ENROLLED

HOUSE BILL No. HB24

(By Delegate Farris Byrnes Hunt, Hutchins, Azinger, Hall and Wiltz)

Passed March 7, 1996

In Effect Ninety Days from Passage

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1996
AN ACT to amend and reenact section two, article one, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections four, thirteen and fourteen, article two of said chapter; to amend and reenact section two, article three of said chapter; to amend and reenact sections two, four, six, eight, twenty and twenty-six, article four of said chapter; to amend and reenact sections twelve, twelve-b, fifteen and sixteen, article eight of said chapter; to further amend said article by adding thereto a new section, designated section eight-a; and to amend and reenact section one hundred ten, article three, chapter forty-six-a of said code, all relating to banks and banking; defining terms; protection of financial institution condition records from disclosure; entry of voluntary assurances of compliance; the imposition of injunctions and civil penalties; use of the term "bank" or "bane;" issuance of bank stock prior to conducting business; access to audit workpapers and electronic data procedure review materials; the ability of banks to invest in certain securities and derivatives; criteria for establishing a nonsurviving interim bank or resulting branches in a bank merger or acquisition transaction; citizenship of a majority of the bank's directors; renewal of oaths by bank directors upon their re-election; permissible use of telecommunication and computer technology
Be it enacted by the Legislature of West Virginia:

That section two, article one, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections four, thirteen and fourteen, article two of said chapter be amended and reenacted; that section two, article three of said chapter be amended and reenacted; that sections two, four, six, eight, twenty and twenty-six, article four of said chapter be amended and reenacted; that sections twelve, twelve-b, fifteen and sixteen, article eight of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section eight-a; and that section one hundred ten, article three, chapter forty-six-a of said code be amended and reenacted, all to read as follows:

CHAPTER 31A. BANKS AND BANKING.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.


As used in this chapter, unless the context in which used plainly requires a different meaning:

(a) The word "action," in the sense of a judicial proceeding, means any proceeding in a court of competent jurisdiction in which rights are adjudicated and determined and shall embrace and include recoupment, counterclaim, setoff and other related, similar and summary proceedings;

(b) The words "bank" and "banking institution" mean a corporation heretofore or hereafter chartered to conduct a banking business under the laws of West Virginia or an association heretofore or hereafter authorized to conduct a banking business in West Virginia under the laws of the United States and having its principal office in this state and shall embrace and include a savings bank, savings and loan association, trust company or an institution combin-
ing banking and trust company facilities, functions and services so chartered or authorized to conduct such business in this state;

(c) The words "bankers' bank" mean a banking institution, insured by the Federal Deposit Insurance Corporation, the stock of which is owned exclusively by banks and other depository institutions, and such banking institution and all subsidiaries thereof are engaged exclusively in providing services for banks and other depository institutions and their officers, directors and employees;

(d) The term "banking business" means the functions, services and activities contained, detailed and embraced in sections thirteen and fourteen, article four of this chapter, and as elsewhere defined by law;

(e) The word "board" means the West Virginia board of banking and financial institutions;

(f) The words "branch bank" mean an office or other place at which a bank performs any or all banking business. For purposes of this chapter, a branch bank does not include:

   (1) A bank's principal place of business;

   (2) Any customer bank communication terminals installed and operated pursuant to section twelve-b, article eight of this chapter; and

   (3) Any loan origination office authorized by section twelve-c, article eight of this chapter;

(g) The words "commissioner" or "commissioner of banking" mean the commissioner of banking of West Virginia;

(h) The word "community" means a city, town or other incorporated area, or, where not so incorporated, a trading area;

(i) The word "department" means the department of banking of West Virginia;
(j) The words "deputy commissioner" or "deputy commissioner of banking" mean the deputy commissioner of banking of West Virginia;

(k) The word "fiduciary" means any trustee, agent, executor, administrator, curator, committee, guardian or conservator, special commissioner, receiver, trustee in bankruptcy, assignee for creditors, or any holder of a similar position of trust or responsibility;

(l) The words "financial institutions" mean banks, building and loan associations, industrial banks, industrial loan companies, supervised lenders, credit unions and all other similar institutions, whether persons, firms or corporations, which are by law under the jurisdiction and supervision of the commissioner of banking;

(m) The word "officer" when referring to any financial institution, means any person designated as such in the bylaws and includes, whether or not so designated, any executive officer, the chairman of the board of directors, the chairman of the executive committee, and any trust officer, assistant vice president, assistant treasurer, assistant secretary, assistant trust officer, assistant cashier, assistant comptroller, or any other person who performs the duties appropriate to those offices, and the terms "executive officer" as herein used, when referring to banking institutions, mean an officer of a bank whose duties involve regular, active and substantial participation in the daily operations of such institution and who, by virtue of his position, has both a voice in the formulation of the policy of the bank and responsibility for implementation of the policy, such responsibility of and functions performed by the individual, and not his title or office, being determinative of whether he is an "executive officer";

(n) The words "person" or "persons" mean any individual, partnership, society, association, firm, institution, company, public or private corporation, state, governmental agency, bureau, department, division or instrumentality, political subdivision, county commission, municipality, trust, syndicate, estate or any other legal entity whatsoever, formed, created or existing under the laws of this state or any other jurisdiction;
(o) The words "safe-deposit box" mean a safe-deposit box, vault or other safe-deposit receptacle maintained by a lessor bank, and the rules relating thereto apply to property or documents kept therein in the bank's vault under the joint control of lessor and lessee;

(p) The words "state bank" or "state banking institution" mean a bank chartered under the laws of West Virginia, as distinguished from a national banking association; and

(q) The words "trust business" mean the functions, services and activities contained, detailed and embraced in section fourteen, article four of this chapter, and as elsewhere defined by law and as may be included within the meaning of the term "banking business."

ARTICLE 2. DIVISION OF BANKING.

§31A-2-4. Jurisdiction of commissioner; powers, etc., of department transferred to commissioner; powers and duties of commissioner.

(a) Subject to the powers vested in the board by article three of this chapter, the commissioner shall have supervision and jurisdiction over state banks, industrial loan companies, building and loan associations, supervised lenders, credit unions, and all other persons now or hereafter made subject to his supervision or jurisdiction. All powers, duties, rights and privileges vested in the department are hereby vested in the commissioner. He shall be the chief executive officer of the department of banking and shall be responsible for the department's organization, services and personnel, and for the orderly and efficient administration, enforcement and execution of the provisions of this chapter and all laws vesting authority or powers in or prescribing duties or functions for the department or the commissioner.

(b) The commissioner shall:

(1) Maintain the office for the department at the state capitol, and there keep a complete record of all the department's transactions, of the financial conditions of all financial institutions and such records of the activities of other
persons as the commissioner may deem important. Notwith- 
withstanding any other provision of the code of West Vir- 
ginia, heretofore or hereafter enacted, the records relating 
to the financial condition of any financial institution and 
any information contained therein shall be confidential 
for the use of the commissioner and authorized personnel 
of the department of banking. No person shall divulge 
any information contained in any such records except as 
hereafter authorized in response to a valid subpoena or 
subpoena duces tecum issued pursuant to law in a criminal 
proceeding or in a civil enforcement action brought by 
the state or federal regulatory authorities. Subpoenas shall 
first be directed to the commissioner, who shall authorize 
disclosure of relevant records and information therefrom 
for good cause, upon imposing terms and conditions as 
are deemed necessary to protect the confidential nature of 
the records, the financial integrity of the financial institu- 
tion or the person to which the records relate, and the 
legitimate privacy interests of any individual named in 
such records. Conformity with federal procedures shall be 
sought where the institution maintains federal deposit 
insurance. The commissioner shall have and may exercise 
reasonable discretion as to the time, manner and extent the 
other records in his office and the information contained 
therein shall be available for public examination;

(2) Require all financial institutions to comply with all 
the provisions of this chapter and other applicable laws, or 
any rule and regulation promulgated or order issued 
thereunder; and

(3) Investigate all alleged violations of this chapter and 
all other laws which he is required to enforce and of any 
rule and regulation promulgated or order issued thereun- 
der.

(c) In addition to all other authority and powers vested 
in the commissioner by provisions of this chapter and 
other applicable laws, the commissioner is authorized and 
empowered:

(1) To provide for the organization of the department 
and the procedures and practices thereof and implement 
the same by the promulgation of rules and regulations and
forms as appropriate, which rules and regulations shall be promulgated in accordance with article three, chapter twenty-nine-a of this code;

(2) Employ, direct, discipline, discharge and establish qualifications and duties for all personnel for the department, including, but not limited to, examiners, assistant examiners, conservators and receivers, to establish the amount and condition of bonds for such thereof as he deems appropriate and to pay the premiums thereon, and if he so elects, to have all such personnel subject to and under the classified service of the state personnel department;

(3) To cooperate with organizations, agencies, committees and other representatives of financial institutions of the state in connection with schools, seminars, conferences and other meetings to improve the responsibilities, services and stability of the financial institutions;

(4) In addition to the examinations required by section six of this article, to inspect, examine and audit the books, records, accounts and papers of all financial institutions at such times as circumstances in his opinion may warrant;

(5) To call for and require all such data, reports and information from financial institutions under his jurisdiction, at such times and in such form, content and detail, deemed necessary by him in the faithful discharge of his duties and responsibilities in the supervision of the financial institutions;

(6) Subject to the powers vested in the board by article three of this chapter, to supervise the location, organization, practices and procedures of financial institutions and, without limitation on the general powers of supervision thereof, to require financial institutions to:

(A) Maintain their accounts consistent with such regulations as he may prescribe and in accordance with generally accepted accounting practices;

(B) Observe methods and standards which he may prescribe for determining the value of various types of assets;
(C) Charge off the whole or any part of an asset which at the time of his action could not lawfully be acquired;

(D) Write down an asset to its market value;

(E) Record or file writings creating or evidencing liens or other interests in property;

(F) Obtain financial statements from prospective and existing borrowers;

(G) Obtain insurance against damage and loss to real estate and personal property taken as security;

(H) Maintain adequate insurance against such other risks as he may deem and determine to be necessary and appropriate for the protection of depositors and the public;

(I) Maintain an adequate fidelity bond or bonds on its officers and employees;

(J) Take such other action as may in his judgment be required of the institution in order to maintain its stability, integrity and security as required by law and all rules and regulations promulgated by him; and

(K) Verify any or all asset or liability accounts;

(7) Subject to the powers vested in the board by article three of this chapter, to receive from any person or persons and to consider any request, petition or application relating to the organization, location, conduct, services, policies and procedures of any financial institution and to act thereupon in accordance with any provisions of law applicable thereto;

(8) In connection with the investigations required by subdivision (3), subsection (b) of this section, to issue subpoenas and subpoenas duces tecum, administer oaths, examine persons under oath, and hold and conduct hearings, any such subpoenas or subpoenas duces tecum to be issued, served and enforced in the manner provided in section one, article five, chapter twenty-nine-a of this code. Any person appearing and testifying at such a hearing may be accompanied by an attorney employed by him;
(9) To issue declaratory rulings in accordance with the provisions of section one, article four, chapter twenty-nine-a of this code;

(10) To study and survey the location, size and services of financial institutions, the geographic, industrial, economic and population factors affecting the agricultural, commercial and social life of the state, and the needs for reducing, expanding or otherwise modifying the services and facilities of financial institutions in the various parts of the state, and to compile and keep current data thereon to aid and guide him in the administration of the duties of his office;

(11) To implement all of the provisions of this chapter (except the provisions of article three) and all other laws which he is empowered to administer and enforce by the promulgation of rules and regulations in accordance with the provisions of article three, chapter twenty-nine-a of this code;

(12) To implement the provisions of chapter forty-six-a of this code applicable to consumer loans and consumer credit sales by the promulgation of rules and regulations in accordance with the provisions of article three, chapter twenty-nine-a of this code so long as said rules and regulations do not conflict with any rules and regulations promulgated by the state's attorney general;

(13) To foster and encourage a working relationship between the department of banking and financial institutions, credit, consumer, mercantile and other commercial and finance groups and interests in the state in order to make current appraisals of the quality, stability and availability of the services and facilities of financial institutions;

(14) To provide to financial institutions and the public copies of the West Virginia statutes relating to financial institutions, suggested drafts of bylaws commonly used by financial institutions, and such other forms and printed materials as may be found by him to be helpful to financial institutions, their shareholders, depositors and patrons, and to make reasonable charges therefor;
(15) To delegate the powers and duties of his office, other than the powers and duties in this subsection herein-after excepted, to qualified department personnel, who shall act under the direction and supervision of the commissioner and for whose acts he shall be responsible, but the commissioner may delegate to the deputy commissioner of banking and to no other department personnel the following powers, duties and responsibilities, all of which are hereby granted to and vested in the commissioner and for all of which the commissioner shall likewise be responsible:

(A) To order any person to cease violating any provision or provisions of this chapter or other applicable law or any rule and regulation promulgated or order issued thereunder;

(B) To order any person to cease engaging in any unsound practice or procedure which may detrimentally affect any financial institution or depositor thereof;

(C) To revoke the certificate of authority, permit or license of any financial institution except a banking institution in accordance with the provisions of section thirteen of this article; and

(D) To accept an assurance in writing that the person will not in the future engage in the conduct alleged by the commissioner to be unlawful, which conduct could be subject to an order under the provisions of this chapter. Such assurance of voluntary compliance shall not be considered an admission of violation for any purpose, except that if a person giving such assurance fails to comply with its terms, the assurance is prima facie evidence that prior to such assurance the person engaged in conduct described in such assurance;

(16) To seek and obtain from courts, civil penalties against any person who violates this chapter, the rules issued pursuant thereto, or any orders lawfully entered by the commissioner or board of banking and financial institutions in an amount not less than fifty dollars nor more than five thousand dollars for each violation;
(17) To receive from state banking institutions applications to change the locations of their principal offices and to approve or disapprove such applications; and

(18) To take such other action as he may deem necessary to enforce and administer the provisions of this chapter (except the provisions of article three) and all other laws which he is empowered to administer and enforce, and to apply to any court of competent jurisdiction for appropriate orders, writs, processes and remedies.


(a) If any financial institution shall fail or refuse to comply with any order of the commissioner, entered pursuant to the provisions of paragraphs (A) or (B), subdivision (15) subsection (c), section four of this article, the commissioner may apply to any court having jurisdiction for a prohibitory or mandatory injunction or other appropriate remedy to compel obedience to such order; or may apply to the board of banking and financial institutions for appropriate relief.

(b) In addition, if any financial institution other than a state bank shall fail or refuse to comply with any order of the commissioner, entered pursuant to the provisions of paragraphs (A) or (B), subdivision (15), subsection (c), section four of this article, the commissioner may make and enter an order revoking the certificate of authority, permit or license of such institution to engage in the business of a financial institution in this state.

§31A-2-14. Banking interests of and acceptance of gratuities by officers and employees of department.

No officer or employee of the department of banking shall be an officer, director, trustee, attorney, owner, shareholder, or partner in or of any financial institution. Nor shall any officer or employee of the department receive, directly or indirectly, any payment or gratuity from any financial institution, or be engaged in any manner in the negotiation of loans for others therewith. Nothing herein shall prohibit said persons from having shares as a result of membership in a credit union, mutual savings associa-
tion, or similar depository institution by virtue of being a
customer; nor shall it prohibit the receipt of interest or
other payments on accounts made in the regular course of
business.

ARTICLE 3. BOARD OF BANKING AND FINANCIAL INSTITU-
TIONS.

§31A-3-2. General powers and duties.

(a) In addition to other powers conferred by this chap-
ter, 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 recom-
   mend 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;

5. Grant permission and authority to a financial insti-
tution:

   (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 com-
   ply 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 insti-
tutions of the same type subject to the jurisdiction of the
   federal government may hereafter be authorized by feder-
al 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 inter-
est 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 Legisla-
ture, unless the Legislature shall at such session enact leg-
islation authorizing the financial institution participation,
activity, services and procedures 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; and

(6) Seek judicial enforcement to compel compliance
with any of its orders and to seek and obtain civil penalties
as set forth under this chapter.

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

(1) Restrict the withdrawal of deposits from any finan-
cial institution when, in the judgment of the board, ex-
traordinary circumstances make such restrictions neces-
sary 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, in-
competent 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 accordance 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 commissioner entered pursuant to the provisions of paragraph (A) or (B), subdivision (15), 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 of financial institution business;

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

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

(10) Approve or disapprove the application of any
state bank to purchase the business and assets and assume
the liabilities of a national banking association, or merge
or consolidate with a national banking association to form
a resulting state bank in accordance with the provisions of
section seven, article seven of this chapter; and

(11) In addition to any authority granted pursuant to
section twelve, article eight of this chapter, incident to the
approval of an application pursuant to subdivisions (7) or
(8) of this subsection, permit the bank the application of
which is so approved to operate its banking business under
its name from the premises of the bank the business and
assets of which have been purchased and the liabilities of
which have been assumed by such applicant bank or with
which such applicant bank has merged or consolidated:
Provided, That such permission may be granted only if
the board has made the findings required by subsection
(f), section three of this article and such applicant bank
has no common directors or officers nor common owner-
ship of stock exceeding ten percent of total 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 obli-
gations of a banking institution in regard to its sharehold-
ers, 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 provi-
sions 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.

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENER-
ALLY.
§31A-4-2. Use of terms; unlawfully engaging in banking business; penalties; enforcement.

(a) No person doing business in this state, except a banking institution or a person authorized by the commissioner under the terms of this section, shall use or advertise in connection with such business, or as a designation or title thereof, the term "bank," "banker," "banking," "banking company," "industrial bank," "savings bank," or "trust company," or engage in the banking or trust business in this state.

(b) It shall be unlawful for any such person other than banking institutions as herein excepted, to advertise or hold himself, itself, or themselves, as the case may be, out to the public in any manner indicating, directly, indirectly or by implication, that any of them is engaged in the banking or trust business or is authorized and approved to engage therein in this state.

(c) The commissioner may authorize a person to utilize the term "bank" or "banc" in connection with non-profit organizations or medical businesses where the term would have a common meaning separate and apart from a financial institution and would not result in confusion to the public (e.g., food bank; medical databank); and in connection with bank holding companies or their non-banking affiliates where the term denotes the entities' common affiliation and would not result in confusion to the public.

(d) Any violation of the provisions of this section shall constitute a misdemeanor offense, punishable as provided in section fifteen of article eight of this chapter.

(e) The commissioner of banking or any one or more banking institutions, acting individually or jointly, may petition the circuit court of the county in which any violation of the provisions of this section occur or are threatened to occur for injunction or other appropriate judicial remedies for enforcement of the provisions hereof and the prevention of further or continued violations thereof.

§31A-4-4. Majority of stock to be paid in full before engaging in business; sale of additional stock; organi-
zational expense fund; affidavit of incorporators; penalties; stockholder preemptive rights.

(a) The majority of the capital stock of every banking institution, chartered under the laws of this state, shall be paid in full in cash and issued to the ultimate subscribers, not an agent or broker acting on behalf of the organizers, before it shall be authorized to engage in business, except such business as is incidental and necessary preliminary to its organization. Authorized but unissued stock may be issued from time to time to employees of the bank pursuant to a stock option or stock purchase plan approved by the commissioner or may be issued for such other purposes and consideration as may be approved by the board of directors of said bank. The commissioner shall establish the minimum amount of authorized capital stock which shall be paid in full in cash and issued prior to opening the bank for business.

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

(c) A majority of the incorporators shall file with the West Virginia board of banking and financial institutions at the time of filing of the charter application an affidavit:
(1) Setting forth all expenses incurred or to be incurred in connection with the organization of the institution, subscriptions for its shares and sale of its shares, and (2) stating that no fee, compensation or commission prohibited by this section has been or will be paid or incurred. The board may disapprove the charter application on account of any violation of this section and order the incorporators to restore any sum expended for other than proper organizational expense. In addition, violations hereof shall constitute a misdemeanor offense punishable as prescribed in section fifteen, article eight of this chapter.

(d) Unless otherwise provided in the charter, whenever additional stock is offered for sale, stockholders of record on the date of the offer shall have the right to subscribe to such proportion of the shares as the stock held by them bears to the total of the outstanding stock. This right shall be transferable but shall terminate if not exercised within sixty days of the offer. If the right be not exercised, the stock shall not be offered for sale to others at a lower price without the stockholders again being accorded a preemptive right to subscribe. No banking institution shall sell its shares of stock at less than par, but may sell its shares at such price above par as may be set by the board of directors. The preemptive rights of the stockholders, as provided in this paragraph, shall not apply to any stock issued by a banking institution, to another bank or financial institution or the stockholders thereof, pursuant to a merger or consolidation with such other bank or financial institution, or to authorized but unissued stock authorized by the charter of the banking institution.

§31A-4-6. Examination and investigation of proposed bank by board.

(a) When an agreement of incorporation, fully complying with the requirements of this article, has been filed with the board, it shall promptly make or cause to be made a careful examination and investigation relative to the following:

(1) The character, reputation, financial standing and motives of the organizers, incorporators and subscribers in organizing the proposed bank;
(2) The need for the facilities and services which the proposed bank will offer in the community where it is to be located, giving particular consideration to the adequacy of existing banking and trust facilities and services;

(3) The present and future ability of the community to support the proposed bank and all other existing banking and trust facilities and services in the community;

(4) The character, financial responsibility, banking experience and business qualifications of the proposed officers; and

(5) The character, financial responsibility, business experience and standing of the proposed stockholders and directors.

(b) The board shall approve or disapprove the application, in the exercise of its reasonable discretion, but shall not approve such application unless it finds:

(1) Public convenience and advantage will be promoted by the establishment of the proposed bank;

(2) Local conditions assure reasonable promise of successful operation for the proposed bank and those banks already established in the community;

(3) The proposed capital structure is adequate;

(4) The proposed officers and directors have sufficient banking experience and trust experience, if the bank proposes to engage in the trust business, ability, character and standing to assure reasonable promise of successful operation;

(5) The name of the proposed bank or trust company is not so similar as to cause confusion with the name of an existing bank; and

(6) Provision has been made for suitable banking house quarters in the community specified in the application.

(c) In the course of its examination and investigation, the board may call upon the attorney, agent or other responsible person representing the incorporators and upon
the incorporators for additional information and disclosures it deems necessary in taking appropriate action on and making proper disposition of the application.

(d) Where the agreement of incorporation is for an interim bank organized solely for the purpose of facilitating the acquisition of another bank, which interim bank will not survive the acquisition and merger, the board may dispense with further investigation and find the criteria set forth in subsections (a) and (b) of this section have been met on the basis of its examination of the performance or attributes of the surviving bank.

§31A-4-8. Directors, their qualifications and oaths.

For every state-chartered banking institution there shall be a board of not less than five nor more than twenty-five directors, who shall meet at least once each month and who shall have power to do, or cause to be done, all things that are proper to be done by the banking institution; and a majority of whom shall at all times be United States citizens and residents of this state. Every such director shall own capital stock in the banking institution of which he is a director. Said director must own shares in the aggregate par value of not less than five hundred dollars, an exception being that if a bank holding company has control of that banking institution, shares owned by a director of the subsidiary bank in the controlling bank holding company will satisfy the requirements of this section: Provided, That the director owns, in his own right, common or preferred stock of the controlling bank holding company in an amount equal to or greater than any one of the following: (i) Aggregate par value of five hundred dollars; (ii) aggregate shareholders' equity of five hundred dollars; or (iii) aggregate fair market value of five hundred dollars. Determination of the fair market value of the controlling bank holding company's stock shall be based upon the value of that stock on the date it was purchased or on the date the person became a director, whichever is greater. If a bank holding company controls more than one bank subsidiary, a director owning at least five hundred dollars of the shares of a bank holding company is qualified, if otherwise permitted by applicable
law, to serve as a director of every bank subsidiary con-
trolled by that bank holding company. Before entering on
the discharge of his duties as such director, he shall take
an oath that he will, so far as the duty devolves upon him,
diligently and honestly administer the affairs of the bank-
ing institution, and that he will not knowingly or willingly
permit to be violated any of the provisions of the laws of
this state relative to banking and banking institutions, and
that the stock standing in his name upon the books of the
banking institution is not hypothecated or pledged in any
way as security for loans obtained from or debts owing to
the banking institution of which he is a director, and that
the number of shares necessary to qualify a stockholder to
be a director are not now, and shall not at any time while
he serves as a director be pledged or hypothecated in any
manner for any debt or obligation of the director, or any
other person; which oath subscribed by him and certified
by the officer before whom it was taken shall be filed and
preserved in the office of the commissioner of banking.
Should a director fail to subscribe to or renew the oath
herein provided within sixty days after notice of his elec-
tion or re-election, or at any time after qualifying as such,
sell or dispose of, or in any manner hypothecate or pledge
as security for a debt or obligation, such qualifying shares,
or any number thereof, necessary for his qualification,
thereupon the remaining directors shall elect another di-
rector in his stead. No person shall serve as a director of
any banking institution who has evidenced personal dis-
honesty and unfitness to serve as such director by his
conduct or practice with another financial institution
which resulted in a substantial financial loss or damage
thereto or who has been convicted of any crime involving
personal dishonesty.

§31A-4-20. Stockholders’ annual meeting; financial statement;
appointment, duties and report of examining
committee; employment of accountants; examin-
ers may require presence of executive or exam-
iners.

(a) The stockholders of each state banking institution
shall meet annually and at such annual meeting it shall be
the duty of the cashier or other executive officer of such
banking institution to prepare and submit to the stockholders a clear and concise statement of the financial condition of the corporation as of the close of business on the last day of the month next preceding.

(b) At such meeting, the stockholders present in person or by proxy shall elect an examining committee composed of not less than three nor more than five persons, each of whom shall be a stockholder either in such banking institution, or, if such banking institution is controlled by a bank holding company, in that bank holding company.

(c) At such time or times as it may be directed to do so by the written request of the board of directors or the commissioner of banking, such committee shall immediately proceed to examine the condition of the bank and, upon completion of such examination, shall file its report in writing with the board of directors. Such report shall set forth in detail all items included in the assets of the bank which the committee has reason to believe are not of the value at which they appear on the books and records of the bank, and shall give the value of each of such items according to its judgment. The board of directors shall cause such report to be retained as a part of the records of the bank and shall transmit a duly authenticated copy thereof to the commissioner of banking.

(d) With the consent and approval of the stockholders, such committee may employ registered or certified public accountants to make such examination or make the same in conjunction with any official examination made by any supervisory authority.

(e) The workpapers of any audit, including any materials associated with an audit of the bank’s electronic data procedures, shall be made available to the commissioner or to the examiners of the department of banking upon request, and will be accorded confidentiality in conformity with section four, article two of this chapter.

(f) Any official examiner of the department of banking may require the presence of the examining committee or the executive committee during his examination.
§31A-4-26. Limitation on loans and extensions of credit; limitation on investments; loans to executive officers and directors of banks and employees of the banking department; exceptions; valuation of securities.

(a) (1) The total loans and extensions of credit made by a state-chartered banking institution to any one person or common enterprise and not fully secured, as determined in a manner consistent with subdivision (2) of this subsection, shall not exceed fifteen percent of the unimpaired capital and unimpaired surplus of that state-chartered banking institution initially determined for the period such loan or extension of credit is made.

