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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1985



ENROLLED

SENATE BILL NO. 498

(By Mr. Sucker)



PASSED April 13, 1985

In Effect ninety days from Passage



ENROLLED
Senate Bill No. 498

(BY MR. TUCKER)

[Passed April 13, 1985; in effect ninety days from passage.]

AN ACT to amend and reenact section three, article three, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to allowing the entry of an order without notice or hearing which approves or disapproves an application by a bank holding company if its financial condition imminently imperils its customers or depositors.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. BOARD OF BANKING AND FINANCIAL INSTITUTIONS.

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

- 1 (a) Subject to the provisions of subsections (e), (f), (g)
- 2 and (h) of this section, notice and hearing shall be provided
- 3 in advance of the entry of any order by the board.
- 4 (1) Such notice shall be given to the financial institution
- 5 or person with respect to whom the hearing is to be
- 6 conducted in accordance with the provisions of section two,
- 7 article seven, chapter twenty-nine-a of this code, and such
- 8 hearing and the administrative procedures in connection

9 therewith shall be governed by all of the provisions of
10 article five, chapter twenty-nine-a of this code, and shall be
11 held at a time and place set by the board, but shall not be
12 held less than ten nor more than thirty days after such
13 notice is given. A hearing may be continued by the board on
14 its own motion or for good cause shown.

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

18 (b) After any such hearing and consideration of all of
19 the testimony and evidence, the board shall make and enter
20 an order deciding the matters with respect to which such
21 hearing was conducted, which order shall be accompanied
22 by findings of fact and conclusions of law as specified in
23 section three, article five, chapter twenty-nine-a of this
24 code, and a copy of such order and accompanying findings
25 and conclusions shall be served upon all parties to such
26 hearing, and their attorneys of record, if any.

27 (c) In the case of an application for the board's approval
28 to incorporate and organize a banking institution in this
29 state, as provided in subdivision (3), subsection (b), section
30 two of this article, the board shall, upon receipt of any such
31 application, provide notice to all banking institutions,
32 which in the manner hereinafter provided, have requested
33 notice of any such action. The request by any such banking
34 institution to receive such notice shall be in writing and
35 shall request the board to notify it of the receipt by the
36 board of any application to incorporate and organize a
37 banking institution in this state. A banking institution may,
38 within ten days after receipt of such notice, file a petition to
39 intervene and shall, if it so files such petition, thereupon
40 become a party to any hearing relating thereto before the
41 board.

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

47 (e) Whenever the board shall find that extraordinary
48 circumstances exist which require immediate action, it may
49 forthwith without notice or hearing enter an order taking
50 any action permitted by subdivisions (1), (2), (4) and (5),

51 subsection (b), section two of this article. Immediately upon
52 the entry of such order, certified copies thereof shall be
53 served upon all persons affected thereby and upon demand
54 such persons shall be entitled to a hearing thereon at the
55 earliest practicable time.

56 (f) Whenever the board shall find that the financial
57 condition of a state banking institution or a national
58 banking association constitutes an imminent peril to its
59 depositors, savings account holders, other customers or
60 creditors, it may forthwith without notice or hearing enter
61 an order taking any action permitted by subdivisions (7)
62 and (8) of subsection (b), section two of this article.
63 Immediately upon entry of such order, certified copies
64 thereof shall be served upon all persons affected thereby
65 and upon demand such persons shall be entitled to a hearing
66 thereon at the earliest practicable time.

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

85 (h) Whenever the board shall find that the financial
86 condition of a state banking institution, national
87 association or bank holding company constitutes an
88 imminent peril to its depositors, savings account holders,
89 other customers or creditors, it may forthwith without
90 compliance with the provisions of section four, article
91 eight-a of this chapter and without notice of hearing enter
92 an order approving or disapproving an application by an

93 existing bank holding company or by an organizing bank
94 holding company to acquire in whole or in part, directly or
95 indirectly, such state banking institution, national
96 association or bank holding company. Immediately upon
97 the entry of such order, certified copies thereof shall be
98 served upon all persons affected thereby at the earliest
99 practicable time.

100 (i) Definitions:

101 (1) The term "imminent peril" means that, because the
102 banking institution or bank holding company is insolvent
103 or about to be insolvent, or there is a probability that the
104 banking institution will not be able to pay its debts when
105 they become due.

106 (2) A banking institution or bank holding company is
107 "about to be insolvent" when it would be unable to meet the
108 demands of its depositors or is clearly unable, without
109 impairment of capital, by sale of assets or lawful
110 borrowings or otherwise, to realize sufficient liquid assets
111 to pay such debts for which payment is likely, in the
112 immediate future, to be due and demanded in the ordinary
113 course of business.

114 (3) A banking institution or bank holding company is
115 "insolvent" when it is unable to pay its debts to its
116 depositors and other creditors in the ordinary and usual
117 course of business.

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

David E. Nelson
.....
Chairman Senate Committee

Floyd Fuller
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Todd C. Keith
.....
Clerk of the Senate

Donald J. Kapp
.....
Clerk of the House of Delegates

Sam Tomlinson
.....
President of the Senate

Joseph P. Allright
.....
Speaker House of Delegates

The within.....*approved*.....this the *2nd*.....
day of.....*May*....., 1985.

Anna Proctor
.....
Governor

PRESENTED TO THE
GOVERNOR

Date 4/19/85

Time 7:50 p.m.