

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1996



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HOUSE BILL No. 4624

(By Delegates Farris, Boone, Hunt,
Hutchins, Azinger, Hall and
Waltus)

Passed March 7 1996

In Effect Ninety Days From Passage

ENROLLED

H. B. 4624

(BY DELEGATES FARRIS, BEANE, HUNT, HUTCHINS,
AZINGER, HALL AND WALTERS)

[Passed March 7, 1996; in effect ninety days from passage.]

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 "banc;" 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

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for home and office banking services; nonbanking point-of-sale terminals; the increase in fines for criminal violations; the element of willfulness in criminal violations; and clarification of the limitation on prepayment penalties in loans or credits secured by land.

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.

§31A-1-2. Definitions.

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

3 (a) The word "action," in the sense of a judicial pro-
4 ceeding, means any proceeding in a court of competent
5 jurisdiction in which rights are adjudicated and deter-
6 mined and shall embrace and include recoupment, coun-
7 terclaim, setoff and other related, similar and summary
8 proceedings;

9 (b) The words "bank" and "banking institution" mean
10 a corporation heretofore or hereafter chartered to conduct
11 a banking business under the laws of West Virginia or an
12 association heretofore or hereafter authorized to conduct a
13 banking business in West Virginia under the laws of the
14 United States and having its principal office in this state
15 and shall embrace and include a savings bank, savings and
16 loan association, trust company or an institution combin-

17 ing banking and trust company facilities, functions and
18 services so chartered or authorized to conduct such busi-
19 ness in this state;

20 (c) The words "bankers' bank" mean a banking institu-
21 tion, insured by the Federal Deposit Insurance Corpora-
22 tion, the stock of which is owned exclusively by banks and
23 other depository institutions, and such banking institution
24 and all subsidiaries thereof are engaged exclusively in
25 providing services for banks and other depository institu-
26 tions and their officers, directors and employees;

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

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

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

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

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

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

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

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

49 (i) The word "department" means the department of
50 banking of West Virginia;

51 (j) The words "deputy commissioner" or "deputy com-
52 missioner of banking" mean the deputy commissioner of
53 banking of West Virginia;

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

59 (l) The words "financial institutions" mean banks,
60 building and loan associations, industrial banks, industrial
61 loan companies, supervised lenders, credit unions and all
62 other similar institutions, whether persons, firms or corpo-
63 rations, which are by law under the jurisdiction and super-
64 vision of the commissioner of banking;

65 (m) The word "officer" when referring to any financial
66 institution, means any person designated as such in the
67 bylaws and includes, whether or not so designated, any
68 executive officer, the chairman of the board of directors,
69 the chairman of the executive committee, and any trust
70 officer, assistant vice president, assistant treasurer, assistant
71 secretary, assistant trust officer, assistant cashier, assistant
72 comptroller, or any other person who performs the duties
73 appropriate to those offices, and the terms "executive offi-
74 cer" as herein used, when referring to banking institutions,
75 mean an officer of a bank whose duties involve regular,
76 active and substantial participation in the daily operations
77 of such institution and who, by virtue of his position, has
78 both a voice in the formulation of the policy of the bank
79 and responsibility for implementation of the policy, such
80 responsibility of and functions performed by the individu-
81 al, and not his title or office, being determinative of wheth-
82 er he is an "executive officer";

83 (n) The words "person" or "persons" mean any indi-
84 vidual, partnership, society, association, firm, institution,
85 company, public or private corporation, state, government-
86 tal agency, bureau, department, division or instrumentality,
87 political subdivision, county commission, municipality,
88 trust, syndicate, estate or any other legal entity whatsoever,
89 formed, created or existing under the laws of this state or
90 any other jurisdiction;

91 (o) The words "safe-deposit box" mean a safe-deposit
92 box, vault or other safe-deposit receptacle maintained by a
93 lessor bank, and the rules relating thereto apply to proper-
94 ty or documents kept therein in the bank's vault under the
95 joint control of lessor and lessee;

96 (p) The words "state bank" or "state banking institu-
97 tion" mean a bank chartered under the laws of West Vir-
98 ginia, as distinguished from a national banking associa-
99 tion; and

100 (q) The words "trust business" mean the functions,
101 services and activities contained, detailed and embraced in
102 section fourteen, article four of this chapter, and as else-
103 where defined by law and as may be included within the
104 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.

