WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1986

ENROLLED

Committee Substitute for

HOUSE BILL No. 1170

(By Delegate Hamilton and 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.

(a)(1) When the commissioner of banking has approved the bylaws, and the association shall file with the commissioner of banking:

(A) A certified copy of the charter;

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

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

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

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

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

(1) Its principal office in this state; or

(2) Branch offices, already established at the time of
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.

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

(b) Notwithstanding any other provision of this code
to the contrary, after the 31st day of December, 1987,
a West Virginia building and loan association may
acquire a savings and loan association, savings bank or
savings and loan holding company having a principal
place of business in another state. A savings and loan
association, or a savings bank, the accounts of which are insured by the Federal Savings and Loan Insurance Corporation pursuant to the National Housing Act of 1934, as amended, or savings and loan holding company with its principal place of business in another state may acquire a West Virginia building and loan association, if the commissioner of banking determines, in his discretion, that the laws of such other state in effect at the time the application for the proposed acquisition in this state is filed, permit a West Virginia building and loan association to acquire a savings and loan association having its principal place of business in such other state on terms that are, on the whole, substantially no more restrictive than those established under the provisions of this section. A savings and loan association or savings and loan holding company with its principal place of business in another state may not acquire a West Virginia building and loan association which has been in existence and operating for less than two years: Provided, That the commissioner of banking may approve the acquisition of ownership or control of a building and loan association which was newly organized under the provisions of this article, if such newly chartered building and loan association was organized solely for the purpose of facilitating the acquisition of a building and loan association that has been continuously operating for more than two years. If the law of such other state restricts entry to that state by a West Virginia building and loan association, then the commissioner of banking may similarly limit the authority granted by this section for savings and loan associations or savings and loan holding companies with their principal places of business located in that other state to effect acquisitions in this state.

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

(d) No application for approval of an acquisition
pursuant to the authority granted by this section may be approved by the commissioner of banking if the commissioner determines that such approval would cause the applicant savings and loan association or savings and loan holding company to control aggregate total deposits in this state exceeding twenty percent of the total deposits held by all financial institutions located in this state as reported in the most recently available reports of condition or similar reports filed with state or federal authorities.

(e) Unless the shareholders of the West Virginia building and loan association to be acquired have approved an amendment to its articles of incorporation or code of regulations or comparable document that provides that this subsection shall not apply to such West Virginia building and loan association, any acquisition to be made pursuant to the authority granted by this section which will result in the acquiring of nonresident savings and loan association or savings and loan holding company directly or indirectly owning or controlling the West Virginia building and loan association must be authorized by the affirmative vote of the holders of not less than two thirds of the voting power of the West Virginia building and loan association to be acquired.

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

(g) As used in this section:

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

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

(B) The acquisition of the direct or indirect ownership or control of voting shares of a West Virginia building and loan association if, after such acquisition, the acquiring savings and loan association or savings and loan holding company will directly or indirectly own or control more than five percent of any class of voting shares of the West Virginia building and loan association, unless the commissioner determines, in his discretion, that the nature of the acquisition is such that it should not be subject to the limitations of this section;

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

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

(2) “Principal place of business” means, as to a savings and loan holding company, the state or jurisdiction in which the total deposits of all direct or indirect subsidiaries of the savings and loan holding company and any other company that has control of the savings and loan holding company are the largest, as shown in the most recent report of condition or similar report filed by such subsidiaries with state or federal authorities; and, as to a savings and loan association, the state or jurisdiction in which its total deposits and those of all its subsidiaries, if any, are the largest, as shown in the most recent report of condition or similar report filed by the savings and loan association and its subsidiaries with state or federal authorities.

(3) “Savings and loan holding company” means any company which is a savings and loan holding company
as defined in the federal savings and loan holding company act, 12 U.S.C. §1730a(a)(1) (D), (E) or (F), or which will become such an approved savings and loan holding company prior to or upon completion of the acquisition to be made pursuant to the authority granted by this section.

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

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

(2) The commissioner may enter into cooperative agreements with other state and federal savings and loan regulatory authorities to facilitate the examination of any savings and loan association or savings and loan holding company that has acquired or has an application pending to acquire a West Virginia building and loan association pursuant to the authority granted by subsection (b) of this section. The commissioner may accept reports of examinations and other records from such other authorities in lieu of conducting his own examination of such savings and loan association or savings and loan holding companies. The commissioner may take any action jointly with other regulatory agencies having concurrent jurisdiction over such
savings and loan association or savings and loan holding
companies or may take action independently in order to
carry out his responsibilities under subsection (b) of this
section.

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

(a) Subject to the provisions of subsections (e), (f), (g)
and (h) of this section and to the provisions of subsection
(j), section twelve, article eight of this chapter, notice
and hearing shall be provided in advance of the entry
of any order by the board.

(1) Such notice shall be given to the financial institu-
tion 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 proce-
dures 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 or 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 admit-
ted 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-
ine-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 institu-
tion 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 hereinaf-
fter 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
therby 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

64 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), 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.

72 (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.

91 (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 or section seven, 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.

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 as 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, one thousand nine hundred eighty-four, was authorized to operate an off-premise walk-in or drive-in facility, pursuant to the law then in effect, may, as of the seventh day of June, 1984, 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), subsection (b), section two,
(b) Except for a bank holding company, it shall be unlawful for any individual, partnership, society, association, firm, institution, trust, syndicate, public or private corporation, 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 seventh of June, one thousand nine hundred eighty-four, 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; and

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

(2) The purchase of the business and assets and assumption 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 as of the seventh day of June, 1984, 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 request 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 investigation with respect to such application, the board shall, if a hearing be required pursuant to subsection (j) of this section, 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.

