WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1991

ENROLLED

HOUSE BILL No. 2793

(By Mr. Del Rutledge and Williams)

Passed March 8, 1991

In Effect July 1, 1991
ENROLLED

H. B. 2793

(By Delegates Rutledge and Williams)

[Passed March 8, 1991; in effect July 1, 1991.]

AN ACT to amend and reenact sections five, fourteen, fifteen and thirty-three, article four, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section twelve, article eight and section four, article eight-a of said chapter, all relating to banking institutions, increasing certain fees for investigation of bank incorporation; eliminating certificates of unimpaired capital and replacing certificates with annual reports; deposits in trust; limitation on liability of institutions making payments from certain accounts; and reducing investigation fees for mergers and share acquisition.

Be it enacted by the Legislature of West Virginia:

That sections five, fourteen and fifteen and thirty-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; and that section twelve, article eight and section four, article eight-a of said chapter be amended and reenacted, all to read as follows:

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

§31A-4-5. Requirements and procedure for incorporation of state banks.

1 A state bank may be organized by five or more incorporators, a majority of whom shall be residents of
the state of West Virginia. Such banking institution shall have as a part of its corporate name or title one or more of the following words indicative of the business which it is authorized to conduct, namely, “bank,” “banking company,” “banking association,” “trust company,” “banking and trust company” or “bank and trust company.”

The incorporators shall file with the board an agreement of incorporation, in duplicate, following generally the form prescribed by the secretary of state for chartering corporations under provisions of article one, chapter thirty-one of this code. The information set forth in the agreement shall include the following:

1. The name of the proposed bank;
2. The community and county in which the bank is to be located, together with the post-office address of the place of business of the bank;
3. Whether such bank proposes also to engage in the trust business;
4. The name, residence and occupation of each incorporator, and the amount of capital stock subscribed and paid for by each;
5. The names of the persons who are to serve as officers and directors of the banking institution and the official position proposed to be held by each; and
6. The total authorized capital stock of the institution.

The agreement of incorporation shall be signed and acknowledged by each of the incorporators and, when filed with the board, shall be accompanied by the statutory corporation charter fees, and an examination and investigation fee of five thousand dollars payable to the board. However, if the agreement is for the incorporation of a bank to be organized solely for the purpose of facilitating the acquisition of another bank, the examination and investigation fee is five hundred dollars payable to the board. When transmitting the agreement to the board, the incorporators shall designate by name and give the address of the attorney, agent
or other responsible party with whom the board may communicate, on whom the board may call for further information, and to whom the board may officially report as to action on the agreement so filed with him. The agreement shall constitute and may be considered and treated by the board as an application for the board's approval to incorporate and organize a banking institution in this state.

§31A-4-14. Trust powers of banking institutions.

Every state banking institution, except industrial banks created and organized pursuant to the provisions of article seven, chapter thirty-one of this code, which files the reports required in the following section and which is not otherwise prohibited by the commissioner or federal bank regulators from doing so, shall have and exercise the following powers:

(a) All the powers, rights and privileges of any state banking institution;

(b) To act as trustee, assignee, special commissioner, general or special receiver, guardian, executor, administrator, committee, agent, curator, or in any other fiduciary capacity, and to take, assume, accept and execute trusts of every description not inconsistent with the constitution and laws of the United States of America or of this state; and to receive, hold, manage and apply any sinking fund on the terms and for the purposes specified in the instrument creating such fund;

(c) To act as registrar, transfer agent or dividend or coupon paying agent for any corporation;

(d) To make, hold and dispose of investments and establish common trust funds, and account therefor, pursuant to the provisions of chapter forty-four of this code;

(e) To purchase and sell and take charge of and receive the rents, issues and profits of any real estate for other persons or corporations;

(f) To act as trustee or agent in any collateral trust and in order to secure the payment of any obligations
of any person, firm, private corporation, public corporation, public body or public agency to receive and hold in trust any items of personal property (including without limitation notes, bonds, debentures, obligations and certificates for shares of stock) with the right in case of default to sell and dispose of such personal property and to collect, settle and adjust any obligations for the payment of money, and at any sale of such personal property held by it, to purchase the same for the benefit of all or any of the holders of the obligations, to secure the payment of which such items of personal property were pledged and delivered to the trustee or agent. Any such sale may be made without any proceedings in any court, and at such times and upon such terms as may be specified in the instrument or instruments creating the trust, or, in the absence of any specification of terms, at such time and upon such terms as the trustee shall deem reasonable; and

(g) To do and perform any act or thing requisite or necessary in, or incidental to, the exercise of the general powers herein set forth.

All national banks having their principal offices in this state which have been, or hereafter may be, authorized under the laws of the United States to act as trustee and in other fiduciary capacities in the state of West Virginia shall have all the rights, powers, privileges and immunities conferred hereunder, provided they comply with the requirements hereof.

§31A-4-15. Certificate showing unimpaired capital to be filed before exercising trust powers; penalties; notice of failure to comply:

No banking institution shall exercise any of the trust powers mentioned in the preceding section until it shall have filed with the commissioner of banking an annual report of trust assets each calendar year as filed with federal regulators. If any such banking institution shall exercise, or attempt to exercise, any such powers or rights without having complied with the requirements of this section as to the filing of such report, it shall be guilty of a misdemeanor, and, upon conviction thereof,
shall be fined not more than five hundred dollars; and
in every such case, whether or not there shall have been
a prosecution or conviction of the company so offending,
the commissioner of banking, being satisfied of the facts,
may publish a notice of the fact that it has failed to
comply with the requirements of this section and is
therefore not entitled to exercise the trust powers and
rights mentioned in the preceding section. In the event
a notice is published as aforesaid, it shall be published
as a Class II legal advertisement in compliance with the
provisions of article three, chapter fifty-nine of this code,
and the publication area for such publication shall be
the county in which such institution is located.

§31A-4-33. Deposits in trust; deposits in more than one
name; limitation on liability of institutions
making payments from certain accounts.

If any deposit in any banking institution be made by
any person describing himself in making such deposit
as trustee for another, and no other or further notice of
the existence and terms of a legal and valid trust than
such description shall be given in writing to the banking
institution, in the event of the death of the person so
described as trustee, such deposit, or any part thereof,
together with the interest thereon, may be paid to the
person for whom the deposit was thus stated to have
been made.

When a deposit is made by any person in the name
of such depositor and another or others and in form to
be paid to any one of such depositors, or the survivor
or survivors of them, such deposit, and any additions
thereto, made by any of such persons, upon the making
thereof, shall become the property of such persons as
joint tenants; and the same, together with all interest
thereon, shall be held for the exclusive use of the persons
so named, and may be paid to any one of them during
the lifetime of them, or to the survivor or survivors after
the death of any of them; and such payment and the
receipt or the acquittance of the one to whom such
payment is made shall be a valid and sufficient release
and discharge for all payments made on account of such
deposit, prior to the receipt by the banking institution
of notice in writing, signed by any one of such joint
tenants not to pay such deposit in accordance with the
terms thereof. Prior to the receipt of such notice no
banking institution shall be liable for the payment of
such sums.

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
organization office permitted by section twelve-c of this
article: Provided, That acceptance of a deposit at the
offices of any subsidiary, as defined in section two,
article eight-a of this chapter, for credit to the custo-
mer's account at any other subsidiary of the same bank
holding company is permissible and does not constitute
branch banking.

Any banking institution which on January one, one
thousand nine hundred eighty-four, was authorized to
operate an off-premises walk-in or drive-in facility,
pursuant to the law then in effect, may, as of the seventh
day of June, one thousand nine hundred eighty-four,
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, article three
of this chapter.

(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 consolida-
tion 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 subdi-
vision (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, one thousand nine hundred
eighty-four, 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. Notwithstanding the above, if the merger or consolidation is between an existing banking institution and a bank newly incorporated solely for the purpose of facilitating the acquisition of the existing banking institution, the commissioner shall collect an examination and investigation fee of five hundred dollars. 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 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 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, inves-
tigation, 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 ap-
proved by the board unless a banking institution has
timely filed a petition to intervene pursuant to subsec-
tion (g) of this section. The order shall be accompanied
by findings of fact that:

(1) Public convenience and advantage will be pro-
moted 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.

(l) 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.

1. 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 four 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.

2. If a bank holding company, pursuant to subsection (a), subdivision (3) above, acquires more than five percent, but less than twenty-five percent of the voting shares of a bank, and is not determined to be acquiring control over the bank, the examination and investigation fee to be paid to the board shall be determined by multiplying the examination and investigation fee established in subsection (a) by the percentage of voting
(c) 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, one thousand nine hundred eighty-four, 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, one thousand nine hundred eighty-four, 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.

(d) If, within one hundred twenty 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.

(e) 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.

(f) 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, one thousand nine hundred eighty-four.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect July 1, 1991.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within ...................... this the 3rd day of ........................, 1991.

Governor