WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1990

ENROLLED

Am. Sub. for
HOUSE BILL No. 4803

(By Delegate Phillips)

Passed March 10, 1990

In Effect 90 Days from Passage
ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 4803
(By Delegate Phillips)

[Passed March 10, 1990; in effect ninety days from passage.]

AN ACT to amend and reenact section three, article four, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one and seven, article eight-a of said chapter; and to amend and reenact section two, article one, chapter forty-seven-a of said code, all relating to banking institutions and services generally; acquisition of bank shares, state banks or holding companies by foreign banks; lending and credit rate board yearly fee; and incorporation of newly organized banks; and capitalization requirements of newly organized banks.

Be it enacted by the Legislature of West Virginia:

That section three, article four, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections one and seven, article eight-a of said chapter be amended and reenacted; and that section two, article one, chapter forty-seven-a of said code be amended and reenacted, all to read as follows:

CHAPTER 31A. BANKS AND BANKING.

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.
§31A-4-3. Minimum capital stock; one class of stock; par value; capitalization of surplus.

(a) No banking institution may hereafter be incorporated unless it shall have bona fide subscribed capital stock and capital surplus equal to at least one million dollars. The West Virginia board of banking and financial institutions shall require capital in excess of one million dollars if, in its judgment, economic conditions or the operating environment of the proposed banking institution, make such a requirement necessary.

(b) Notwithstanding any provision of (a) above, the commissioner or the West Virginia board of banking and financial institutions may approve the incorporation of a bank newly organized solely for the purpose of facilitating the acquisition of another bank if the proposed newly organized bank has a bona fide subscribed capital stock and capital surplus of at least sixty thousand dollars.

(c) Banking institutions shall issue but one class of stock and the shares shall have a nominal or par value of not less than one dollar nor more than one hundred dollars each, and as to each banking institution each share shall be equal in all respects with any other share.

(d) Any banking institution may change the par value of its shares, when and to the extent that any such action may be authorized in writing by the commissioner.

ARTICLE 8A. ACQUISITION OF BANK SHARES.

§31A-8A-1. Legislative findings and purpose.

After a review of the structure of banking organizations in the state of West Virginia and after full consideration of the complex issues involved, the Legislature hereby finds and determines that:

(a) Well managed and financially sound banking institutions are essential to the financial well-being of the citizens, and the promotion of the future economic and industrial growth and development of this state;
(b) The formation of bank holding companies will strengthen and supplement traditional banking services and facilitate the development of the type of banking institutions that are necessary for the economic and industrial growth and development of this state;

(c) It is in the best interests of this state and its citizens for the board to have the power and authority to disapprove the acquisition of a bank by a bank holding company when the board determines that such acquisition would result in a monopoly, substantially lessen competition, or be contrary to the best interests of the shareholders or customers of the bank involved;

and

(d) The deposits of the citizens of this state are a substantial and valuable resource which should serve the economic and industrial growth and development needs, and the consumer needs of the citizens of this state; and since the board could not effectively make a determination that the control of deposits of the citizens of this state by bank holding companies, the principal places of business of which are located outside this state, would be used for the above enumerated local needs of this state's citizenry, a bank holding company with its principal place of business located outside this state shall be prohibited from acquiring, directly or indirectly, five percent or more of the interest in, or assets of, any bank or bank holding company located in this state, unless acquired pursuant to section seven of this article.

§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 West Virginia 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 incorporation 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 subsi-
diaries 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.

CHAPTER 47A. WEST VIRGINIA LENDING AND CREDIT RATE BOARD.

ARTICLE 1. LENDING AND CREDIT RATE BOARD.

§47A-1-2. Board staff, offices, funding.

Under the direction of the chairperson of the board, the board shall be entitled to utilize the staff of the West Virginia banking department and the offices of the board shall be those of the West Virginia banking department. In order to defray the cost of the board's operations including the cost of its utilization of the staff of the West Virginia banking department, the board shall establish the West Virginia lending and credit rate board revolving fund.

On or before the first day of July of each year, the commissioner of banking may charge and collect from each supervised financial organization and supervised lender a yearly fee of fifty dollars and pay it into the revolving fund established by the board. The fees paid into this revolving fund shall be utilized to pay the costs and expenses of the board and all incidental costs and expenses necessary for its operations.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Frederick L. Parks  
Chairman Senate Committee

Ben. W. Kelly  
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Harry F. Choate  
Clerk of the Senate

Donald L. Whipp  
Clerk of the House of Delegates

Paul Bunch  
President of the Senate

John C. Coleman  
Speaker of the House of Delegates

The within is approved this the 26th day of March, 1900.

Governor
PRESENTED TO THE
GOVERNOR
Date 3/22/90
Time 7:12 PM