WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1995

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ENROLLED

Com. Sub. for HOUSE BILL No. 2574

(By Delegates - Thompson, Amos, Raleigh)

Sprouse, Bivin and Kiss

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Passed March 11, 1995

In Effect 90 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.
(a) Except as otherwise provided herein, 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.

(1) Acceptance of a deposit or allowing a withdrawal at the banking offices of any subsidiary, as defined in section two, article eight-a of this chapter, for credit or debit to the customer's account at any other subsidiary of the same bank holding company is permissible and does not constitute branch banking. In addition, the conduct of activity at bank offices as an agent for any bank subsidiary of the same bank holding company shall be permitted to the same extent allowed by federal law for national banks pursuant to 12 USC 1828, and does not constitute branch banking; nor shall such activity constitute a violation of section forty-two, article four of this chapter: Provided, That no banking institution may utilize that agency relationship to evade state consumer protection laws, including usury laws, or any other applicable laws of this state, or to conduct any activity that is not financially-related, as that term is defined by §31A-8C-2.

(2) A banking institution located in a county where there is also a higher educational institution as defined in section two, article one, chapter eighteen-b of this code, may establish a temporary business office on the campus of any such educational institution located in such county for the limited purposes of opening accounts and accepting deposits for a period not in excess of four business days per semester, trimester or quarter: Provided, That prior to opening any temporary office, a banking institution must first obtain written permission from the institution of higher education. The term "business days," for the purpose of this subsection, means days exclusive of Saturdays, Sundays and legal holidays as defined in section one, article two, chapter two of this code.
(3) 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 consolidation 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 subdivision (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
in 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 procedures 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 attor-
neys of record, if any.

(j) No state banking institution may establish a branch
bank until the board, following an examination, investiga-
tion, 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 approved by the board
unless a banking institution has timely filed a petition to
intervene pursuant to subsection (g) of this section. The
order shall be accompanied by findings of fact that:

(1) Public convenience and advantage will be promot-
ed 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 busi-
ness 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 pro-
posed 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 pre-
scribes.

(m) Any violation of any provision of this section
shall constitute a misdemeanor offense punishable by
applicable penalties as provided in section fifteen of this
article.
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 ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 24th day of March, 1991.

Governor