

No. 1706

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1985



ENROLLED

HOUSE BILL No. 1706.....

(By Mr. Del. Flanigan + Del. Phillips.)



Passed March 27, 1985

In Effect From Passage

ENROLLED
H. B. 1706

(By DELEGATE FLANIGAN AND DELEGATE PHILLIPS)

[Passed March 27, 1985; in effect from passage.]

AN ACT to amend and reenact section four, article eight-a, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to acquisition by a bank holding company, or any other company, of any banking institution located in the state of West Virginia that does not both accept deposits that the depositor has a legal right to withdraw on demand and engage in the business of making commercial loans.

Be it enacted by the Legislature of West Virginia:

That section four, article eight-a, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 8A. ACQUISITION OF BANK SHARES.

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

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

9 (1) For any action to be taken that causes any company to

10 become a bank holding company;

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

13 (3) For any bank holding company to acquire direct or
14 indirect ownership or control of any shares of any bank if,
15 after such acquisition, such company will directly or indirectly
16 own or control more than five percent of the voting shares
17 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 assets
20 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 which
24 would violate the Federal Bank Holding Company Act.

25 (b) The provisions of subsection (a) of this section shall not
26 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 this
32 article; or

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

39 (2) Additional shares acquired by a bank holding company
40 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 section 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 discretion-
46 ary authority to exercise voting rights with respect thereto, but

47 in such instances acquisitions may be made without prior
48 notice to the board if the board, upon notice and submission
49 of information in form and content as it shall approve, filed
50 within ninety days after the shares are acquired, approved
51 retention or, if retention is disapproved, the acquiring bank
52 disposes of the shares or its sole discretionary voting rights
53 within five years after issuance of the order of disapproval.

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

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

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

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

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

87 company located in this state if the operations of any banking
88 subsidiary of such bank holding company are located outside
89 this state.

90 (e) Notwithstanding any other provision of law, no bank
91 holding company, or any other company, shall establish,
92 acquire or control any banking institution as defined in section
93 three of this article, when said banking institution does not
94 both (i) accept deposits that the depositor has a legal right to
95 withdraw on demand and (ii) engage in the business of making
96 commercial loans.

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

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

Bruce A. Weir

Chairman Senate Committee

Floyd Fuller

Chairman House Committee

Originating in the House.

Takes effect from passage.

Todd C. Still

Clerk of the Senate

Donald L. Koff

Clerk of the House of Delegates

Sam Tenbrink

President of the Senate

Joseph P. Allright

Speaker of the House of Delegates

The within *approved* this the *10th*
April day of _____, 1985.

Aruba A. Shaver Jr.

Governor



PRESENTED TO THE

GOVERNOR

Date 4/04/85

Time 3:39 p.m.

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RECEIVED

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE