

No: 1170

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1986

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ENROLLED

Committee Substitute for
HOUSE BILL No. 1170

(By Mr. Delegate Hamilton + Delegate Mastrantoni)

— ● —

Passed February 28, 1986

In Effect ninety days from Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 1170
(By DELEGATE HAMILTON and DELEGATE MASTRANTONI)

[Passed February 28, 1986; in effect ninety days from passage.]

AN ACT to amend and reenact section seven, article six, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article six by adding thereto a new section, designated section seven-a; to amend and reenact section three, article three, chapter thirty-one-a of said code; to amend and reenact section twelve, article eight of said chapter; to amend and reenact sections four and five, article eight-a of said chapter and to further amend article eight-a of said chapter by adding thereto a new section, designated section seven; relating to the authority of building and loan associations to commence business; authorizing a federally insured savings and loan association or savings and loan holding company of another state to acquire a West Virginia building and loan association if the laws of such other state provide a reciprocal privilege to West Virginia building and loan associations; relating to accelerating the phase-in of branch banking; authorizing a bank or bank holding company of another state to acquire a West Virginia bank or bank holding company if the laws of such other state provide a reciprocal privilege to West Virginia banks and bank holding companies; granting such reciprocal privilege to

all states; authorizing the commissioner of banking to impose certain restrictions on a foreign bank holding company that has acquired a West Virginia bank or bank holding company; establishment of electronic data processing facilities and credit card processing facilities.

Be it enacted by the Legislature of West Virginia:

That section seven, article six, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article six be further amended by adding thereto a new section, designated section seven-a; that section three, article three, chapter thirty-one-a of said code be amended and reenacted; that section twelve, article eight of said chapter be amended and reenacted; that sections four and five, article eight-a of said chapter be amended and reenacted; and that said article eight-a of said chapter be further amended by adding thereto a new section, designated section seven, all to read as follows:

ARTICLE 6. BUILDING AND LOAN ASSOCIATION.

§31-6-7. Certificate of authority to commence business; expiration on failure to organize; no branches other than those already established allowed.

1 (a)(1) When the commissioner of banking has ap-
2 proved the bylaws, and the association shall file with the
3 commissioner of banking:

4 (A) A certified copy of the charter;

5 (B) Duly certified copies of the minutes of the meeting
6 of the shareholders at which directors were elected, and
7 of the first meeting of the directors at which officers
8 were elected; and

9 (C) A list of the names of the directors and all officers,
10 with their addresses.

11 (2) When the commissioner of banking is satisfied
12 that such association has complied with all requirements
13 of the law precedent to the exercise of the powers
14 imposed by law, and it appears that such association is
15 lawfully entitled to commence business, he shall give to
16 such association a certificate of authority under his hand

17 and official seal that such association is authorized to
18 commence business.

19 (b) No building and loan association shall transact
20 any business except such as is incidental or necessarily
21 preliminary to its organization until it has been
22 authorized by the commissioner of banking to do so. A
23 building and loan association failing to organize and
24 receive authority from the commissioner of banking to
25 commence business within one year from the date of
26 receiving its certificate of incorporation, shall cease to
27 exist, and such certificate shall be null and void.

28 (c) Except as may otherwise be provided for in section
29 seven-a of this article, no building and loan association
30 or savings and loan company organized and operating
31 under the provisions of this article shall engage in
32 business at any place other than:

33 (1) Its principal office in this state; or

34 (2) Branch offices, already established at the time of
35 the effective date of this section.

**§31-6-7a. Prohibition on the transaction of business by
foreign savings and loan associations; acquisition of state building and loan association by
foreign savings and loan association or savings and loan holding company; reciprocity;
definitions; authority of commissioner of
banking.**

1 (a) Except as authorized in this section, no savings
2 and loan association organized under the laws of any
3 other state or having its principal place of business in
4 any other state may accept deposits or savings, or
5 transact any other business normally associated with the
6 operation of a savings and loan association of any kind,
7 in this state, other than the lending of money.

