WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1984

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)

[Passed March 9, 194; 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 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.


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

3 (a) The word “action,” in the sense of a judicial proceeding, means any proceeding in a court of competent jurisdiction in which rights are adjudicated and determined and shall embrace, and include recoupment, counterclaim, setoff and other related, similar and summary proceedings;
(b) The words "bank" and "banking institution" mean a corporation heretofore or hereafter chartered to conduct a banking business under the laws of West Virginia or an association heretofore or hereafter authorized to conduct a banking business in West Virginia under the laws of the United States and having its principal office in this state and shall embrace and include a trust company or an institution combining banking and trust company facilities, functions and services so chartered or authorized to conduct such business in this state, and shall include industrial banks authorized by article seven, chapter thirty-one of this code, subject to the limitations therein imposed on such industrial banks and further subject to the limitations imposed thereon in this article;

(c) The words "bankers' bank" mean a banking institution, insured by the Federal Deposit Insurance Corporation, the stock of which is owned exclusively by banks and other depository institutions, and such banking institution and all subsidiaries thereof are engaged exclusively in providing services for banks and other depository institutions and their officers, directors and employees;

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

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

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

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

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

(3) Any loan origination office authorized by section twelve-c, article eight of this chapter:
(g) The words "commissioner" or "commissioner of banking" mean the commissioner of banking of West Virginia;

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

(i) The word "department" means the department of banking of West Virginia;

(j) The words "deputy commissioner" or "deputy commissioner of banking" mean the deputy commissioner of banking of West Virginia;

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

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

(m) The word "officer" when referring to any financial institution, means any person designated as such in the by-laws and includes, whether or not so designated, any executive officer, the chairman of the board of directors, the chairman of the executive committee, and any trust officer, assistant vice president, assistant treasurer, assistant secretary, assistant trust officer, assistant cashier, assistant comptroller, or any other person who performs the duties appropriate to those offices, and the terms "executive officer" as herein used, when referring to banking institutions, mean an officer of a bank whose duties involve regular, active and substantial participation in the daily operations of such institution and who, by virtue of his position, has both a voice in the formulation of the policy of the bank and responsibility for implementation of the policy, such responsibility of and functions performed by the individual, and not his title or
office, being determinative of whether he is an “executive
officer”;

(n) The words “person” or “persons” mean any individual,
partnership, society, association, firm, institution, company,
public or private corporation, state, governmental agency,
bureau, department, division or instrumentality, political sub-
division, county commission, municipality, trust, syndicate,
estate or any other legal entity whatsoever, formed, created
or existing under the laws of this state or any other jurisdi-
cion;

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

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

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

ARTICLE 3. BOARD OF BANKING AND FINANCIAL INSTITUTIONS.

§31A-3-2. General powers and duties.

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

(1) Regulate its own procedure and practice;

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

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

(4) Study the organization, programs and services of fi-
financial institutions and the laws relating thereto in this state and in other jurisdictions, and to report and recommend to the governor and the Legislature all such changes and amendments in laws, policies and procedures relating thereto as may be by it deemed proper; and

(5) Grant permission and authority to a financial institution:

(A) To participate in a public agency hereafter created under the laws of this state or of the United States, the purpose of which is to afford advantages or safeguards to financial institutions or to depositors therein, and to comply with all lawful requirements and conditions imposed upon such participants;

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

(C) To pay interest on demand deposits of the United States or any agency thereof, if the payment of such interest shall be permitted under any applicable federal law, rule or regulation.

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

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

(1) Restrict the withdrawal of deposits from any financial institution when, in the judgment of the board, extraordinary circumstances make such restrictions necessary for the protec-
(2) Compel the holder of shares in any corporate financial
institution to refrain from voting said shares on any matter
when, in the judgment of the board, such order is necessary to
protect the institution from reckless, incompetent or careless
management, to safeguard funds of depositors in the institu-
tion, or to prevent willful violation of any applicable law or
of any rule and regulation or order issued thereunder. In
such a case the shares of such a holder shall not be counted
in determining the existence of a quorum or a percentage of
the outstanding shares necessary to take any corporate action;

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

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

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

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

(7) Suspend or remove a director, officer or employee of
any financial institution who is or becomes ineligible to hold
such position under any provision of law or rule and regula-
tion or order, or who willfully disregards or fails to comply
with any order of the board or commissioner made and entered
in accordance with the provisions of this chapter or who is
dishonest or grossly incompetent in the conduct of financial
institution business;