(2) Where the total loans and extensions of credit by a state-chartered banking institution to any one person or common enterprise are fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to the outstanding amount of such loans and extensions, then the bank may provide such loans or extensions of up to ten percent of the unimpaired capital and unimpaired surplus of that state-chartered banking institution initially determined for the period such loan or extension is made. This limitation shall be separate from and in addition to the limitation contained in subdivision (1) of this subsection.

(3) For the purposes of this subsection:

(A) The term "loans and extensions of credit" shall include all direct or indirect advances of funds to a person made on the basis of any obligation of that person to repay the funds or repayable from specific property pledged by or on behalf of the person and to the extent specified by the commissioner of banking, such terms shall also include any liability of a state-chartered banking institution to advance funds to or on behalf of a person pursuant to a contractual commitment;

(B) The term "person" shall include an individual, partnership, sole proprietorship, society, association, firm, institution, company, public or private corporation,
not-for-profit corporation, state, governmental agency, bureau, department, division or instrumentality, political subdivision, county commission, municipality, trust, syndicate, estate or any other legal entity whatsoever, formed, created or existing under the laws of this state or any other jurisdiction;

(C) The term "unimpaired capital and unimpaired surplus" means the amount of total equity capital outstanding as indicated in the bank's most recent quarterly report of condition and income as filed with the commissioner of banking pursuant to section nineteen of this article, plus the amount of the allowance for loan losses, minus the amount of goodwill or other nonmarketable intangible assets included in such quarterly report pursuant to generally accepted accounting principles. Unrealized gains and losses on the bank's securities and loan portfolios shall be included in the calculation of total equity capital to the extent required by generally accepted accounting principles and applicable federal or state law, rule or regulation; and

(D) The term "common enterprise" includes, but is not limited to, persons and entities who are so related by business or otherwise that the expected source of repayment on the loan or extension of credit is substantially the same for each person or entity.

(4) The limitations contained in this subsection shall be subject to the following exceptions:

(A) Loans or extensions of credit arising from the discount of commercial or business paper evidencing an obligation to the person negotiating it with recourse shall not be subject to any limitation based on capital and surplus;

(B) The purchase of bankers' acceptances of the kind described in section thirteen of the Federal Reserve Act and issued by other banks shall not be subject to any limitation based on capital and surplus;

(C) Loans and extensions of credit having a term of ten months or less and secured by bills of lading, warehouse receipts, or similar documents transferring or secur-
ing title to readily marketable staples shall be subject to a limitation of twenty percent of unimpaired capital and unimpaired surplus in addition to the general limitations set forth in subdivision (1) of this subsection, provided the market value of the staples securing each additional loan or extension of credit at all times equals or exceeds one hundred fifteen percent of the outstanding amount of such loan or extension of credit. The staples shall be fully covered by insurance whenever it is customary to insure such staples. If collateral values of the staples fall below the levels required herein, to the extent that the loan is no longer in conformance with its collateral requirements and exceeds the general fifteen percent limitation, the loan must be brought into conformance within five business days, except where judicial proceedings, regulatory actions or other extraordinary occurrences prevent the bank from taking action;

(D) Loans or extensions of credit secured by bonds, notes, certificates of indebtedness or treasury bills of the United States or by other such obligations fully guaranteed as to principal and interest by the United States or by bonds, notes, certificates of indebtedness which are general obligations of the state of West Virginia or by other such obligations fully guaranteed as to principal and interest by the state of West Virginia shall not be subject to any limitation based on capital and surplus;

(E) Loans or extensions of credit to or secured by unconditional takeout commitments or guarantees of any department, agency, bureau, board, commission or establishment of the United States or of the state of West Virginia or any corporation wholly owned directly or indirectly by the United States shall not be subject to any limitation based on capital and surplus;

(F) Loans or extensions of credit secured by a segregated deposit account in the lending bank shall not be subject to any limitation based on capital and surplus;

(G) Loans or extensions of credit to any banking institution or to any receiver, conservator or other agent in charge of the business and property of such banking institution or other federally insured depository institution,
when such loans or extensions of credit are approved by
the commissioner of banking, shall not be subject to any
limitation based on capital and surplus;

(H) (i) Loans and extensions of credit arising from the
discount of negotiable or nonnegotiable installment con-
sumer paper which carries a full recourse endorsement or
unconditional guarantee by the person or common enter-
prise transferring the paper shall be subject under this
section to a maximum limitation equal to twenty-five per-
cent of such unimpaired capital and unimpaired surplus,
notwithstanding the collateral requirements set forth in
subdivision (2) of this subsection;

(ii) If the bank's files or the knowledge of its officers
of the financial condition of each maker of such consum-
er paper is reasonably adequate, and an officer of the
bank designated for that purpose by the board of directors
of the bank certifies in writing that the bank is relying
primarily upon the responsibility of each maker for pay-
ment of such loans or extensions of credit and not upon
any full or partial recourse endorsement or guarantee by
the transferor, the limitations of this section as to the loans
or extensions of credit of each such maker shall be the
sole applicable loan limitations;

(I) (i) Loans and extensions of credit secured by ship-
ing documents or instruments transferring or securing
title covering livestock or giving a lien on livestock when
the market value of the livestock securing the obligation is
not at any time less than one hundred fifteen percent of
the face amount of the note covered, shall be subject un-
der this section, to a maximum limitation equal to
twenty-five percent of such unimpaired capital and unim-
paired surplus, notwithstanding the collateral requirements
set forth in subdivision (2) of this subsection;

(ii) Loans and extensions of credit which arise from
the discount by dealers in livestock of paper given in pay-
ment for livestock, which paper carries a full recourse
endorsement or unconditional guarantee of the seller and
which are secured by the livestock being sold, shall be
subject under this section, to a limitation of twenty-five
percent of such unimpaired capital and unimpaired sur-
plus, notwithstanding the collateral requirements set forth
in subdivision (2) of this subsection;

(iii) If collateral values of the livestock documents,
instruments or discount paper fall below the levels re-
quired herein, to the extent that the loan is no longer in
conformance with its collateral requirements and exceeds
the general fifteen percent limitation, the loan must be
brought into conformance within thirty business days,
except where judicial proceedings, regulatory actions or
other extraordinary occurrences prevent the bank from
taking action;

(J) Loans or extensions of credit to the student loan
marketing association shall not be subject to any limitation
based on capital and surplus; and

(K) Loans or extensions of credit to a corporation
owning the property in which that state-chartered banking
institution is located, when that state-chartered banking
institution has an unimpaired capital and surplus of not
less than one million dollars or when approved in writing
by the commissioner of banking, shall not be subject to
any limitation based on capital and surplus.

(5) (A) The commissioner of banking may prescribe
rules to administer and carry out the purposes of this sub-
section including rules to define or further define terms
used in this subsection and to establish limits or require-
ments other than those specified in this subsection for
particular classes or categories of loans or extensions of
credit;

(B) The commissioner of banking may also prescribe
rules to deal with loans or extensions of credit, which were
not in violation of this section prior to the effective date of
this article, but which will be in violation of this section
upon the effective date of this article; and

(C) The commissioner of banking also shall have
authority to determine when a loan putatively made to a
person shall for purposes of this subsection be attributed
to another person.
(b) (1) Except as hereinafter provided or otherwise permitted by law, nothing herein contained shall authorize the purchase by a state-chartered banking institution for its own account of any shares of stock of any corporation: Provided, That a state-chartered banking institution may purchase and sell securities and stock without recourse, solely upon the order and for the account of customers.

(2) In no event shall the total amount of investment securities of any one obligor or maker held by a state-chartered banking institution for its own account, exceed fifteen percent of the unimpaired capital and unimpaired surplus of that state-chartered banking institution.

(3) For purposes of this subsection:

(A) The term "investment securities" means a marketable obligation in the form of a stock, bond, note, or debenture, commonly regarded as an investment security and that is salable under ordinary circumstances with reasonable promptness at a fair value. "Derivative security" means a type of investment security involving a financial contract whose value depends on the values of one or more underlying assets or indexes of asset values. The term derivative refers inter alia to financial contracts such as collateralized mortgage obligations ("CMOs"), forwards, futures, forward rate agreements, swaps, options, and caps /floors/collars, whose primary purpose is to transfer price risks associated with fluctuations in asset values;

(B) The term "person" shall include any individual, partnership, sole proprietorship, society, association, firm, institution, company, public or private corporation, not-for-profit corporation, state, governmental agency, bureau, department, division or instrumentality, political subdivision, county commission, municipality, trust, syndicate, estate or any other legal entity whatsoever, formed, created or existing under the laws of this state or any other jurisdiction; and
(C) The term "unimpaired capital and unimpaired surplus" shall have the same meaning as set forth in subsection (a) of this section.

(4) The limitations contained in this subsection shall be subject to the following exceptions:

(A) Obligations of the United States or its agencies;

(B) General obligations of any state or of any political subdivision thereof;

(C) Obligations issued under authority of the federal Farm Loan Act, as amended, or issued by the thirteen banks for cooperatives or any of them or the federal home loan banks;

(D) Obligations which are insured by the secretary of housing and urban development under Title XI of the National Housing Act, 12 U.S.C. §1749aaa, et seq.;

(E) Obligations which are insured by the secretary of housing and urban development hereafter in this sentence referred to as the "secretary" pursuant to Section 207 of the National Housing Act, 12 U.S.C. §1713, if the debentures to be issued in payment of such insured obligations are guaranteed as to principal and interest by the United States;

(F) Obligations, participations or other instruments of or issued by the federal national mortgage association or the government national mortgage association, or mortgages, obligations or other securities which are or ever have been sold by the federal home loan mortgage corporation pursuant to Section 305 or 306 of the federal Home Loan Mortgage Corporation Act, 12 U.S.C. §1454 or §1455;

(G) Obligations of the federal financing bank;

(H) Obligations or other instruments or securities of the student loan marketing association;

(I) Obligations of the environmental financing authority;
(J) Such obligations of any local public agency, as defined in Section 110(h) of the Housing Act of 1949, 42 U.S.C. §1460 (h) as are secured by an agreement between the local public agency and the secretary of housing and urban development in which the local public agency agrees to borrow from said secretary and said secretary agrees to lend to said local public agency, moneys in an aggregate amount which together with any other moneys irrevocably committed to the payment of interest on such obligations, will suffice to pay, when due, the interest on and all installments, including the final installment of the principal of such obligations, which moneys under the terms of said agreement are required to be used for such payments;

(K) Obligations of a public housing agency as that term is defined in the United States Housing Act of 1937, as amended, 42 U.S.C. §1437a as are secured:

(i) By an agreement between the public housing agency and the secretary in which the public housing agency agrees to borrow from the secretary, and the secretary agrees to lend to the public housing agency, prior to the maturity of such obligations, moneys in an amount which, together with any other moneys irrevocably committed to the payment of interest on such obligations, will suffice to pay the principal of such obligations with interest to maturity thereon, which moneys under the terms of said agreement are required to be used for the purpose of paying the principal of and the interest on such obligations at their maturity;

(ii) By a pledge of annual contributions under an annual contributions contract between such public housing agency and the secretary if such contract shall contain the covenant by the secretary which is authorized by Section 11, 42 U.S.C. §1437i (a)(1)(B) of the United States Housing Act of 1937, as amended, and if the maximum sum and the maximum period specified in such contract pursuant to said section, shall not be less than the annual amount and the period for payment which are requisite to provide for the payment when due of all installments of principal and interest on such obligations; or
(iii) By a pledge of both annual contributions under an annual contributions contract containing the covenant by the secretary which is authorized by Section 11 of the United States Housing Act of 1937, 42 U.S.C. §1437i(a)(1)(B), and a loan under an agreement between the local public housing agency and the secretary in which the public housing agency agrees to borrow from the secretary, and the secretary agrees to lend to the public housing agency, prior to the maturity of the obligations involved, moneys in an amount which, together with any other moneys irrevocably committed under the annual contributions contract to the payment of principal and interest on such obligations will suffice to provide for the payment when due of all installments of principal and interest on such obligations, which moneys under the terms of the agreement are required to be used for the purpose of paying the principal and interest on such obligations at their maturity; and

(L) Obligations of a corporation owning the property in which that state-chartered banking institution is located when that state-chartered banking institution has an unimpaired capital and unimpaired surplus of not less than one million dollars or when approved in writing by the commissioner of banking.

(5) Notwithstanding any other provision in this subsection, a state-chartered banking institution may purchase for its own account shares of stock issued by a corporation authorized to be created pursuant to Title IX of the Housing and Urban Development Act of 1968, 42 U.S.C. §3931 et seq., and may make investments in a partnership, limited partnership, or joint venture formed pursuant to Section 907 (a) or 907 (c) of that act, 42 U.S.C. §3937 (a) or (c), and may purchase shares of stock issued by any West Virginia housing corporation and may make investments in loans and commitments for loans to any such corporation: Provided, That in no event shall the total amount of such stock held for its own account and such investments in loans and commitments made by the state-chartered banking institution exceed at any time five percent of the unimpaired capital and unimpaired surplus of that state-chartered banking institution.
(6) Notwithstanding any other provision in this subsection, a state-chartered banking institution may purchase, for its own account, shares of stock of small business investment companies chartered under the laws of this state, which are licensed under the act of Congress known as the "Small Business Investment Act of 1958", as amended, and of business development corporations created and organized under the act of the Legislature known as the "West Virginia Business Development Corporation Act", as amended: Provided, That in no event shall any such state-chartered banking institution hold shares of stock in small business investment companies and/or business development corporations in any amount aggregating more than fifteen percent of the unimpaired capital and unimpaired surplus of that state-chartered banking institution.