1 (a) Subject to the powers vested in the board by article
2 three of this chapter, the commissioner shall have supervi-
3 sion and jurisdiction over state banks, industrial loan com-
4 panies, building and loan associations, supervised lenders,
5 credit unions, and all other persons now or hereafter made
6 subject to his supervision or jurisdiction. All powers, du-
7 ties, rights and privileges vested in the department are
8 hereby vested in the commissioner. He shall be the chief
9 executive officer of the department of banking and shall
10 be responsible for the department's organization, services
11 and personnel, and for the orderly and efficient adminis-
12 tration, enforcement and execution of the provisions of
13 this chapter and all laws vesting authority or powers in or
14 prescribing duties or functions for the department or the
15 commissioner.

16 (b) The commissioner shall:

17 (1) Maintain the office for the department at the state
18 capitol, and there keep a complete record of all the depart-
19 ment's transactions, of the financial conditions of all finan-
20 cial institutions and such records of the activities of other

21 persons as the commissioner may deem important. Not-
22 withstanding any other provision of the code of West Vir-
23 ginia, heretofore or hereafter enacted, the records relating
24 to the financial condition of any financial institution and
25 any information contained therein shall be confidential
26 for the use of the commissioner and authorized personnel
27 of the department of banking. No person shall divulge
28 any information contained in any such records except as
29 hereafter authorized in response to a valid subpoena or
30 subpoena duces tecum issued pursuant to law in a criminal
31 proceeding or in a civil enforcement action brought by
32 the state or federal regulatory authorities. Subpoenas shall
33 first be directed to the commissioner, who shall authorize
34 disclosure of relevant records and information therefrom
35 for good cause, upon imposing terms and conditions as
36 are deemed necessary to protect the confidential nature of
37 the records, the financial integrity of the financial institu-
38 tion or the person to which the records relate, and the
39 legitimate privacy interests of any individual named in
40 such records. Conformity with federal procedures shall be
41 sought where the institution maintains federal deposit
42 insurance. The commissioner shall have and may exercise
43 reasonable discretion as to the time, manner and extent the
44 other records in his office and the information contained
45 therein shall be available for public examination;

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

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

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

58 (1) To provide for the organization of the department
59 and the procedures and practices thereof and implement
60 the same by the promulgation of rules and regulations and

61 forms as appropriate, which rules and regulations shall be
62 promulgated in accordance with article three, chapter
63 twenty-nine-a of this code;

64 (2) Employ, direct, discipline, discharge and establish
65 qualifications and duties for all personnel for the depart-
66 ment, including, but not limited to, examiners, assistant
67 examiners, conservators and receivers, to establish the
68 amount and condition of bonds for such thereof as he
69 deems appropriate and to pay the premiums thereon, and
70 if he so elects, to have all such personnel subject to and
71 under the classified service of the state personnel depart-
72 ment;

73 (3) To cooperate with organizations, agencies, commit-
74 tees and other representatives of financial institutions of
75 the state in connection with schools, seminars, conferences
76 and other meetings to improve the responsibilities, services
77 and stability of the financial institutions;

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

82 (5) To call for and require all such data, reports and
83 information from financial institutions under his jurisdic-
84 tion, at such times and in such form, content and detail,
85 deemed necessary by him in the faithful discharge of his
86 duties and responsibilities in the supervision of the finan-
87 cial institutions;

88 (6) Subject to the powers vested in the board by article
89 three of this chapter, to supervise the location, organiza-
90 tion, practices and procedures of financial institutions and,
91 without limitation on the general powers of supervision
92 thereof, to require financial institutions to:

93 (A) Maintain their accounts consistent with such regula-
94 tions as he may prescribe and in accordance with general-
95 ly accepted accounting practices;

96 (B) Observe methods and standards which he may pre-
97 scribe for determining the value of various types of assets;

- 98 (C) Charge off the whole or any part of an asset which
99 at the time of his action could not lawfully be acquired;
- 100 (D) Write down an asset to its market value;
- 101 (E) Record or file writings creating or evidencing liens
102 or other interests in property;
- 103 (F) Obtain financial statements from prospective and
104 existing borrowers;
- 105 (G) Obtain insurance against damage and loss to real
106 estate and personal property taken as security;
- 107 (H) Maintain adequate insurance against such other
108 risks as he may deem and determine to be necessary and
109 appropriate for the protection of depositors and the pub-
110 lic;
- 111 (I) Maintain an adequate fidelity bond or bonds on its
112 officers and employees;
- 113 (J) Take such other action as may in his judgment be
114 required of the institution in order to maintain its stability,
115 integrity and security as required by law and all rules and
116 regulations promulgated by him; and
- 117 (K) Verify any or all asset or liability accounts;
- 118 (7) Subject to the powers vested in the board by article
119 three of this chapter, to receive from any person or per-
120 sons and to consider any request, petition or application
121 relating to the organization, location, conduct, services,
122 policies and procedures of any financial institution and to
123 act thereupon in accordance with any provisions of law
124 applicable thereto;
- 125 (8) In connection with the investigations required by
126 subdivision (3), subsection (b) of this section, to issue
127 subpoenas and subpoenas duces tecum, administer oaths,
128 examine persons under oath, and hold and conduct hear-
129 ings, any such subpoenas or subpoenas duces tecum to be
130 issued, served and enforced in the manner provided in
131 section one, article five, chapter twenty-nine-a of this code.
132 Any person appearing and testifying at such a hearing
133 may be accompanied by an attorney employed by him;

134 (9) To issue declaratory rulings in accordance with the
135 provisions of section one, article four, chapter
136 twenty-nine-a of this code;

137 (10) To study and survey the location, size and services
138 of financial institutions, the geographic, industrial, eco-
139 nomic and population factors affecting the agricultural,
140 commercial and social life of the state, and the needs for
141 reducing, expanding or otherwise modifying the services
142 and facilities of financial institutions in the various parts of
143 the state, and to compile and keep current data thereon to
144 aid and guide him in the administration of the duties of
145 his office;

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

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

159 (13) To foster and encourage a working relationship
160 between the department of banking and financial institu-
161 tions, credit, consumer, mercantile and other commercial
162 and finance groups and interests in the state in order to
163 make current appraisals of the quality, stability and avail-
164 ability of the services and facilities of financial institutions;

165 (14) To provide to financial institutions and the public
166 copies of the West Virginia statutes relating to financial
167 institutions, suggested drafts of bylaws commonly used by
168 financial institutions, and such other forms and printed
169 materials as may be found by him to be helpful to finan-
170 cial institutions, their shareholders, depositors and patrons,
171 and to make reasonable charges therefor;

172 (15) To delegate the powers and duties of his office,
173 other than the powers and duties in this subsection herein-
174 after excepted, to qualified department personnel, who
175 shall act under the direction and supervision of the com-
176 missioner and for whose acts he shall be responsible, but
177 the commissioner may delegate to the deputy commis-
178 sioner of banking and to no other department personnel
179 the following powers, duties and responsibilities, all of
180 which are hereby granted to and vested in the commis-
181 sioner and for all of which the commissioner shall likewise
182 be responsible:

183 (A) To order any person to cease violating any provi-
184 sion or provisions of this chapter or other applicable law
185 or any rule and regulation promulgated or order issued
186 thereunder;

187 (B) To order any person to cease engaging in any un-
188 sound practice or procedure which may detrimentally
189 affect any financial institution or depositor thereof;

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

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

204 (16) To seek and obtain from courts, civil penalties
205 against any person who violates this chapter, the rules
206 issued pursuant thereto, or any orders lawfully entered by
207 the commissioner or board of banking and financial insti-
208 tutions in an amount not less than fifty dollars nor more
209 than five thousand dollars for each violation;

210 (17) To receive from state banking institutions applica-
 211 tions to change the locations of their principal offices and
 212 to approve or disapprove such applications; and

213 (18) To take such other action as he may deem neces-
 214 sary to enforce and administer the provisions of this chap-
 215 ter (except the provisions of article three) and all other
 216 laws which he is empowered to administer and enforce,
 217 and to apply to any court of competent jurisdiction for
 218 appropriate orders, writs, processes and remedies.