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

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

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

(11) In addition to any authority granted pursuant to
section twelve, article eight of this chapter, incident to the
approval of an application pursuant to subdivision (7) or sub-
division (8) of this subsection (b), permit the bank the appli-
cation of which is so approved to operate its banking business
under its name from the premises of the bank the business and
assets of which have been purchased and the liabilities of
which have been assumed by such applicant bank or with
which such applicant bank has merged or consolidated:
Provided, That such permission may be granted only if the
board has made the findings required by subsection (f), sec-
tion three of this article and such applicant bank has no com-
mon directors or officers nor common ownership of stock ex-
ceeding ten percent of total outstanding voting stock with
the bank whose business and assets are being purchased and
liabilities assumed, or with whom such applicant bank is be-
ing merged; and

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

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

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

For every state-chartered banking institution there shall
be a board of not less than five nor more than twenty-five
directors, who shall meet at least once each month and who
shall have power to do, or cause to be done, all things that
are proper to be done by the banking institution; and a
majority of whom shall at all times be residents of this state.
Every such director shall own capital stock in the banking in-
stitution of which he is a director. Said director must own
shares in the aggregate par value of not less than five hundred
dollars, an exception being that if a bank holding company
has control of that banking institution, shares owned by a
director of the subsidiary bank in the controlling bank holding
company will satisfy the requirements of this section: Pro-
vided, That the director owns, in his own right, common or
preferred stock of the controlling bank holding company in
an amount equal to or greater than any one of the following:
(i) Aggregate par value of five hundred dollars; (ii) aggregate
shareholders’ equity of five hundred dollars; or (iii) aggregate
fair market value of five hundred dollars. Determination
of the fair market value of the controlling bank holding com-
pany’s stock shall be based upon the value of that stock on the
date it was purchased or on the date the person became a direc-
tor, whichever is greater. If a bank holding company controls
more than one bank subsidiary, a director owning at least five
hundred dollars of the shares of a bank holding company is
qualified, if otherwise permitted by applicable law, to serve
as a director of every bank subsidiary controlled by that bank holding company. Before entering on the discharge of his duties as such director, he shall take an oath that he will, so far as the duty devolves upon him, diligently and honestly administer the affairs of the banking institution, and that he will not knowingly or willingly permit to be violated any of the provisions of the laws of this state relative to banking and banking institutions, and that the stock standing in his name upon the books of the banking institution is not hypothecated or pledged in any way as security for loans obtained from or debts owing to the banking institution of which he is a director, and that the number of shares necessary to qualify a stockholder to be a director are not now, and shall not at any time while he serves as a director, be pledged or hypothecated in any manner for any debt or obligation of the director, or any other person; which oath subscribed by him and certified by the officer before whom it was taken shall be filed and preserved in the office of the commissioner of banking. Should a director fail to subscribe to the oath herein provided within sixty days after notice of his election, or at any time after qualifying as such, sell or dispose of, or in any manner hypothecate or pledge as security for a debt or obligation, such qualifying shares, or any number thereof, necessary for his qualification, thereupon the remaining directors shall elect another director in his stead. No person shall serve as a director of any banking institution who has evidenced personal dishonesty and unfitness to serve as such director by his conduct or practice with another financial institution which resulted in a substantial financial loss or damage thereto or who has been convicted of any crime involving personal dishonesty.

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

The stockholders of each state banking institution shall meet annually and at such annual meeting it shall be the
duty of the cashier or other executive officer of such banking institution to prepare and submit to the stockholders a clear and concise statement of the financial condition of the corporation as of the close of business on the last day of the month next preceding. At such meeting, the stockholders present in person or by proxy shall elect an examining committee composed of not less than three nor more than five persons, each of whom shall be a stockholder either in such banking institution, or, if such banking institution is controlled by a bank holding company, in that bank holding company. At such time or times as it may be directed to do so by the written request of the board of directors or the commissioner of banking, such committee shall immediately proceed to examine the condition of the bank and, upon completion of such examination, shall file its report in writing with the board of directors. Such report shall set forth in detail all items included in the assets of the bank which the committee has reason to believe are not of the value at which they appear on the books and records of the bank, and shall give the value of each of such items according to its judgment. The board of directors shall cause such report to be retained as a part of the records of the bank and shall transmit a duly authenticated copy thereof to the commissioner of banking. With the consent and approval of the stockholders, such committee may employ registered or certified public accountants to make such examination or make the same in conjunction with any official examination made by any supervisory authority. Any official examiner of the department of banking may require the presence of the examining committee on the executive committee during his examination.

