WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1985

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ENROLLED

SENATE BILL NO. 498

(By Mr. )

PASSED ____________ 1985

In Effect ninety day 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) and (h) of this section, notice and hearing shall be provided in advance of the entry of any order by the board.

4 (1) Such notice shall be given to the financial institution or person with respect to whom 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
held less than ten nor more than thirty days after such
notice is given. A hearing may be continued by the board on
its own motion or for good cause shown.
(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.
(b) After any such hearing and consideration of all of
the testimony and evidence, the board shall make and enter
an order deciding the matters with respect to which such
hearing was conducted, which order shall be accompanied
by findings of fact and conclusions of law as specified in
section three, article five, chapter twenty-nine-a of this
code, and a copy of such order and accompanying findings
and conclusions shall be served upon all parties to such
hearing, and their attorneys of record, if any.
(c) In the case of an application for the board's approval
to incorporate and organize a banking institution in this
state, as provided in subdivision (3), subsection (b), section
two of this article, the board shall, upon receipt of any such
application, provide notice to all banking institutions,
which in the manner hereinafter provided, have requested
notice of any such action. The request by any such banking
institution to receive such notice shall be in writing and
shall request the board to notify it of the receipt by the
board of any application to incorporate and organize a
banking institution in this state. 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.
(d) The board shall have the power and authority to
issue subpoenas and subpoenas duces tecum, administer
oaths and examine any person under oath in connection
with any subject relating to duties imposed upon or powers
vested in the board.
(e) Whenever the board shall find that extraordinary
circumstances exist which require immediate action, it may
forthwith without notice or hearing enter an order taking
any action permitted by subdivisions (1), (2), (4) and (5),
subsection (b), section two of this article. Immediately upon
the entry of such order, certified copies thereof shall be
served upon all persons affected thereby and upon demand
such persons shall be entitled to a hearing thereon at the
earliest practicable time.

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

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

(h) Whenever the board shall find that the financial
condition of a state banking institution, national
association or bank holding company constitutes an
imminent peril to its depositors, savings account holders,
other customers or creditors, it may forthwith without
compliance with the provisions of section four, article
eight-a of this chapter and without notice of hearing enter
an order approving or disapproving an application by an
existing bank holding company or by an organizing bank
holding company to acquire in whole or in part, directly or
indirectly, such state banking institution, national
association or bank holding company. Immediately upon
the entry of such order, certified copies thereof shall be
served upon all persons affected thereby at the earliest
practicable time.

(i) Definitions:

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

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

(3) A banking institution or bank holding company is
“insolvent” when it is unable to pay its debts to its
depositors and other creditors in the ordinary and usual
course of business.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In 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 ............ this the ............ day of ............, 1985.

Governor
PRESENTED TO THE
GOVERNOR
Date 4/19/85
Time 7:50 p.m.