**§31A-2-13. Enforcement of orders of the commissioner against
 financial institutions.**

1 (a) If any financial institution shall fail or refuse to
 2 comply with any order of the commissioner, entered pur-
 3 suant to the provisions of paragraphs (A) or (B), subdivi-
 4 sion (15) subsection (c), section four of this article, the
 5 commissioner may apply to any court having jurisdiction
 6 for a prohibitory or mandatory injunction or other appro-
 7 priate remedy to compel obedience to such order; or may
 8 apply to the board of banking and financial institutions
 9 for appropriate relief.

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

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

1 No officer or employee of the department of banking
 2 shall be an officer, director, trustee, attorney, owner, share-
 3 holder, or partner in or of any financial institution. Nor
 4 shall any officer or employee of the department receive,
 5 directly or indirectly, any payment or gratuity from any
 6 financial institution, or be engaged in any manner in the
 7 negotiation of loans for others therewith. Nothing herein
 8 shall prohibit said persons from having shares as a result
 9 of membership in a credit union, mutual savings associa-

10 tion, or similar depository institution by virtue of being a
11 customer; nor shall it prohibit the receipt of interest or
12 other payments on accounts made in the regular course of
13 business.

ARTICLE 3. BOARD OF BANKING AND FINANCIAL INSTITUTIONS.

§31A-3-2. General powers and duties.

1 (a) In addition to other powers conferred by this chap-
2 ter, the board shall have the power to:

3 (1) Regulate its own procedure and practice;

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

8 (3) Advise the commissioner in all matters within his
9 jurisdiction;

10 (4) Study the organization, programs and services of
11 financial institutions and the laws relating thereto in this
12 state and in other jurisdictions, and to report and recom-
13 mend to the governor and the Legislature all such changes
14 and amendments in laws, policies and procedures relating
15 thereto as may be by it deemed proper;

16 (5) Grant permission and authority to a financial insti-
17 tution:

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

24 (B) To engage in any financial institution activity,
25 services, procedures and practices in which financial insti-
26 tutions of the same type subject to the jurisdiction of the
27 federal government may hereafter be authorized by feder-
28 al laws, rules or regulations to engage, notwithstanding any
29 contrary provision of this code; and

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

34 Any permission and authority granted by the board
35 pursuant to this subdivision shall cease and terminate upon
36 the adjournment of the next regular session of the Legisla-
37 ture, unless the Legislature shall at such session enact leg-
38 islation authorizing the financial institution participation,
39 activity, services and procedures or payment of interest
40 with respect to which such permission and authority were
41 granted, in which event such permission and authority
42 shall continue in effect until the effective date of such
43 legislation; and

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

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

49 (1) Restrict the withdrawal of deposits from any finan-
50 cial institution when, in the judgment of the board, ex-
51 traordinary circumstances make such restrictions neces-
52 sary for the protection of creditors of and depositors in
53 the affected institution;

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

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

69 (4) Approve or disapprove applications to incorporate
70 and organize state-chartered bankers' banks in accordance
71 with the provisions of sections six and seven, article four
72 of this chapter;

73 (5) Exempt a bankers' bank from any provision of this
74 chapter if the board finds that such provision is inconsis-
75 tent with the purpose for which a bankers' bank is incor-
76 porated and organized and that the welfare of the public
77 or any banking institution or other financial institution
78 would not be jeopardized thereby;

79 (6) Revoke the certificate of authority, permit, certifi-
80 cate or license of any state banking institution to engage
81 in business in this state if such institution shall fail or re-
82 fuse to comply with any order of the commissioner en-
83 tered pursuant to the provisions of paragraph (A) or (B),
84 subdivision (15), subsection (c), section four, article two
85 of this chapter, or at the board's election to direct the com-
86 missioner to apply to any court having jurisdiction for a
87 prohibitory or mandatory injunction or other appropriate
88 remedy to compel obedience to such order;

