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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1992



ENROLLED

Com. Sub. For
HOUSE BILL No. 4613

(By Delegates *Reitledge and Williams*)



Passed *March 7* 1992

In Effect *Ninety Days From* Passage

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 4613

(By DELEGATES RUTLEDGE AND WILLIAMS)

[Passed March 7, 1992; in effect ninety days from passage.]

AN ACT to amend and reenact section four, article four, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the issuance of bank stock and organizational expenses.

Be it enacted by the Legislature of West Virginia:

That section four, article four, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

§31A-4-4. Stock to be paid in full before engaging in business; exception as to unissued stock; organizational expense fund; affidavit of incorporators; penalties; stockholders' preemptive rights.

- 1 (a) All of the capital stock of every banking institu-
- 2 tion, chartered under the laws of this state, shall be paid
- 3 in full in cash and issued to the ultimate subscribers,
- 4 not an agent or broker acting on behalf of the organ-
- 5 izers, before it shall be authorized to engage in business,

6 except such business as is incidental and necessarily
7 preliminary to its organization: *Provided*, That with the
8 approval of the commissioner of banking, the charter of
9 any state bank, now or hereafter organized, may provide
10 that not to exceed five percent of the bank's authorized
11 capital stock may be unissued stock. Such authorized
12 but unissued stock may be issued from time to time to
13 employees of the bank pursuant to a stock option or
14 stock purchase plan approved by the commissioner or
15 may be issued for such other purposes and consideration
16 as may be approved by the board of directors of said
17 bank.

18 (b) Each subscriber at the time he or she subscribes
19 to the stock of a proposed banking institution shall pay
20 in cash a sum at least equal to five percent of the par
21 value of such stock into a fund to be used to defray the
22 expenses of organization of said institution. No organ-
23 izational expenses shall be paid out of any other funds
24 of the bank. The amount of any organizational expenses
25 which are accumulated and recorded on the newly
26 organized bank's accounting records as an asset to be
27 amortized over a period of time according to generally
28 accepted accounting principles shall be added to the
29 capital requirement for incorporation of the bank as
30 determined by the West Virginia board of banking and
31 financial institutions pursuant to subsection (a), section
32 three, article four of this chapter. Upon the grant of a
33 charter to the institution any unexpended balance in the
34 organizational expense fund shall be transferred to
35 undivided profits of the institution. If the charter
36 application is finally denied, any unexpended balance in
37 said fund shall be distributed among the contributors in
38 proportion to their respective payments.

39 (c) A majority of the incorporators shall file with the
40 West Virginia board of banking and financial institu-
41 tions at the time of filing of the charter application an
42 affidavit: (1) Setting forth all expenses incurred or to be
43 incurred in connection with the organization of the
44 institution, subscriptions for its shares and sale of its
45 shares, and (2) stating that no fee, compensation or
46 commission prohibited by this section has been or will

47 be paid or incurred. The board may disapprove the
48 charter application on account of any violation of this
49 section and order the incorporators to restore any sum
50 expended for other than proper organizational expense.
51 In addition, violations hereof shall constitute a misde-
52 meanor offense punishable as prescribed in section
53 fifteen, article eight of this chapter.

54 (d) Unless otherwise provided in the charter, when-
55 ever additional stock is offered for sale, stockholders of
56 record on the date of the offer shall have the right to
57 subscribe to such proportion of the shares as the stock
58 held by them bears to the total of the outstanding stock.
59 This right shall be transferable but shall terminate if
60 not exercised within sixty days of the offer. If the right
61 be not exercised, the stock shall not be offered for sale
62 to others at a lower price without the stockholders again
63 being accorded a preemptive right to subscribe. No
64 banking institution shall sell its shares of stock at less
65 than par, but may sell its shares at such price above par
66 as may be set by the board of directors. The preemptive
67 rights of the stockholders, as provided in this para-
68 graph, shall not apply to any stock issued by a banking
69 institution, to another bank or financial institution or
70 the stockholders thereof, pursuant to a merger or
71 consolidation with such other bank or financial institu-
72 tion, or to authorized but unissued stock authorized by
73 the charter of the banking institution.

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

Tommy Heck

Chairman Senate Committee

Ernest C. Moore

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Daniel R. Adams

Clerk of the Senate

Donald L. Hoop

Clerk of the House of Delegates

Keith Sandate

President of the Senate

Robert C. Bell

Speaker of the House of Delegates

The within is approved this the 30th day of *May*, 1992.

Gaston Caperton
Governor

PRESENTED TO THE

GOVERNOR

Date 3/25/92

Time 11:50 am