 (c) A banking institution may establish branch banks  
26 either by:

27 (1) The construction, lease or acquisition of branch bank  
28 facilities as follows:

29 (A) After the effective date of this act, within the county  
30 in which that banking institution's principal office is located  
31 or within the county in which that banking institution had  
32 prior to January first, one thousand nine hundred eighty-four,  
33 established a branch bank, pursuant to subdivision (2) of  
34 this subsection;

35 (B) After January first, one thousand nine hundred eighty-  
36 seven, within the county in which that banking institution's  
37 principal office is located or within any county contiguous to  
38 the county in which that banking institution's principal office  
39 is located; and

40 (C) After January first, one thousand nine hundred ninety-  
41 one, within any county in this state; or

42 (2) The purchase of the business and assets and assump-  
43 tion of the liabilities of, or merger or consolidation with,  
44 another banking institution.

45 (d) Notwithstanding any other provision of this chapter  
46 to the contrary, subject to and in furtherance of the board's  
47 authority under the provisions of subdivision (6), subsection

48 (b), section two, article three of this chapter, and subsection  
49 (g) of this section, the board may approve or disapprove the  
50 application of any state banking institution to establish a  
51 branch bank.

52 (e) The principal office of a banking institution of the  
53 effective date of this act shall continue to be the principal  
54 office of such banking institution for purposes of establishing  
55 branch banks under this section, notwithstanding any sub-  
56 sequent change in the location of such banking institution's  
57 principal office.

58 (f) Any banking institution which is authorized to estab-  
59 lish branch banks pursuant to this section may provide the  
60 same banking services and exercise the same powers at each  
61 such branch bank as may be provided and exercised at its  
62 principal banking house.

63 (g) The board shall, upon receipt of any application to  
64 establish a branch bank, provide notice of such application  
65 to all banking institutions. A banking institution may, with-  
66 in ten days after receipt of such notice, file a petition to  
67 intervene and shall, if it so files such petition, thereupon  
68 become a party to any hearing relating thereto before the  
69 board.

70 (h) The commissioner shall prescribe the form of the  
71 application for a branch bank and shall collect an examination  
72 and investigation fee of one thousand dollars for each filed  
73 application for a branch bank that is to be established by  
74 the construction, lease or acquisition of a branch bank  
75 facility, and two thousand five hundred dollars for a branch  
76 bank that is to be established by the purchase of the business  
77 and assets and assumption of the liabilities of, or merger or  
78 consolidation with another banking institution. The board  
79 shall complete the examination and investigation within nine-  
80 ty days from the date on which such application and fee are  
81 received, unless the board requests in writing additional in-  
82 formation and disclosures concerning the proposed branch  
83 bank from the applicant banking institution, in which event  
84 such ninety-day period shall be extended for an additional  
85 period of thirty days plus the number of days between the

86 date of such request and the date such additional information  
87 and disclosures are received.

88 (i) Upon completion of the examination and investiga-  
89 tion with respect to such application, the board shall, if  
90 a hearing be required pursuant to subsection (j) of this sec-  
91 tion, forthwith give notice and hold a hearing pursuant to  
92 the following provisions:

93 (1) Notice of such hearing shall be given to the banking  
94 institution with respect to which the hearing is to be conducted  
95 in accordance with the provisions of section two, article  
96 seven, chapter twenty-nine-a of this code, and such hearing  
97 and the administrative procedures in connection therewith  
98 shall be governed by all of the provisions of article five,  
99 chapter twenty-nine-a of this code, and shall be held at a  
100 time and place set by the board but shall not be less than  
101 ten nor more than thirty days after such notice is given;

102 (2) At any such hearing a party may represent himself or  
103 be represented by an attorney-at-law admitted to practice  
104 before any circuit court of this state; and

105 (3) After such hearing and consideration of all the testi-  
106 mony and evidence, the board shall make and enter an  
107 order approving or disapproving the application, which order  
108 shall be accompanied by findings of fact and conclusions of  
109 law as specified in section three, article five, chapter twenty-  
110 nine-a of this code, and a copy of such order and accompany-  
111 ing findings and conclusions shall be served upon all parties  
112 to such hearing, and their attorneys of record, if any.

113 (j) No state banking institution may establish a branch  
114 bank until the board, following an examination, investigation,  
115 notice and hearing, enters an order approving an applica-  
116 tion for that branch bank: *Provided*, That no such hearing  
117 shall be required with respect to any application to estab-  
118 lish a branch bank which is approved by the board unless  
119 a banking institution has timely filed a petition to intervene  
120 pursuant to subsection (g) of this section. The order shall  
121 be accompanied by findings of fact that:

122 (1) Public convenience and advantage will be promoted

123 by the establishment of the proposed branch bank;

124 (2) Local conditions assure reasonable promise of suc-  
125 cessful operation of the proposed branch bank and of those  
126 banks and branches thereof already established in the com-  
127 munity;

128 (3) Suitable physical facilities will be provided for the  
129 branch bank;

130 (4) The applicant state-chartered banking institution satis-  
131 fies such reasonable and appropriate requirements as to  
132 sound financial condition as the commissioner or board may  
133 from time to time establish by regulation;

134 (5) The establishment of the proposed branch bank would  
135 not result in a monopoly, nor be in furtherance of any  
136 combination or conspiracy to monopolize the business of bank-  
137 ing in any section of this state; and

138 (6) The establishment of the proposed branch bank would  
139 not have the effect in any section of the state of substantially  
140 lessening competition, nor tend to create a monopoly or in  
141 any other manner be in restraint of trade, unless the anti-  
142 competitive effects of the establishment of that proposed  
143 branch bank are clearly outweighed in the public interest  
144 by the probable effect of the establishment of the proposed  
145 branch bank in meeting the convenience and needs of the  
146 community to be served by that proposed branch bank.