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

(a) The directors of any state-chartered banking institution may quarterly, semiannually or annually, declare a dividend of so much of the net profits of that banking institution as they shall judge expedient, except that until the surplus fund of such banking institution shall equal its common stock, no dividends shall be declared unless there has been carried to the surplus fund not less than one-
(a) (1) The total loans and extensions of credit by a state-chartered banking institution to a person outstanding at one time and not fully secured, as determined in a manner consistent with subdivision (2) of this subsection, by collateral having a market value at least equal to the amount of the loan or extension of credit shall not exceed fifteen percent of the unimpaired capital and unimpaired surplus of that state-chartered banking institution.

(2) The total loans and extensions of credit by a state-chartered banking institution to a person outstanding at one time and fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to the amount
of the funds outstanding shall not exceed ten percent of the
unimpaired capital and unimpaired surplus of that state-
chartered banking institution. This limitation shall be separate
from and in addition to the limitation contained in subdivision
(1) of this subsection.

(3) For the purposes of this subsection:

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

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

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

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

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

(C) Loans and extensions of credit secured by bills of lading,
warehouse receipts or similar documents transferring or
securing title to readily marketable staples shall be subject to
a limitation of thirty-five percent of capital and surplus in
addition to the general limitations if the market value of the
staples securing each additional loan or extension of credit at all times equals or exceeds one hundred fifteen percent of the outstanding amount of such loan or extension of credit. The staples shall be fully covered by insurance whenever it is customary to insure such staples;

(D) Loans or extensions of credit secured by bonds, notes, certificates of indebtedness or treasury bills of the United States or by other such obligations fully guaranteed as to principal and interest by the United States or by bonds, notes, certificates of indebtedness which are general obligations of the state of West Virginia or by other such obligations fully guaranteed as to principal and interest by the state of West Virginia, shall not be subject to any limitation based on capital and surplus;

(E) Loans or extensions of credit to or secured by unconditional takeout commitments or guarantees of any department, agency, bureau, board, commission or establishment of the United States or of the state of West Virginia or any corporation wholly owned directly or indirectly by the United States shall not be subject to any limitation based on capital and surplus;

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

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

(H) (i) Loans and extensions of credit arising from the discount of negotiable or nonnegotiable installment consumer paper which carries a full recourse endorsement or unconditional guarantee by the person transferring the paper shall be subject under this section to a maximum limitation equal to twenty-five percent of such capital and surplus, notwith-
standing the collateral requirements set forth in subdivision (2) of this subsection.

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

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

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

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

(K) Loans or extensions of credit to a corporation owning the property in which that state-chartered banking institution is located, when that state-chartered banking institution has an unimpaired capital and surplus of not less than one million dollars or when approved in writing by the com-
missioner of banking, shall not be subject to any limitation based on capital and surplus.

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

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

(C) The commissioner of banking also shall have authority to determine when a loan putatively made to a person shall for purposes of this subsection be attributed to another person.

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

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

(3) For purposes of this subsection:

(A) The term "investment securities" shall include marketable obligations, evidencing indebtedness of any person in the form of stocks, bonds, notes and/or debentures; "investment securities" may be further defined by regulation of the commissioner of banking; and
(B) The term “person” shall include any individual, partnership, society, association, firm, institution, company, public or private corporation, state, governmental agency, bureau, department, division or instrumentality, political subdivision, county commission, municipality, trust, syndicate, estate or any other legal entity whatsoever, formed, created or existing under the laws of this state or any other jurisdiction.

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

(A) Obligations of the United States;

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

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

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

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

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

(G) Obligations of the federal financing bank;

(H) Obligations or other instruments or securities of the student loan marketing association;
(I) Obligations of the environmental financing authority;

(J) Such obligations of any local public agency (as defined in Section 110(h) of the Housing Act of 1949 (42 USC §1460 (h)) as are secured by an agreement between the local public agency and the secretary of housing and urban development in which the local public agency agrees to borrow from said secretary and said secretary agrees to lend to said local public agency, moneys in an aggregate amount which (together with any other moneys irrevocably committed to the payment of interest on such obligations) will suffice to pay, when due, the interest on all installments (including the final installment) of the principal of such obligations, which moneys under the terms of said agreement are required to be used for such payments;

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

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

(ii) By a pledge of annual contributions under an annual contributions contract between such public housing agency and the secretary if such contract shall contain the covenant by the secretary which is authorized by subsection (b), Section 22 (Section 6 (g) (42 USC § 1421a(b)) of the United States Housing Act of 1937, as amended, and if the maximum sum and the maximum period specified in such contract pursuant to said subsection (b), section 22, shall not be less than the annual amount and the period for payment which are re-
quissite to provide for the payment when due of all install-
ments of principal and interest on such obligations; or