8 (b) Notwithstanding any other provision of this code
9 to the contrary, after the 31st day of December, 1987,
10 a West Virginia building and loan association may
11 acquire a savings and loan association, savings bank or
12 savings and loan holding company having a principal
13 place of business in another state. A savings and loan

14 association, or a savings bank, the accounts of which are
15 insured by the Federal Savings and Loan Insurance
16 Corporation pursuant to the National Housing Act of
17 1934, as amended, or savings and loan holding company
18 with its principal place of business in another state may
19 acquire a West Virginia building and loan association,
20 if the commissioner of banking determines, in his
21 discretion, that the laws of such other state in effect at
22 the time the application for the proposed acquisition in
23 this state is filed, permit a West Virginia building and
24 loan association to acquire a savings and loan association
25 having its principal place of business in such other state
26 on terms that are, on the whole, substantially no more
27 restrictive than those established under the provisions
28 of this section. A savings and loan association or savings
29 and loan holding company with its principal place of
30 business in another state may not acquire a West
31 Virginia building and loan association which has been
32 in existence and operating for less than two years:
33 *Provided*, That the commissioner of banking may
34 approve the acquisition of ownership or control of a
35 building and loan association which was newly organ-
36 ized under the provisions of this article, if such newly
37 chartered building and loan association was organized
38 solely for the purpose of facilitating the acquisition of
39 a building and loan association that has been continu-
40 ously operating for more than two years. If the law of
41 such other state restricts entry to that state by a West
42 Virginia building and loan association, then the commis-
43 sioner of banking may similarly limit the authority
44 granted by this section for savings and loan associations
45 or savings and loan holding companies with their
46 principal places of business located in that other state
47 to effect acquisitions in this state.

48 (c) Any savings and loan holding company proposing
49 to acquire a West Virginia building and loan association
50 pursuant to this section shall comply with, and be
51 governed by, the regulation of holding companies
52 provided for in 12 U.S.C. §1730a, and the regulations
53 promulgated pursuant thereto.

54 (d) No application for approval of an acquisition

55 pursuant to the authority granted by this section may
56 be approved by the commissioner of banking if the
57 commissioner determines that such approval would
58 cause the applicant savings and loan association or
59 savings and loan holding company to control aggregate
60 total deposits in this state exceeding twenty percent of
61 the total deposits held by all financial institutions
62 located in this state as reported in the most recently
63 available reports of condition or similar reports filed
64 with state or federal authorities.

65 (e) Unless the shareholders of the West Virginia
66 building and loan association to be acquired have
67 approved an amendment to its articles of incorporation
68 or code of regulations or comparable document that
69 provides that this subsection shall not apply to such
70 West Virginia building and loan association, any
71 acquisition to be made pursuant to the authority granted
72 by this section which will result in the acquiring of
73 nonresident savings and loan association or savings and
74 loan holding company directly or indirectly owning or
75 controlling the West Virginia building and loan associ-
76 ation must be authorized by the affirmative vote of the
77 holders of not less than two thirds of the voting power
78 of the West Virginia building and loan association to be
79 acquired.

80 (f) Any savings and loan association or savings and
81 loan holding company acquiring a West Virginia
82 building and loan association pursuant to the authority
83 granted by this section shall file with the commissioner
84 copies of the public portions of all regular and periodic
85 reports such savings and loan association or savings and
86 loan holding company is required to file with federal
87 regulators under section 13 or 15(d) of the "Securities
88 Exchange Act of 1934," 48 STAT. 894, 15 U. S. C. 78m
89 or 78o(d), as amended. These reports shall be filed with
90 the commissioner within fifteen days following the date
91 they are filed in final form with the applicable
92 regulator.

