

HB 2574

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SENATE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1995



ENROLLED

Com. Sub. for
HOUSE BILL No. 2574

(By Delegates *Thompson, Amos, Pulliam,*
Sprouse, Owen and Kiss)



Passed *March 11,* 1995

In Effect *90 Days From* Passage



ENROLLED
COMMITTEE SUBSTITUTE
FOR

H. B. 2574

(BY DELEGATES THOMPSON, AMORES, PULLIAM, SPROUSE,
GIVEN AND KISS)

[Passed March 11, 1995; in effect ninety days from passage.]

AN ACT to amend and reenact section twelve, article eight, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing state banks parity with national bank agency powers to conduct certain business.

Be it enacted by the Legislature of West Virginia:

That section twelve, article eight, 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 8. HEARINGS; ADMINISTRATIVE PROCEDURES; JUDICIAL REVIEW; UNLAWFUL ACTS; PENALTIES.

§31A-8-12. Procedure for authorization of branch banks; temporary offices at colleges and universities; limitations and restrictions; examinations and hearings; standards of review; penalties for violation of section.

1 (a) Except as otherwise provided herein, no banking
2 institution shall engage in business at any place other than
3 at its principal office in this state, at a branch bank in this
4 state permitted by this section as a customer bank commu-
5 nication terminal permitted by section twelve-b of this
6 article or at any loan organization office permitted by
7 section twelve-c of this article.

8 (1) Acceptance of a deposit or allowing a withdrawal
9 at the banking offices of any subsidiary, as defined in
10 section two, article eight-a of this chapter, for credit or
11 debit to the customer's account at any other subsidiary of
12 the same bank holding company is permissible and does
13 not constitute branch banking. In addition, the conduct of
14 activity at bank offices as an agent for any bank subsid-
15 iary of the same bank holding company shall be permitted
16 to the same extent allowed by federal law for national
17 banks pursuant to 12 USC 1828, and does not constitute
18 branch banking; nor shall such activity constitute a viola-
19 tion of section forty-two, article four of this chapter: *Pro-*
20 *vided*, That no banking institution may utilize that agency
21 relationship to evade state consumer protection laws, in-
22 cluding usury laws, or any other applicable laws of this
23 state, or to conduct any activity that is not financially-
24 related, as that term is defined by §31A-8C-2.

25 (2) A banking institution located in a county where
26 there is also a higher educational institution as defined in
27 section two, article one, chapter eighteen-b of this code,
28 may establish a temporary business office on the campus
29 of any such educational institution located in such county
30 for the limited purposes of opening accounts and accept-
31 ing deposits for a period not in excess of four business
32 days per semester, trimester or quarter: *Provided*, That
33 prior to opening any temporary office, a banking institu-
34 tion must first obtain written permission from the institu-
35 tion of higher education. The term "business days," for
36 the purpose of this subsection, means days exclusive of
37 Saturdays, Sundays and legal holidays as defined in sec-
38 tion one, article two, chapter two of this code.

39 (3) Any banking institution which on January one,
40 one thousand nine hundred eighty-four, was authorized to
41 operate an off-premises walk-in or drive-in facility, pursu-
42 ant to the law then in effect, may, as of the seventh day of
43 June, one thousand nine hundred eighty-four, operate
44 such facility as a branch bank and it shall not be neces-
45 sary, for the continued operation of such branch bank, to
46 obtain additional approvals, notwithstanding the provisions
47 of subsection (d) of this section and subdivision (6), sub-
48 section (b), section two, article three of this chapter.

49 (b) Except for a bank holding company, it shall be
50 unlawful for any individual, partnership, society, associa-
51 tion, firm, institution, trust, syndicate, public or private
52 corporation, or any other legal entity, or combination of
53 entities acting in concert, to directly or indirectly own,
54 control or hold with power to vote, twenty-five percent or
55 more of the voting shares of each of two or more banks,
56 or to control in any manner the election of a majority of
57 the directors of two or more banks.

58 (c) A banking institution may establish branch banks
59 either by:

60 (1) The construction, lease or acquisition of branch
61 bank facilities as follows:

62 (A) After the seventh of June, one thousand nine hun-
63 dred eighty-four, within the county in which that banking
64 institution's principal office is located or within the county
65 in which that banking institution had prior to January first,
66 one thousand nine hundred eighty-four, established a
67 branch bank, pursuant to subdivision (2) of this subsec-
68 tion; and

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

71 (2) The purchase of the business and assets and as-
72 sumption of the liabilities of, or merger or consolidation
73 with, another banking institution.

74 (d) Notwithstanding any other provision of this chap-
75 ter to the contrary, subject to and in furtherance of the
76 board's authority under the provisions of subdivision (6),
77 subsection (b), section two, article three of this chapter,
78 and subsection (g) of this section, the board may approve
79 or disapprove the application of any state banking institu-
80 tion to establish a branch bank.

81 (e) The principal office of a banking institution as of
82 the seventh day of June, one thousand nine hundred
83 eighty-four, shall continue to be the principal office of
84 such banking institution for purposes of establishing
85 branch banks under this section, notwithstanding any
86 subsequent change in the location of such banking
87 institution's principal office.

88 (f) Any banking institution which is authorized to
89 establish branch banks pursuant to this section may pro-
90 vide the same banking services and exercise the same
91 powers at each such branch bank as may be provided and
92 exercised at its principal banking house.