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

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

(5) Notwithstanding any other provision in this subsection,
a state-chartered banking institution may purchase for its
own account shares of stock issued by a corporation autho-
rized to be created pursuant to Title IX of the Housing and
Urban Development Act of 1968 (42 USC §§3931 et seq.)
and may make investments in a partnership, limited partner-
ship or joint venture formed pursuant to section 907 (a) or
907 (c) of that act (42 USC §3937 (a) or (c), and may
purchase shares of stock issued by any West Virginia housing
corporation and may make investments in loans and com-
mittments for loans to any such corporation: Provided, That
in no event shall the total amount of such stock held for its
own account and such investments in loans and commitments
made by the state-chartered banking institution exceed at any
time five percent of the unimpaired capital and unimpaired
surplus of that state-chartered banking institution.

(6) Notwithstanding any other provision in this subsection,
a state-chartered banking institution may purchase, for its
own account, shares of stock of small business investment
title of the unimpaired capital and unimpaired
surplus of that state-chartered banking institution.

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

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

(c) No officer or director of any banking institution or
the commissioner of banking or any employee of the department of banking shall borrow, directly or indirectly, from the banking institution with which he is connected, or which is subject to examination by the commissioner of banking, any sum of money without the prior approval of a majority of the board of directors or discount committee of the banking institution, or of any duly constituted committee whose duties include those usually performed by a discount committee, embodied in a resolution adopted by a majority vote of such board or committee, exclusive of the director to whom the loan is made. If any officer, clerk or other employee of any bank shall own or control a majority of the stock of any other corporation, a loan to such corporation shall, for the purpose of this section, constitute a loan to such officer, clerk or other employee.

(d) Securities purchased by a banking institution shall be entered upon the books of the bank at actual cost. For the purpose of calculating the undivided profits applicable to the payment of dividends, securities shall not be valued at a valuation exceeding their present cost as determined by amortization, that is, by deducting from the cost of a security purchased at a premium, and charging to profit and loss a 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.

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

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

to obtain additional approvals, notwithstanding the provisions
of subsection (d) of this section and subdivision (6), sub-
section (b), section two, article three of this chapter.

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

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

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

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

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

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

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

(d) Notwithstanding any other provision of this chapter
to the contrary, subject to and in furtherance of the board’s
authority under the provisions of subdivision (6), subsection
(b), section two, article three of this chapter, and subsection (g) of this section, the board may approve or disapprove the application of any state banking institution to establish a branch bank.

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

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

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

(h) The commissioner shall prescribe the form of the application for a branch bank and shall collect an examination and investigation fee of one thousand dollars for each filed application for a branch bank that is to be established by the construction, lease or acquisition of a branch bank facility, and two thousand five hundred dollars for a branch bank that is to be established by the purchase of the business and assets and assumption of the liabilities of, or merger or consolidation with another banking institution. The board shall complete the examination and investigation within ninety days from the date on which such application and fee are received, unless the board requests in writing additional information and disclosures concerning the proposed branch bank from the applicant banking institution, in which event such ninety-day period shall be extended for an additional period of thirty days plus the number of days between the
date of such request and the date such additional information
and disclosures are received.

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

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

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

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

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

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

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

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

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

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

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

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

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

given in such form and manner as the commissioner prescribes.

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

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

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

ARTICLE 8A. ACQUISITIONS OF BANK SHARES.

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

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

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

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

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

(d) The deposits of the citizens of this state are a sub-
22 substantial 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
(6) For any bank holding company to take any action which would violate the Federal Bank Holding Company Act.

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

(1) Shares acquired by a bank:

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

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

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

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

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

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

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

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

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

CHAPTER 47. REGULATION OF TRADE.
ARTICLE 18. ANTITRUST ACT; RESTRAINT OF TRADE.

1 After a review of the structure of depository institutions
in the state of West Virginia, the Legislature hereby deter-
mines that:

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

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

(c) Therefore, to control more than twenty percent of the
deposits of all the depository institutions (the term “de-
pository institutions” shall include, but is not limited to, state-
chartered banking institutions, national banking associations,
federal savings and loan associations, bank holding companies,
savings and loan holding companies, federal savings banks,
state-chartered industrial loan companies, state-chartered
building and loan associations, state-chartered credit unions
and federally-chartered credit unions), of this state is anti-
competitive and unlawful.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James F. Davis
Chairman Senate Committee

Donald Amello
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Joseph F. Watts
Clerk of the Senate

Donald L. Kopp
Clerk of the House of Delegates

Walter F. Hobbs
President of the Senate

Joseph M. Sheperd
Speaker House of Delegates

The within ___________________ this the ________

day of ___________________, 1984.

John J. Dingell
Governor