93 (g) As used in this section:

94 (1) "Acquire" or "acquisition" means any of the

95 following transactions or actions:

96 (A) A merger, consolidation or combination of, or
97 with, a savings and loan association, savings bank or a
98 savings and loan holding company;

99 (B) The acquisition of the direct or indirect ownership
100 or control of voting shares of a West Virginia building
101 and loan association if, after such acquisition, the
102 acquiring savings and loan association or savings and
103 loan holding company will directly or indirectly own or
104 control more than five percent of any class of voting
105 shares of the West Virginia building and loan associa-
106 tion, unless the commissioner determines, in his discre-
107 tion, that the nature of the acquisition is such that it
108 should not be subject to the limitations of this section;

109 (C) The direct or indirect acquisition of all or
110 substantially all of the assets of a West Virginia
111 building and loan association by a savings and loan
112 association or a savings and loan holding company of
113 another state; or

114 (D) The taking of any other action by a savings and
115 loan association or a savings and loan holding company
116 that results in the direct or indirect control of a West
117 Virginia building and loan association.

118 (2) "Principal place of business" means, as to a
119 savings and loan holding company, the state or jurisdic-
120 tion in which the total deposits of all direct or indirect
121 subsidiaries of the savings and loan holding company
122 and any other company that has control of the savings
123 and loan holding company are the largest, as shown in
124 the most recent report of condition or similar report
125 filed by such subsidiaries with state or federal author-
126 ities; and, as to a savings and loan association, the state
127 or jurisdiction in which its total deposits and those of
128 all its subsidiaries, if any, are the largest, as shown in
129 the most recent report of condition or similar report
130 filed by the savings and loan association and its
131 subsidiaries with state or federal authorities.

132 (3) "Savings and loan holding company" means any
133 company which is a savings and loan holding company

134 as defined in the federal savings and loan holding
135 company act, 12 U.S.C. §1730a(a)(1) (D), (E) or (F), or
136 which will become such an approved savings and loan
137 holding company prior to or upon completion of the
138 acquisition to be made pursuant to the authority granted
139 by this section.

140 (4) "West Virginia building and loan association"
141 means a building and loan association or a savings and
142 loan company, the accounts of which are insured by the
143 Federal Savings and Loan Insurance Corporation,
144 pursuant to the National Housing Act of 1934, as
145 amended and chartered under the provisions of this
146 article.

147 (h)(1) When the commissioner of banking considers it
148 necessary or appropriate, he may examine any savings
149 and loan association or a savings and loan holding
150 company that has acquired or has an application
151 pending to acquire a West Virginia building and loan
152 association pursuant to the authority granted by
153 subsection (b) of this section. The cost of an examination,
154 if in excess of the initial fee, shall be assessed against
155 and paid by the savings and loan association or savings
156 and loan holding company examined. The commissioner
157 may request the savings and loan association or savings
158 and loan holding company to be examined pursuant to
159 this subsection to advance the estimated cost of such
160 examination.

161 (2) The commissioner may enter into cooperative
162 agreements with other state and federal savings and
163 loan regulatory authorities to facilitate the examination
164 of any savings and loan association or savings and loan
165 holding company that has acquired or has an application
166 pending to acquire a West Virginia building and loan
167 association pursuant to the authority granted by
168 subsection (b) of this section. The commissioner may
169 accept reports of examinations and other records from
170 such other authorities in lieu of conducting his own
171 examination of such savings and loan association or
172 savings and loan holding companies. The commissioner
173 may take any action jointly with other regulatory
174 agencies having concurrent jurisdiction over such

175 savings and loan association or savings and loan holding
176 companies or may take action independently in order to
177 carry out his responsibilities under subsection (b) of this
178 section.

179 (3) When the commissioner considers it necessary, he
180 may require any savings and loan association or savings
181 and loan holding company that has acquired a West
182 Virginia building and loan association pursuant to the
183 authority granted by subsection (b) of this section to
184 submit such reports to the commissioner as he deter-
185 mines to be necessary or appropriate for the purpose of
186 carrying out his responsibilities.

**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 and to the provisions of subsection
3 (j), section twelve, article eight of this chapter, notice
4 and hearing shall be provided in advance of the entry
5 of any order by the board.

6 (1) Such notice shall be given to the financial institu-
7 tion or person with respect to whom the hearing is to
8 be conducted in accordance with the provisions of
9 section two, article seven, chapter twenty-nine-a of this
10 code, and such hearing and the administrative proce-
11 dures in connection therewith shall be governed by all
12 of the provisions of article five, chapter twenty-nine-a of
13 this code, and shall be held at a time and place set by
14 the board, but shall not be held less than ten or more
15 than thirty days after such notice is given. A hearing
16 may be continued by the board on its own motion or for
17 good cause shown.