(3) After such hearing and consideration of all the testimony 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-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.

(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 application for that branch bank: Provided, That no such hearing shall be required with respect to any application to establish 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 anticompetitive 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.

(1) 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.
ARTICLE 8A. ACQUISITION OF BANK SHARES.

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

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

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

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

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

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

(5) For any bank holding company to merge or consolidate 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 seventh day of June, 1984, 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 seventh day of June, 1984, 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 120 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 of 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 companies 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 provision of law, no
bank holding company, or any other company, shall
establish, acquire or control any banking institution as
defined in section three of this article, when said
banking institution does not both (i) accept deposits that
the depositor has a legal right to withdraw on demand
and (ii) engage in the business of making commercial
loans.

(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 seventh day of June, 1984.

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

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

(b) On the first day of July, one thousand nine
hundred eighty-two, and annually thereafter on dates
established by the commissioner, each bank holding
company shall register with the commissioner on forms
provided or prescribed by him, which shall include such
information with respect to the financial condition,
operation, management and intercompany relationships
of the bank holding company and its subsidiaries and
related matters as the commissioner may deem neces-
sary or appropriate to carry out the purposes of this
article.

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

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

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

(f) The commissioner of banking shall charge and
collect from each bank holding company and pay into
a special revenue account in the state treasury for the
department of banking an annual assessment payable on
the last day of January computed upon the total deposits
in this state of the bank holding company contained in
the consolidated financial statement as of the last
business day in December of the previous year as is set out in section eight, article two, chapter thirty-one-a of this code. The payment of such registration fee shall be accompanied by a report on forms prescribed by the commissioner.

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

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

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

(c) After the thirty-first day of December, one thousand nine hundred eighty-seven, a bank holding company with its principal place of business in another state may acquire a West Virginia bank or West Virginia bank holding company if the board determines in its discretion that the laws of such other state, as in effect at the time the application referred to in subsection (d) of this section, permits a West Virginia bank holding company to acquire a bank or bank holding company having its principal place of business in such other state on terms that are, on the whole, substantially no more restrictive than those established under this section and if the West Virginia bank has, or all subsidiaries of the West Virginia bank holding company to be acquired have, been in operation for two years or more. The board may approve the acquisition of all or substantially all of the shares of a bank newly organized solely for the purpose of facilitating the acquisition of a bank that has been in existence and continuously operating for at least two years. If the law of such other state restricts entry by West Virginia bank holding companies to that state, then the board may
similarly limit the authority granted by this section for
bank holding companies with their principal places of
business located in that state.

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

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

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

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

(g) Any bank holding company acquiring a bank or
bank holding company pursuant to the authority
granted by this section shall file with the commissioner
copies of the public portions of all regular and periodic
reports such bank holding company is required to file
with federal regulators and under section 13 or 15(d) of
the "Securities Exchange Act of 1934," 48 STAT. 894,
15 U.S.C. 78m or 78o(d), as amended. These reports
shall be filed with the commissioner within fifteen days
following the date they are filed in final form with the
applicable regulator.

(h) As used in this section:

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

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

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

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

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

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

(3) "Electronic data processing facilities and credit
card processing facilities" means facilities established
only for the purpose of processing accounts and or processing transactions relating to the issuance of credit cards.

(4) "Principal place of business" means, as to a bank holding company, the state or jurisdiction in which the total deposits of all direct and indirect banking subsidiaries of the bank holding company and any other company that has control of the bank holding company are the largest, as shown in the most recent report of condition or similar report filed by such banking subsidiaries with state or federal authorities; and, as to a bank, the state or jurisdiction in which its total deposits and those of all its banking subsidiaries, if any, are the largest, as shown in the most recent report of condition or similar report filed by the bank and its banking subsidiaries with state or federal authorities.

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

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

(i) (1) When the commissioner of banking considers it necessary or appropriate, he may examine any bank holding company that has acquired or has an application pending to acquire a West Virginia bank or West Virginia bank holding company pursuant to the authority granted by subsection (c) of this section. The cost of an examination if in excess of the initial fee, shall be assessed against and paid by the bank holding company examined. The commissioner may request the bank holding company to be examined pursuant to this subsection to advance the estimated cost of such examination.

(2) The commissioner may enter into cooperative agreements with other state and federal bank regulatory authorities to facilitate the examination of any bank holding company that has acquired or has an application
pending to acquire a West Virginia bank or West Virginia bank holding company pursuant to the authority granted by subsection (c) of this section. The commissioner may accept reports of examinations and other records from such other authorities in lieu of conducting his own examination of such bank holding companies. The commissioner may take any action jointly with other regulatory agencies having concurrent jurisdiction over such bank holding companies or may take action independently in order to carry out his responsibilities under subsection (c) of this section.

(3) When the commissioner considers it necessary, he may require any bank holding company that has acquired a West Virginia bank or West Virginia bank holding company pursuant to the authority granted by subsection (c) of this section to submit such reports to the commissioner as he determines to be necessary or appropriate for the purpose of carrying out his responsibilities.
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.

J. Cole McClellan
Clerk of the Senate

Donald A. Kopp
Clerk of the House of Delegates

Dan Tomlinson
President of the Senate

Joseph D. Allen
Speaker of the House of Delegates

The within ................. this the 11th .................

day of ...................... March ......................, 1986.

Ann W. Thornburg
Governor
PRESENTED TO THE
GOVERNOR
Date 3/11/86
Time 3:00 p.m.