93 (g) The board shall, upon receipt of any application to
94 establish a branch bank, provide notice of such application
95 to all banking institutions. A banking institution may,
96 within ten days after receipt of such notice, file a petition
97 to intervene and shall, if it so files such petition, thereupon
98 become a party to any hearing relating thereto before the
99 board.

100 (h) The commissioner shall prescribe the form of the
101 application for a branch bank and shall collect an exami-
102 nation and investigation fee of one thousand dollars for
103 each filed application for a branch bank that is to be es-
104 tablished by the construction, lease or acquisition of a
105 branch bank facility, and two thousand five hundred dol-
106 lars for a branch bank that is to be established by the pur-
107 chase of the business and assets and assumption of the
108 liabilities of, or merger or consolidation with another
109 banking institution. Notwithstanding the above, if the
110 merger or consolidation is between an existing banking

111 institution and a bank newly incorporated solely for the
112 purpose of facilitating the acquisition of the existing
113 banking institution, the commissioner shall collect an
114 examination and investigation fee of five hundred dollars.
115 The board shall complete the examination and investiga-
116 tion within ninety days from the date on which such appli-
117 cation and fee are received, unless the board request in
118 writing additional information and disclosures concerning
119 the proposed branch bank from the applicant banking
120 institution, in which event such ninety-day period shall be
121 extended for an additional period of thirty days plus the
122 number of days between the date of such request and the
123 date such additional information and disclosures are re-
124 ceived.

125 (i) Upon completion of the examination and investiga-
126 tion with respect to such application, the board shall, if a
127 hearing be required pursuant to subsection (j) of this sec-
128 tion, forthwith give notice and hold a hearing pursuant to
129 the following provisions:

130 (1) Notice of such hearing shall be given to the bank-
131 ing institution with respect to which the hearing is to be
132 conducted in accordance with the provisions of section
133 two, article seven, chapter twenty-nine-a of this code, and
134 such hearing and the administrative procedures in connec-
135 tion therewith shall be governed by all of the provisions of
136 article five, chapter twenty-nine-a of this code, and shall be
137 held at a time and place set by the board but shall not be
138 less than ten nor more than thirty days after such notice is
139 given.

140 (2) At any such hearing a party may represent himself
141 or be represented by an attorney at law admitted to prac-
142 tice before any circuit court of this state.

143 (3) After such hearing and consideration of all the
144 testimony and evidence, the board shall make and enter an
145 order approving or disapproving the application, which
146 order shall be accompanied by findings of fact and con-
147 clusions of law as specified in section three, article five,

148 chapter twenty-nine-a of this code, and a copy of such
149 order and accompanying findings and conclusions shall
150 be served upon all parties to such hearing, and their attor-
151 neys of record, if any.

152 (j) No state banking institution may establish a branch
153 bank until the board, following an examination, investiga-
154 tion, notice and hearing, enters an order approving an
155 application for that branch bank: *Provided*, That no such
156 hearing shall be required with respect to any application to
157 establish a branch bank which is approved by the board
158 unless a banking institution has timely filed a petition to
159 intervene pursuant to subsection (g) of this section. The
160 order shall be accompanied by findings of fact that:

161 (1) Public convenience and advantage will be promot-
162 ed by the establishment of the proposed branch bank;

163 (2) Local conditions assure reasonable promise of
164 successful operation of the proposed branch bank and of
165 those banks and branches thereof already established in
166 the community;

167 (3) Suitable physical facilities will be provided for the
168 branch bank;

169 (4) The applicant state-chartered banking institution
170 satisfies such reasonable and appropriate requirements as
171 to sound financial condition as the commissioner or board
172 may from time to time establish by regulation;

173 (5) The establishment of the proposed branch bank
174 would not result in a monopoly, nor be in furtherance of
175 any combination or conspiracy to monopolize the busi-
176 ness of banking in any section of this state; and

177 (6) The establishment of the proposed branch bank
178 would not have the effect in any section of the state of
179 substantially lessening competition, nor tend to create a
180 monopoly or in any other manner be in restraint of trade,
181 unless the anticompetitive effects of the establishment of
182 that proposed branch bank are clearly outweighed in the
183 public interest by the probable effect of the establishment

184 of the proposed branch bank in meeting the convenience
185 and needs of the community to be served by that pro-
186 posed branch bank.

187 (k) Any party who is adversely affected by the order
188 of the board shall be entitled to judicial review thereof in
189 the manner provided in section four, article five, chapter
190 twenty-nine-a of this code. Any such party adversely
191 affected by a final judgment of a circuit court following
192 judicial review as provided in the foregoing sentence may
193 seek review thereof by appeal to the supreme court of
194 appeals in the manner provided in article six, chapter
195 twenty-nine-a of this code.

196 (l) Pursuant to the resolution of its board of directors
197 and with the prior written approval of the commissioner, a
198 state banking institution may discontinue the operation of
199 a branch bank upon at least thirty days' prior public notice
200 given in such form and manner as the commissioner pre-
201 scribes.

202 (m) Any violation of any provision of this section
203 shall constitute a misdemeanor offense punishable by
204 applicable penalties as provided in section fifteen of this
205 article.

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

Randy Schoonover
Chairman Senate Committee

Ernest C. Moore
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Darrell Holmes
Clerk of the Senate

Donald L. Kopp
Clerk of the House of Delegates

Earl Ray Tomblin
President of the Senate

Robert Wilson
Speaker of the House of Delegates

The within *is approved* this the *24th*
day of *March*, 1995.

Garston Caperton
Governor

PRESENTED TO THE

GOVERNOR

Date 3/24/95

Time 3:38 pm