18 (2) At any such hearing a party may represent
19 himself or be represented by an attorney-at-law admit-
20 ted to practice before any circuit court of this state.

21 (b) After any such hearing and consideration of all of
22 the testimony and evidence, the board shall make and
23 enter an order deciding the matters with respect to

24 which such hearing was conducted, which order shall be
25 accompanied by findings of fact and conclusions of law
26 as specified in section three, article five, chapter twenty-
27 nine-a of this code, and a copy of such order and
28 accompanying findings and conclusions shall be served
29 upon all parties to such hearing, and their attorneys of
30 record, if any.

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

47 (d) The board shall have the power and authority to
48 issue subpoenas and subpoenas duces tecum, administer
49 oaths and examine any person under oath in connection
50 with any subject relating to duties imposed upon or
51 powers vested in the board.

52 (e) Whenever the board shall find that extraordinary
53 circumstances exist which require immediate action, it
54 may forthwith without notice or hearing enter an order
55 taking any action permitted by subdivisions (1), (2), (4)
56 and (5), subsection (b), section two of this article.
57 Immediately upon the entry of such order, certified
58 copies thereof shall be served upon all persons affected
59 thereby and upon demand such persons shall be entitled
60 to a hearing thereon at the earliest practicable time.

61 (f) Whenever the board shall find that the financial
62 condition of a state banking institution or a national
63 banking association constitutes an imminent peril to its

64 depositors, savings account holders, other customers or
65 creditors, it may forthwith without notice or hearing
66 enter an order taking any action permitted by subdivi-
67 sions (7) and (8), subsection (b), section two of this
68 article. Immediately upon entry of such order, certified
69 copies thereof shall be served upon all persons affected
70 thereby and upon demand such persons shall be entitled
71 to a hearing thereon at the earliest practicable time.

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

91 (h) Whenever the board shall find that the financial
92 condition of a state banking institution, national
93 association or bank holding company constitutes an
94 imminent peril to its depositors, savings account
95 holders, other customers or creditors, it may forthwith
96 without compliance with the provisions of section four
97 or section seven, article eight-a of this chapter and
98 without notice of hearing enter an order approving or
99 disapproving an application by an existing bank holding
100 company or by an organizing bank holding company to
101 acquire in whole or in part, directly or indirectly, such
102 state banking institution, national association or bank
103 holding company. Immediately upon the entry of such
104 order, certified copies thereof shall be served upon all

105 persons affected thereby at the earliest practicable time.

106 (i) Definitions:

107 (1) The term "imminent peril" means that, because
108 the banking institution or bank holding company is
109 insolvent or about to be insolvent, or there is a proba-
110 bility that the banking institution will not be able to pay
111 its debts when they become due.

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

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

**ARTICLE 8. HEARINGS; ADMINISTRATIVE PROCEDURES; JU-
DICIAL REVIEW; UNLAWFUL ACTS; PENALTIES.**

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

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

8 Any banking institution which on January one, one
9 thousand nine hundred eighty-four, was authorized to
10 operate an off-premise walk-in or drive-in facility,
11 pursuant to the law then in effect, may, as of the seventh
12 day of June, 1984, operate such facility as a branch bank
13 and it shall not be necessary, for the continued operation
14 of such branch bank, to obtain additional approvals,
15 notwithstanding the provisions of subsection (d) of this
16 section and subdivision (6), subsection (b), section two,

17 article three of this chapter.

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

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

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

32 (A) After the seventh of June, one thousand nine
33 hundred eighty-four, within the county in which that
34 banking institution's principal office is located or within
35 the county in which that banking institution had prior
36 to January first, one thousand nine hundred eighty-four,
37 established a branch bank, pursuant to subdivision (2)
38 of this subsection; and

39 (B) After the thirty-first of December, one thousand
40 nine hundred eighty-six, within any county in this state;
41 or

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

45 (d) Notwithstanding any other provision of this
46 chapter to the contrary, subject to and in furtherance
47 of the board's authority under the provisions of subdivi-
48 sion (6), subsection (b), section two, article three of this
49 chapter, and subsection (g) of this section, the board may
50 approve or disapprove the application of any state
51 banking institution to establish a branch bank.