(7) Notwithstanding any other provision of this subsection, a state-chartered banking institution may purchase for its own account shares of stock of a bankers' bank or a bank holding company which owns or controls such bankers' bank, but in no event shall the total amount of such stock held by such state-chartered banking institution exceed at any time fifteen percent of the unimpaired capital and unimpaired surplus of that state-chartered banking institution and in no event shall the purchase of such stock result in that state-chartered banking institution acquiring more than twenty percent of any class of voting securities of such bankers' bank or of the bank holding company which owns or controls such bankers' bank.

(8) Notwithstanding any other provision of this subsection, a state-chartered banking institution may invest its funds in any investment authorized for national banking associations. Such investments by state-chartered banking institutions shall be on the same terms and conditions applicable to national banking associations: Provided, That (i) the purchase of investment securities under this subdivision shall be made only when in the bank's prudent judgment, which judgment may be based in part on estimates which it believes to be reliable, there is adequate evidence that the obligor will be able to perform all it undertakes to perform in connection with the securities, including all debt service requirements, and that the secu-
rities may be sold with reasonable promptness at a price that corresponds to their fair value; and (ii) the purchase conforms to the requirement of subparagraph (9) of this subdivision. The commissioner of banking may, from time to time, provide notice to state-chartered banking institutions of authorized investments under this paragraph.

(9) The purchase of investment securities, including derivative securities, in which the investment characteristics are considered distinctly or predominantly speculative, or the purchase of such securities that are in default, whether as to principal or interest, is prohibited. The proper management of interest rate risk through the use of derivative or other investment securities shall not be held a speculative purpose.

(10) The commissioner of banking may prescribe rules to administer and carry out the purposes of this subsection, including rules to define or further define terms used in this subsection and to establish limits or requirements other than those specified in this subsection for particular classes or categories of investment securities.

(c) In the event of a material decline of unimpaired capital and unimpaired surplus of a state-chartered bank during any quarterly reporting period of more than twenty percent from that amount reported in the bank's most recent report of income and condition, or where there is a decrease of more than thirty percent in any twelve-month period, the bank shall review its outstanding loans, extensions of credit and investments and report to the commissioner of banking those loans, extensions and investments that exceed the limitations of this section using the bank's current re-evaluated unimpaired capital and unimpaired surplus. The report shall detail the bank's position in each such loan, extension of credit, and investment. The commissioner may, within his or her discretion, require that such loans, extensions of credit and investments be brought into conformity with the bank's current re-evaluated legal lending and investment limitation.

(d) Notwithstanding any other provision of this section, in order to ensure a bank's safety and soundness, the
 commissioner of banking retains the authority to direct
any state-chartered bank to recalculate its lending and
investment limits at more frequent intervals than otherwise
provided herein and to require all outstanding loans, ex-
tensions of credit and investments be brought into confor-
mance with the re-evaluated limitations. In such cases, the
commissioner will provide the bank a written notice ex-
plaining briefly the specific reasons why the determination
was made to require the more frequent calculations.

(e) Loans to directors or executive officers are subject
to the following limitations:

(1) A director or executive officer of any banking
institution may not borrow, directly or indirectly, from a
banking institution with which he is connected, any sum of
money without the prior approval of a majority of the
board of directors or discount committee of the banking
institution, or of any duly constituted committee whose
duties include those usually performed by a discount
committee. Such approval shall be by resolution adopted
by a majority vote of such board or committee, exclusive
of the director or executive officer to whom the loan is
made.

(2) If any director or executive officer of any bank
owns or controls a majority of the stock of any corpora-
tion, or is a partner in any partnership, a loan to such cor-
poration or partnership shall constitute a loan to such
director or officer.

(3) For purposes of this subsection, an "executive
officer" means:

(A) A person who participates or has authority to
participate, other than in the capacity of a director, in
major policy-making functions of the company or bank,
regardless of any official title, salary or other compensa-
tion. The chairman of the board, the president, every vice
president, the cashier, the secretary and the treasurer of a
company or bank are considered executive officers unless
the officer is excluded, by resolution of the board of di-
rectors or by the bylaws of the bank or company from
participation, other than in the capacity of director, in
major policy-making functions of the bank or company, and the officer does not actually participate therein.

(B) An executive officer of a company of which the bank is a subsidiary, and any other subsidiary of that company, unless the executive officer of the subsidiary is excluded, by name or by title, from participation in major policy-making functions of the bank by resolutions of the boards of directors of both the subsidiary and the bank and does not actually participate in such major policy-making functions.

(f) The commissioner of banking and any employee of the department of banking may not borrow, directly or indirectly, any sum of money from a state-chartered banking institution which is subject to examination by the commissioner or the department.

(g) Securities purchased by a state-chartered banking institution shall be entered upon the books of the bank at actual cost. For the purpose of calculating the undivided profits applicable to the payment of dividends, securities shall not be valued at a valuation exceeding their present cost as determined by amortization of premiums and accretion of discounts pursuant to generally accepted accounting principles, that is, by charging to profit and loss a sum sufficient to bring them to par at maturity: Provided, That securities held for trade or permissible marketable equity securities and any other types of debt securities which pursuant to generally accepted accounting principles are to be carried on the bank's books at fair market value shall have the unrealized market appreciation and depreciation included in the income and capital as permitted by such generally accepted accounting principles.

(h) The market value of securities purchased and loans extended by a state-chartered banking institution shall be reported in all public reports and quarterly reports to the commissioner pursuant to section nineteen of this article in accordance with generally accepted accounting principles and any applicable state or federal law, rule or regulation.
ARTICLE 8. HEARINGS; ADMINISTRATIVE PROCEDURES; JUDICIAL REVIEW; UNLAWFUL ACTS; PENALTIES.

§31A-8-8a. Unauthorized disclosure of information from a financial institution examination report.

Any person having a duty to the financial institution or to a state agency to maintain the confidentiality of examination reports by the department of banking, who willfully and knowingly makes an unauthorized public disclosure of confidential information or records from a state-chartered depository financial institution examination report shall be subject to suit by the commissioner or attorney general for civil penalties of up to one thousand dollars: Provided, That no such suit shall lie where the person was ordered to make the disclosure by a court of competent jurisdiction, or lawfully compelled to make the disclosure as part of a legislative or executive agency investigation. Officials of the financial institution or the commissioner may refer matters of possible wrongdoing discovered by the examination which impact on the institution's soundness or financial integrity, or which concern possible criminal conduct to law enforcement officials, or other appropriate governmental regulatory agencies, including appropriate state bar or ethics officials and such referral shall not constitute public disclosure.

§31A-8-12. Procedure for authorizing 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.

(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 subsid-
...
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 hun-
dred 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 subsec-
tion; 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 as-
sumption of the liabilities of, or merger or consolidation
with, another banking institution.

(d) Notwithstanding any other provision of this chap-
ter 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 institu-
tion 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 institu-
tion's principal office.

(f) Any banking institution which is authorized to
establish branch banks pursuant to this section may pro-
vide 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 exami-
nation and investigation fee of one thousand dollars for
each filed application for a branch bank that is to be es-
tablished by the construction, lease or acquisition of a
branch bank facility, and two thousand five hundred dol-
lars for a branch bank that is to be established by the pur-
chase 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 investiga-
tion within ninety days from the date on which such appli-
cation 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 re-
ceived.