147 (k) Any party who is adversely affected by the order  
148 of the board shall be entitled to judicial review thereof in  
149 the manner provided in section four, article five, chapter  
150 twenty-nine-a of this code. Any such party adversely af-  
151 fected by a final judgment of a circuit court following judicial  
152 review as provided in the foregoing sentence may seek re-  
153 view thereof by appeal to the supreme court of appeals in  
154 the manner provided in article six, chapter twenty-nine-a of  
155 this code.

156 (l) Pursuant to the resolution of its board of directors  
157 and with the prior written approval of the commissioner, a  
158 state banking institution may discontinue the operation of  
159 a branch bank upon at least thirty days' prior public notice



160 given in such form and manner as the commissioner prescribes.

161 (m) Any violation of any provision of this section shall  
162 constitute a misdemeanor offense punishable by applicable  
163 penalties as provided in section fifteen, article eight of this  
164 chapter.

**§31A-8-12c. Loan origination offices permitted.**

1 Origination of loans by employees or agents of a banking  
2 institution at offices other than that banking institution's  
3 principal office or branch bank is permitted: *Provided*, That  
4 any such loans originating at said office are approved and  
5 made at the banking institution's principal place of business  
6 or branch bank.

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

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

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

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

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

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

21 (d) The deposits of the citizens of this state are a sub-

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

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

9 (1) For any action to be taken that causes any company  
 10 to 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 in-  
 16 directly 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  
31 in subdivisions (2) and (3), subsection (b), section three of  
32 this 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  
36 any such previously contracted debt shall be disposed of  
37 within a period of five years from the date on which they  
38 were acquired; or

39 (2) Additional shares acquired by a bank holding com-  
40 any in a bank in which such bank holding company owned or  
41 controlled a majority of the voting shares prior to such  
42 acquisition. For the purpose of the preceding sentence, bank  
43 shares acquired after the effective date of this act shall not  
44 be deemed to have been acquired in good faith in a fiduciary  
45 capacity if the acquiring bank or company has sole discre-  
46 tionary authority to exercise voting rights with respect there-  
47 to, but in such instances acquisitions may be made without  
48 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 acquired,  
51 approved retention or, if retention is disapproved, the ac-  
52 quiring bank disposes of the shares or its sole discretionary  
53 voting rights within five years after issuance of the order  
54 of disapproval.

55 (c) If, within ninety days from the date of submission  
56 pursuant to subsection (a) of this section, after notice and  
57 a 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 subdivision (1), (2), (3),  
60 (4), (5) or (6), subsection (a) of this section, it shall be

61 unlawful to take such action. The board shall disapprove  
 62 the proposed action described in subdivision (1), (2), (3), (4),  
 63 (5) or (6), subsection (a) of this section on the following  
 64 grounds:

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

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

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

81 (d) Notwithstanding any other provisions of this section,  
 82 no proposed action described in subdivision (1), (2), (3),  
 83 (4), (5) or (6), subsection (a) of this section, shall be approved  
 84 if such approval will permit any bank holding company or  
 85 any subsidiary thereof to acquire, directly or indirectly, five  
 86 percent or more of the interest in or assets of a bank or bank  
 87 holding company located in this state if the operations of any  
 88 banking subsidiary of such bank holding company are located  
 89 outside this state.

90 (e) Nothing contained in this section shall affect the  
 91 obligation of any person or company to comply with the  
 92 provisions of any order of any court or the commissioner  
 93 entered prior to the effective date of this act.

## **CHAPTER 47. REGULATION OF TRADE.**

### **ARTICLE 18. ANTITRUST ACT; RESTRAINT OF TRADE.**

#### **§47-18-4a. Establishment of deposit limitation.**

1 After a review of the structure of depository institutions

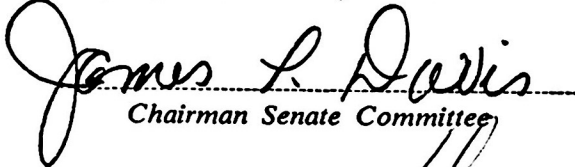
2 in the state of West Virginia, the Legislature hereby deter-  
3 mines that:

4 (a) It is in the best interest of this state and its citizens  
5 to foster and encourage healthy competition among its do-  
6 mestic depository institutions;

7 (b) Excessive concentration or control of the deposit re-  
8 sources of this state is antithetical to fostering a competitive  
9 environment; and

10 (c) Therefore, to control more than twenty percent of the  
11 deposits of all the depository institutions (the term "de-  
12 pository institutions" shall include, but is not limited to, state-  
13 chartered banking institutions, national banking associations,  
14 federal savings and loan associations, bank holding companies,  
15 savings and loan holding companies, federal savings banks,  
16 state-chartered industrial loan companies, state-chartered  
17 building and loan associations, state-chartered credit unions  
18 and federally-chartered credit unions), of this state is anti-  
19 competitive and unlawful.

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

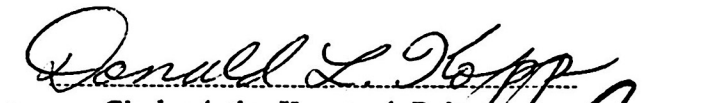

  
Chairman Senate Committee


  
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

  
Clerk of the Senate

  
Clerk of the House of Delegates  
  
President of the Senate

  
Speaker House of Delegates

The within inapparent this the 30  
day of March, 1984.

  
Governor

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SECY. OF STATE