52 (e) The principal office of a banking institution as of
53 the seventh day of June, 1984, shall continue to be the
54 principal office of such banking institution for purposes

55 of establishing branch banks under this section, notwith-
56 standing any subsequent change in the location of such
57 banking institution's principal office.

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

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

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

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

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

105 (2) At any such hearing a party may represent
106 himself or be represented by an attorney-at-law admit-
107 ted to practice before any circuit court of this state.

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

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

127 (1) Public convenience and advantage will be pro-
128 moted by the establishment of the proposed branch
129 bank;

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

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

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

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

144 (6) The establishment of the proposed branch bank
145 would not have the effect in any section of the state of
146 substantially lessening competition, nor tend to create a
147 monopoly or in any other manner be in restraint of
148 trade, unless the anticompetitive effects of the establish-
149 ment of that proposed branch bank are clearly out-
150 weighed in the public interest by the probable effect of
151 the establishment of the proposed branch bank in
152 meeting the convenience and needs of the community to
153 be served by that proposed branch bank.

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

163 (1) Pursuant to the resolution of its board of directors
164 and with the prior written approval of the commis-
165 sioner, a state banking institution may discontinue the
166 operation of a branch bank upon at least thirty days'
167 prior public notice given in such form and manner as
168 the commissioner prescribes.

169 (m) Any violation of any provision of this section shall
170 constitute a misdemeanor offense punishable by appli-
171 cable penalties as provided in section fifteen, article
172 eight of this chapter.

ARTICLE 8A. ACQUISITION OF BANK SHARES.

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

1 (a) Unless an order approving such action has been
2 entered by the board, it is unlawful, prior to one
3 hundred and twenty days following the date of the
4 submission to the board of complete, true and accurate
5 copies of the reports required under federal laws or
6 regulations pursuant to Title 12, United States Code,
7 §§1841-1850 (being the act of Congress entitled the Bank
8 Holding Company Act of 1956, as amended), and the
9 payment of an examination and investigation fee to the
10 board of two thousand five hundred dollars:

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

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

15 (3) For any bank holding company to acquire direct
16 or indirect ownership or control of any shares of any
17 bank if, after such acquisition, such company will
18 directly or indirectly own or control more than five
19 percent of the voting shares of such bank;

20 (4) For any bank holding company or subsidiary
21 thereof, other than a bank, to acquire all or substantially
22 all of the assets of a bank;

23 (5) For any bank holding company to merge or
24 consolidate with any other bank holding company; or

25 (6) For any bank holding company to take any action
26 which would violate the Federal Bank Holding Com-
27 pany Act.

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

30 (1) Shares acquired by a bank:

31 (A) In good faith in a fiduciary capacity, except where
32 shares are held under a trust that constitutes a company
33 as defined in section two of this article and except as

34 provided in subdivisions (2) and (3), subsection (b),
35 section three of this article; or

36 (B) In the regular course of securing or collecting a
37 debt previously contracted in good faith, but any shares
38 acquired after the seventh day of June, 1984, in securing
39 or collecting any such previously contracted debt shall
40 be disposed of within a period of five years from the date
41 on which they were acquired; or

42 (2) Additional shares acquired by a bank holding
43 company in a bank in which such bank holding company
44 owned or controlled a majority of the voting shares prior
45 to such acquisition. For the purpose of the preceding
46 sentence, bank shares acquired after the seventh day of
47 June, 1984, shall not be deemed to have been acquired
48 in good faith in a fiduciary capacity if the acquiring
49 bank or company has sole discretionary authority to
50 exercise voting rights with respect thereto, but in such
51 instances acquisitions may be made without prior notice
52 to the board if the board, upon notice and submission
53 of information in form and content as it shall approve,
54 filed within ninety days after the shares are acquired,
55 approved retention or, if retention is disapproved, the
56 acquiring bank disposes of the shares or its sole
57 discretionary voting rights within five years after
58 issuance of the order of disapproval.