(i) Upon completion of the examination and investiga-
tion with respect to such application, the board shall, if a
hearing be required pursuant to subsection (j) of this sec-
tion, 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 attorneys of record, if any.

(j) No state banking institution may establish a branch bank until the board, following an examination, investigation, 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 promoted 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: Provided, That where the branch results from the merger or acquisition of banking institutions, the findings of fact required in subdivisions (1) through (3) hereof may be based on the performance and suitability of the previous banking offices.

(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 of this article.

§31A-8-12b. Installation and operation of customer bank communication terminals permitted.

(a) Any banking institution as defined in section two, article one of this chapter, individually or jointly with one or more other banking institutions or other federally insured financial institutions having their principal offices in this state, or any combination thereof, may upon thirty days prior written notice filed with the commissioner, install, operate and engage in banking business by means of one or more customer bank communication terminals.

Any banking institution which installs and operates a customer bank communication terminal:

(1) Shall make such customer bank communication terminal available for use by other banking institutions; and

(2) May make such customer bank communication terminal available for use by other federally insured financial institutions, all in accordance with regulations promulgated by the commissioner. Such customer bank communication terminals shall not be considered to be branch banks or branch offices, agencies or places of business or off-premises walk-in or drive-in banking facilities; nor shall the operation of such customer bank communication terminals to communicate with and permit financial transactions to be carried out through a nonexclusive access interchange system be considered to make any banking institution which is part of such a nonexclusive access interchange system to have illegal branch banks or branch offices, agencies or places of business or off-premises walk-in or drive-in banking facilities.

(b) Notwithstanding the provisions of subdivision (1), subsection (a) of this section, a customer bank communication terminal located on the premises of the principal office or branch bank of a banking institution or on the premises of an authorized off-premises facility need not be made available for use by any other banking institution or its customers.
(c) For purposes of this section, "customer bank communication terminal" means any electronic device or machine owned, leased, or operated by a bank, together with all associated equipment, structures and systems, including, without limitation, point of sale terminals, through or by means of which a customer and a banking institution may engage in any banking transactions, whether transmitted to the banking institution instantaneously or otherwise, including, without limitation, the receipt of deposits of every kind, the receipt and dispensing of cash, requests to withdraw money from an account or pursuant to a previously authorized line of credit, receiving payments payable at the bank or otherwise transmitting instructions to receive, transfer or pay funds for a customer's benefit. Personal computers, telephones, and associated equipment which enable a bank customer to conduct banking transactions at their home or office through links to their bank's computer or telephone network, do not constitute a "customer bank communication terminal" under this section. All transactions initiated through a customer bank communication terminal shall be subject to verification by the banking institution.

(d) No person, other than (1) a banking institution authorized to engage in the banking business in this state; or (2) a credit union authorized to conduct business in this state, may operate any automatic teller machine ("ATM") or automatic loan machine ("ALM") located in this state.

(e) For the purposes of this section, "point of sale terminal" means a customer bank communication terminal used for the primary purpose of either transferring funds to or from one or more deposit accounts in a banking institution or segregating funds in one or more deposit accounts in a banking institution for future transfer, or both, in order to execute transactions between a person and his customers incident to sales, including, without limitation, devices and machines which may be used to implement and facilitate check guaranty and check authorization programs.

(f) Nothing in this section prevents point of sale terminals and associated equipment from being owned, leased,
or operated by non-banking entities: *Provided, however,* that such persons may not engage in the business of banking by using point of sale devices. The use of a point of sale terminal to enable a customer or other person to withdraw and obtain cash of more than fifty dollars in excess of the sales transaction purchase amount, will be presumed to constitute engaging in the business of banking.

(g) Except for customer bank communication terminals located on the premises of the principal office or a branch bank of the banking institution or on the premises of an authorized off-premises walk-in or drive-in banking facility, a customer bank communication terminal shall be unattended or attended by persons not employed by any banking institution utilizing the terminal: *Provided,* That:

1. Employees of the banking institution may be present at such terminal not located on the premises of an authorized off-premises facility solely for the purposes of installing, maintaining, repairing and servicing same; and

2. A banking institution may provide an employee to instruct and assist customers in the operation thereof: *Provided,* That such employee shall not engage in any other banking activity.

(h) The commissioner shall prescribe by regulation the procedures and standards regarding the installation and operation of customer bank communication terminals, including, without limitation, the procedure for the sharing thereof.

§31A-8-15. General Penalties.

1. (a) Upon conviction for any misdemeanor offense under the provisions of this chapter, an offending financial institution shall be fined not more than five thousand dollars nor less than fifty dollars and may, in the discretion of the court in consideration of the nature of the offense, be required to forfeit its corporate charter and franchise. Upon conviction of any individual, whether officer, director, agent, employee or any other person connected or not connected with a financial institution, of any misdemeanor offense under the provisions of this
chapter, the offending individual shall be fined not more 
than five thousand dollars nor less than fifty dollars and 
may, in the discretion of the court, be confined in the 
county jail for not more than twelve months.

(b) Any person or financial institution which violates 
the provisions of this chapter, the rules adopted thereun- 
der, or a lawful order of the commissioner or board, shall, 
unless previously fined under the provisions of subsection 
(a) of this section, be subject to civil penalties in an 
amount not more than five thousand dollars nor less than 
fifty dollars in civil actions brought by the commissioner 
or the board.

§31A-8-16. Misdemeanors and felonies.

The willful failure to perform any duty required of 
any financial institution or individual pursuant to provi-
sions of this chapter, or the willful doing of any act by any 
financial institution or individual forbidden by the provi-
sions of this chapter, shall constitute a misdemeanor of-
fense, except any act which is made a felony offense by 
specific language of this article.

CHAPTER 46A. WEST VIRGINIA CONSUMER CREDIT 
AND PROTECTION ACT.

ARTICLE 3. FINANCE CHARGES AND RELATED PROVISIONS.

§46A-3-110. Right to prepay.

(1) Subject to the provisions on rebate upon prepay-
ment, the consumer may repay in full the unpaid balance 
of a consumer credit sale or a consumer loan, refinancing 
or consolidation at any time without penalty.

(2) Notwithstanding subsection one of this section, it is 
permissible within the first three years of a credit exten-
sion or loan to charge a prepayment penalty of up to one 
percent of the original principal amount in a consumer 
credit sale subject to the provisions of section one hundred 
two of this article or on a consumer loan secured by an 
interest in land: Provided, That said prepayment penalty 
may not be imposed as part of any industrial loan compa-
ny licensee or secondary mortgage lender licensee con-
tract, and that in no event can a prepayment penalty be
assessed on a refinancing within one year from the date of the prior loan.

(3) Housing loans originated by the West Virginia Housing Development Fund are exempt from the restrictions set forth in this section.
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 19th day of March, 1996.

Governor