WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1993

ENROLLED

SENATE BILL NO. 342

(By Senator Minard)

PASSED April 9, 1993
In Effect 90 days from Passage
ENROLLED

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[Passed April 9, 1993; in effect ninety days from passage.]

AN ACT to amend article two, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four-a; and to amend and reenact section nine of said article; and to amend and reenact section two, article three of said chapter, all relating to making orders of the commissioner of banking and West Virginia board of banking public records.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. DIVISION OF BANKING.

§31A-2-4a. Orders of the commissioner of banking to be made public.

1 Any order entered by the commissioner of banking against any person:
(1) To cease violating any provision or provisions of this chapter or other applicable law or rule and regulation promulgated or order issued thereunder;

(2) To cease engaging in any unsound practice or procedure which may detrimentally affect any financial institution;

(3) To revoke the certificate of authority, permit or license of any financial institution; and

(4) To take such other action as the commissioner of banking may deem necessary to enforce and administer the provisions of this chapter and all other laws which the commissioner is empowered to enforce is a matter of public record.

§31A-2-9. Correction of violations of law, irregularities and unsound practices; disposition of doubtful assets and past-due obligations; stockholders' meetings.

Whenever it appears that any law, rule and regulation or order applicable to any financial institution is being violated, or that any irregularities exist or unsound practices or procedures are being engaged in, it shall be the duty of the commissioner of banking to promptly call the same to the attention of the officers and directors of the financial institution offending and to demand that the same be promptly corrected; and he or she may require a sworn statement from the said officers and directors covering the matter of all such violations and of all such irregularities, unsound practices or procedures to be furnished to him or her as often as he or she may deem necessary, until he or she is satisfied that such violations have ceased and that the irregularities, unsound practices or procedures complained of have been corrected. Such reports shall not be made public, except as necessary as part of any order or other enforcement action or proceeding.

If any such institution owns any asset, the value of which, in the judgment of the commissioner of banking, is questionable, or owns past-due obligations, the commissioner of banking may require the assets of
doubtful value to be at once converted into money or
charged off of the books of the financial institution at
the expiration of three months from the date of such
order; or require legal proceedings to be at once
instituted for the collection of any past-due obligations
to the financial institution or that they be charged off.

Upon the written notice of the commissioner of
banking, the directors of any financial institution shall
call a general meeting of the stockholders thereof to
consider such matters as the commissioner may
prescribe. Notice of such meeting shall be given in
accordance with applicable statutes and the bylaws of
the financial institution. The expense of such meeting
and notice thereof shall be borne by the financial
institutions whose stockholders are so required to
convene.

ARTICLE 3. BOARD OF BANKING AND FINANCIAL INSTITUTIONS.

§31A-3-2. General powers and duties.

(a) In addition to other powers conferred by this
chapter, the board shall have the power to:

1. Regulate its own procedure and practice;

2. Promulgate reasonable rules to implement any
provision of this article, such rules to be promulgated
in accordance with the provisions of article three,
chapter twenty-nine-a of this code;

3. Advise the commissioner in all matters within
his jurisdiction;

4. Study the organization, programs and services of
financial institutions and the laws relating thereto in
this state and in other jurisdictions, and to report and
recommend to the governor and the Legislature all
such changes and amendments in laws, policies and
procedures relating thereto as may be by it deemed
proper; and

5. Grant permission and authority to a financial
institution:

(A) To participate in a public agency hereafter
created under the laws of this state or of the United
States, the purpose of which is to afford advantages or
safeguards to financial institutions or to depositors
therein, and to comply with all lawful requirements
and conditions imposed upon such participants;

(B) To engage in any financial institution activity,
services, procedures and practices in which financial
institutions of the same type subject to the jurisdiction
of the federal government may hereafter be autho-
ized by federal laws, rules or regulations to engage,
notwithstanding any contrary provision of this code;
and

(C) To pay interest on demand deposits of the United
States or any agency thereof, if the payment of such
interest shall be permitted under any applicable
federal law, rule or regulation.

Any permission and authority granted by the board
pursuant to this subdivision shall cease and terminate
upon the adjournment of the next regular session of
the Legislature, unless the Legislature shall at such
session enact legislation authorizing the financial
institution participation, activity, services and proce-
dures or payment of interest with respect to which
such permission and authority were granted, in which
event such permission and authority shall continue in
effect until the effective date of such legislation.