59 (c) If, within 120 days from the date of submission
60 pursuant to subsection (a) of this section, after notice
61 and a hearing pursuant to the provisions of section three,
62 article three of this chapter, the board enters an order
63 disapproving the proposed action described in subdivi-
64 sion (1), (2), (3), (4), (5) or (6), subsection (a) of this
65 section, it shall be unlawful to take such action. The
66 board shall disapprove the proposed action described in
67 subdivision (1), (2), (3), (4), (5) or (6), subsection (a) of
68 this section on the following grounds:

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

73 (2) The action would have the effect in any section of

74 the state of substantially lessening competition, or would
75 tend to create a monopoly or in any other manner would
76 be in restraint of trade, unless the anticompetitive
77 effects of the proposed action are clearly outweighed in
78 the public interest by the probable effect of the action
79 in meeting the convenience and needs of the community
80 to be served; or

81 (3) Taking into consideration the financial and
82 managerial resources and further prospects of the
83 company or companies and the banks concerned, the
84 action would be contrary to the best interests of the
85 shareholders or customers of the bank whose shares are
86 affected by such action.

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

95 (e) Nothing contained in this section shall affect the
96 obligation of any person or company to comply with the
97 provisions of any order of any court or the commissioner
98 entered prior to the seventh day of June, 1984.

**§31A-8A-5. Registration and reporting of bank holding
companies; annual fee.**

1 (a) For the purposes of this section, other than
2 subsection (f), a "bank holding company" shall include,
3 in addition to a bank holding company defined in
4 subdivision (1), subsection (a), section three of this
5 article, any other bank holding company subject to
6 regulation under Title 12 United States Code, §§1841-
7 1850 (being the act of Congress entitled the Bank
8 Holding Company Act of 1956, as amended), which has
9 acquired or established a place of business in this state
10 or a subsidiary which has a place of business in this
11 state.

12 (b) On the first day of July, one thousand nine

13 hundred eighty-two, and annually thereafter on dates
14 established by the commissioner, each bank holding
15 company shall register with the commissioner on forms
16 provided or prescribed by him, which shall include such
17 information with respect to the financial condition,
18 operation, management and intercompany relationships
19 of the bank holding company and its subsidiaries and
20 related matters as the commissioner may deem neces-
21 sary or appropriate to carry out the purposes of this
22 article.

23 (c) The commissioner is authorized to issue such
24 regulations and orders as may be necessary to enable
25 him or the board to administer and carry out the
26 purposes of this article and prevent evasions thereof.

27 (d) The commissioner from time to time may require
28 reports under oath to keep him informed as to whether
29 the provisions of this article and such regulations and
30 orders thereunder issued by him have been complied
31 with, may make examinations of each bank holding
32 company and each subsidiary thereof, and shall, as far
33 as possible, use the reports of examination made by the
34 comptroller of the currency, federal deposit insurance
35 corporation, or the board of governors of the federal
36 reserve system for the purposes of this section.

37 (e) Bank holding companies and subsidiaries or
38 affiliates thereof shall be regulated, controlled and
39 examined by the commissioner to the same extent that
40 he regulates, controls and examines state banks and
41 other financial institutions under his jurisdiction. The
42 commissioner is hereby authorized to promulgate rules
43 and regulations and registration procedures for the
44 regulation, examination and control of bank holding
45 companies doing business in this state.

46 (f) The commissioner of banking shall charge and
47 collect from each bank holding company and pay into
48 a special revenue account in the state treasury for the
49 department of banking an annual assessment payable on
50 the last day of January computed upon the total deposits
51 in this state of the bank holding company contained in
52 the consolidated financial statement as of the last

53 business day in December of the previous year as is set
54 out in section eight, article two, chapter thirty-one-a of
55 this code. The payment of such registration fee shall be
56 accompanied by a report on forms prescribed by the
57 commissioner.

**§31A-8A-7. Acquisition of state bank or holding company
by foreign bank; reciprocity; authority of
the commissioner and of the board.**

1 (a) Except as authorized in this section, no banking
2 institution incorporated under the laws of any other
3 state or having its principal place of business in any
4 other state may receive deposits or transact any banking
5 business of any kind in this state other than the lending
6 of money.

7 (b) Upon enactment, a bank holding company with its
8 principal place of business in another state may
9 establish electronic data processing facilities and credit
10 card processing facilities in West Virginia.

11 (c) After the thirty-first day of December, one
12 thousand nine hundred eighty-seven, a bank holding
13 company with its principal place of business in another
14 state may acquire a West Virginia bank or West
15 Virginia bank holding company if the board determines
16 in its discretion that the laws of such other state, as in
17 effect at the time the application referred to in
18 subsection (d) of this section, permits a West Virginia
19 bank holding company to acquire a bank or bank
20 holding company having its principal place of business
21 in such other state on terms that are, on the whole,
22 substantially no more restrictive than those established
23 under this section and if the West Virginia bank has,
24 or all subsidiaries of the West Virginia bank holding
25 company to be acquired have, been in operation for two
26 years or more. The board may approve the acquisition
27 of all or substantially all of the shares of a bank newly
28 organized solely for the purpose of facilitating the
29 acquisition of a bank that has been in existence and
30 continuously operating for at least two years. If the law
31 of such other state restricts entry by West Virginia bank
32 holding companies to that state, then the board may

33 similarly limit the authority granted by this section for
34 bank holding companies with their principal places of
35 business located in that state.

36 In no case may this section be construed to permit the
37 merger, combination or consolidation of a West Virginia
38 bank with or into a bank the principal place of business
39 of which is not in this state.

40 (d) Any bank holding company proposing to acquire
41 a West Virginia bank or West Virginia bank holding
42 company pursuant to this section shall comply with, and
43 be governed by, the procedures and requirements
44 contained in section four of this article.

45 (e) No application for approval of an acquisition
46 pursuant to the authority granted by this section may
47 be approved by the board if the board determines that
48 such approval would cause the applicant bank holding
49 company to control aggregate total deposits in this state
50 exceeding twenty percent of the total deposits held by
51 all financial institutions located in this state as reported
52 in the most recently available reports of condition or
53 similar reports filed with state or federal authorities.

54 (f) Unless the shareholders of the West Virginia bank
55 or West Virginia bank holding company to be acquired
56 have approved an amendment to its articles of incorpo-
57 ration or code of regulations or comparable document
58 that provides that this subsection shall not apply to such
59 West Virginia bank or West Virginia bank holding
60 company, any acquisition to be made pursuant to the
61 authority granted by this section which will result in the
62 acquiring nonresident bank holding company directly or
63 indirectly owning or controlling the West Virginia bank
64 or West Virginia bank holding company must be
65 authorized by the affirmative vote of the holders of not
66 less than two thirds of the voting power of the West
67 Virginia bank or West Virginia bank holding company
68 to be acquired.

69 (g) Any bank holding company acquiring a bank or
70 bank holding company pursuant to the authority
71 granted by this section shall file with the commissioner
72 copies of the public portions of all regular and periodic

73 reports such bank holding company is required to file
74 with federal regulators and under section 13 or 15(d) of
75 the "Securities Exchange Act of 1934," 48 STAT. 894,
76 15 U.S.C. 78m or 78o(d), as amended. These reports
77 shall be filed with the commissioner within fifteen days
78 following the date they are filed in final form with the
79 applicable regulator.