(b) The board shall further have the power, by
entering appropriate orders, to:

(1) Restrict the withdrawal of deposits from any
financial institution when, in the judgment of the
board, extraordinary circumstances make such restric-
tions necessary for the protection of creditors of and
depositors in the affected institution;

(2) Compel the holder of shares in any corporate
financial institution to refrain from voting said shares
on any matter when, in the judgment of the board,
such order is necessary to protect the institution
against reckless, incompetent or careless management,
to safeguard funds of depositors in the institution or to
prevent willful violation of any applicable law or of
any rule and regulation or order issued thereunder. In
such a case the shares of such a holder shall not be
counted in determining the existence of a quorum or
a percentage of the outstanding shares necessary to
take any corporate action;

(3) Approve or disapprove applications to incorporate
and organize state banking institutions in accordance
with the provisions of sections six and seven, article
four of this chapter;

(4) Approve or disapprove applications to incorporate
and organize state-chartered bankers’ banks in accor-
dance with the provisions of sections six and seven,
article four of this chapter;

(5) Exempt a bankers’ bank from any provision of
this chapter if the board finds that such provision is
inconsistent with the purpose for which a bankers’
bank is incorporated and organized and that the
welfare of the public or any banking institution or
other financial institution would not be jeopardized
thereby;

(6) Revoke the certificate of authority, permit,
certificate or license of any state banking institution to
engage in business in this state if such institution shall
fail or refuse to comply with any order of the commis-
sioner entered pursuant to the provisions of paragraph
(A) or (B), subdivision (14), subsection (c), section four,
article two of this chapter, or at the board’s election to
direct the commissioner to apply to any court having
jurisdiction for a prohibitory or mandatory injunction
or other appropriate remedy to compel obedience to
such order;

(7) Suspend or remove a director, officer or
employee of any financial institution who is or
becomes ineligible to hold such position under any
provision of law or rule and regulation or order, or
who willfully disregards or fails to comply with any
order of the board or commissioner made and entered
in accordance with the provisions of this chapter or
who is dishonest or grossly incompetent in the conduct
99 of financial institution business;

100 (8) To receive from state banking institutions applications to establish branch banks by the purchase of
101 the business and assets and assumption of the liabilities of, or merger or consolidation with, another
102 banking institution, or by the construction, lease or
103 acquisition of branch bank facilities in an unbanked
104 area; examine and investigate such applications, to
105 hold hearings thereon, and to approve or disapprove
106 such applications, all in accordance with section
107 twelve, article eight of this chapter;

108 (9) Approve or disapprove the application of any
109 state bank to purchase the business and assets and
110 assume the liabilities of, or merge or consolidate with, another state banking institution in accordance with
111 the provisions of section seven, article seven of this
112 chapter;

113 (10) Approve or disapprove the application of any
114 state bank to purchase the business and assets and
115 assume the liabilities of a national banking association,
116 or merge or consolidate with a national banking
117 association to form a resulting state bank in accor-
118 dance with the provisions of section seven, article
119 seven of this chapter; and

120 (11) In addition to any authority granted pursuant to
121 section twelve, article eight of this chapter, incident to
122 the approval of an application pursuant to subdivision
123 (7) or (8) of this subsection, permit the bank the
124 application of which is so approved to operate its
125 banking business under its name from the premises of
126 the bank the business and assets of which have been
127 purchased and the liabilities of which have been
128 assumed by such applicant bank or with which such
129 applicant bank has merged or consolidated: Provided,
130 That such permission may be granted only if the board
131 has made the findings required by subsection (f),
132 section three of this article and such applicant bank
133 has no common directors or officers nor common
134 ownership of stock exceeding ten percent of total
135 outstanding voting stock with the bank whose business
and assets are being purchased and liabilities assumed, or with whom such applicant bank is being merged.

(c) No provision of this section shall be construed to alter, reduce or modify the rights of shareholders, or obligations of a banking institution in regard to its shareholders, as set forth in section one hundred seventeen, article one, chapter thirty-one of this code and section seven, article seven of this chapter, and other applicable provisions of this code.

(d) Any order entered by the West Virginia board of banking and financial institutions pursuant to this section is a matter of public record.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 31st day of April, 1993.

Governor