80 (h) As used in this section:

81 (1) "Acquire" or "acquisition" means any of the
82 following transactions or actions:

83 (A) A merger, consolidation or combination of, or
84 with, a West Virginia bank holding company;

85 (B) The acquisition of the direct or indirect ownership
86 or control of voting shares of a West Virginia bank
87 holding company or a West Virginia bank if, after such
88 acquisition, the acquiring bank holding company will
89 directly or indirectly own or control more than five
90 percent of any class of voting shares of the West
91 Virginia bank or West Virginia bank holding company
92 unless the board determines, in its discretion, that the
93 nature of the acquisition is such that it should not be
94 subject to the limitations of this section;

95 (C) The direct or indirect acquisition of all or
96 substantially all of the assets of a West Virginia bank
97 or West Virginia bank holding company by a bank
98 holding company; or

99 (D) The taking of any other action by a bank holding
100 company that results in the direct or indirect control of
101 a West Virginia bank or West Virginia bank holding
102 company.

103 (2) "Bank holding company" means any company
104 which is a bank holding company as defined in this
105 article, or which will become such an approved bank
106 holding company prior to or upon completion of the
107 acquisition to be made pursuant to the authority granted
108 by this section.

109 (3) "Electronic data processing facilities and credit
110 card processing facilities" means facilities established

111 only for the purpose of processing accounts and or
112 processing transactions relating to the issuance of credit
113 cards.

114 (4) "Principal place of business" means, as to a bank
115 holding company, the state or jurisdiction in which the
116 total deposits of all direct and indirect banking subsi-
117 diaries of the bank holding company and any other
118 company that has control of the bank holding company
119 are the largest, as shown in the most recent report of
120 condition or similar report filed by such banking
121 subsidiaries with state or federal authorities; and, as to
122 a bank, the state or jurisdiction in which its total
123 deposits and those of all its banking subsidiaries, if any,
124 are the largest, as shown in the most recent report of
125 condition or similar report filed by the bank and its
126 banking subsidiaries with state or federal authorities.

127 (5) "West Virginia bank" means a bank incorporated
128 under the laws of this state or a national banking
129 association the principal place of business of which is in
130 this state.

131 (6) "West Virginia bank holding company" means a
132 bank holding company which owns or controls one or
133 more West Virginia banks and has its principal place
134 of business in this state.

135 (i) (1) When the commissioner of banking considers it
136 necessary or appropriate, he may examine any bank
137 holding company that has acquired or has an application
138 pending to acquire a West Virginia bank or West
139 Virginia bank holding company pursuant to the author-
140 ity granted by subsection (c) of this section. The cost of
141 an examination if in excess of the initial fee, shall be
142 assessed against and paid by the bank holding company
143 examined. The commissioner may request the bank
144 holding company to be examined pursuant to this
145 subsection to advance the estimated cost of such
146 examination.

147 (2) The commissioner may enter into cooperative
148 agreements with other state and federal bank regula-
149 tory authorities to facilitate the examination of any bank
150 holding company that has acquired or has an application

151 pending to acquire a West Virginia bank or West
152 Virginia bank holding company pursuant to the author-
153 ity granted by subsection (c) of this section. The
154 commissioner may accept reports of examinations and
155 other records from such other authorities in lieu of
156 conducting his own examination of such bank holding
157 companies. The commissioner may take any action
158 jointly with other regulatory agencies having concurrent
159 jurisdiction over such bank holding companies or may
160 take action independently in order to carry out his
161 responsibilities under subsection (c) of this section.

162 (3) When the commissioner considers it necessary, he
163 may require any bank holding company that has
164 acquired a West Virginia bank or West Virginia bank
165 holding company pursuant to the authority granted by
166 subsection (c) of this section to submit such reports to
167 the commissioner as he determines to be necessary or
168 appropriate for the purpose of carrying out his respon-
169 sibilities.

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

Bruce O. Williams
.....
Chairman Senate Committee

Floyd Fuller
.....
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Todd C. Still
.....
Clerk of the Senate

Donald L. Kopp
.....
Clerk of the House of Delegates

Don Tomkowiak
.....
President of the Senate

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

The within *approved* this the *17th*
March
day of, 1986.

Arch A. Moore
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/11/86

Time 2:00 p.m.

RECEIVED

1933 MAR 18 AM 10 08

OFFICE OF THE
SECRETARY OF STATE

FILE WITH OFFICE OF
SECRETARY OF STATE OF
WEST VIRGINIA

THIS DATE 3/18/36