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

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

106 (9) Approve or disapprove the application of any state
107 bank to purchase the business and assets and assume the

108 liabilities of, or merge or consolidate with, another state
109 banking institution in accordance with the provisions of
110 section seven, article seven of this chapter;

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

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

134 (c) No provision of this section shall be construed to
135 alter, reduce or modify the rights of shareholders, or obli-
136 gations of a banking institution in regard to its sharehold-
137 ers, as set forth in section one hundred seventeen, article
138 one, chapter thirty-one of this code and section seven,
139 article seven of this chapter, and other applicable provi-
140 sions of this code.

141 (d) Any order entered by the West Virginia board of
142 banking and financial institutions pursuant to this section
143 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.

1 (a) No person doing business in this state, except a
2 banking institution or a person authorized by the commis-
3 sioner under the terms of this section, shall use or advertise
4 in connection with such business, or as a designation or
5 title thereof, the term "bank," "banker," "banking," "bank-
6 ing company," "industrial bank," "savings bank," or "trust
7 company," or engage in the banking or trust business in
8 this state.

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

16 (c) The commissioner may authorize a person to uti-
17 lize the term "bank" or "banc" in connection with
18 non-profit organizations or medical businesses where the
19 term would have a common meaning separate and apart
20 from a financial institution and would not result in confu-
21 sion to the public (e.g., food bank; medical databank);
22 and in connection with bank holding companies or their
23 non-banking affiliates where the term denotes the entities'
24 common affiliation and would not result in confusion to
25 the public.

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

29 (e) The commissioner of banking or any one or more
30 banking institutions, acting individually or jointly, may
31 petition the circuit court of the county in which any viola-
32 tion of the provisions of this section occur or are threat-
33 ened to occur for injunction or other appropriate judicial
34 remedies for enforcement of the provisions hereof and the
35 prevention of further or continued violations thereof.

**§31A-4-4. Majority of stock to be paid in full before engag-
ing in business; sale of additional stock; organi-**

zational expense fund; affidavit of incorporators; penalties; stockholder preemptive rights.

1 (a) The majority of the capital stock of every banking
2 institution, chartered under the laws of this state, shall be
3 paid in full in cash and issued to the ultimate subscribers,
4 not an agent or broker acting on behalf of the organizers,
5 before it shall be authorized to engage in business, except
6 such business as is incidental and necessary preliminary to
7 its organization. Authorized but unissued stock may be
8 issued from time to time to employees of the bank pursu-
9 ant to a stock option or stock purchase plan approved by
10 the commissioner or may be issued for such other purpos-
11 es and consideration as may be approved by the board of
12 directors of said bank. The commissioner shall establish
13 the minimum amount of authorized capital stock which
14 shall be paid in full in cash and issued prior to opening
15 the bank for business.

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

36 (c) A majority of the incorporators shall file with the
37 West Virginia board of banking and financial institutions
38 at the time of filing of the charter application an affidavit:

39 (1) Setting forth all expenses incurred or to be incurred in
40 connection with the organization of the institution, sub-
41 scriptions for its shares and sale of its shares, and (2) stat-
42 ing that no fee, compensation or commission prohibited
43 by this section has been or will be paid or incurred. The
44 board may disapprove the charter application on account
45 of any violation of this section and order the incorporators
46 to restore any sum expended for other than proper orga-
47 nizational expense. In addition, violations hereof shall
48 constitute a misdemeanor offense punishable as prescribed
49 in section fifteen, article eight of this chapter.

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

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

1 (a) When an agreement of incorporation, fully com-
2 plying with the requirements of this article, has been filed
3 with the board, it shall promptly make or cause to be made
4 a careful examination and investigation relative to the
5 following:

6 (1) The character, reputation, financial standing and
7 motives of the organizers, incorporators and subscribers in
8 organizing the proposed bank;

9 (2) The need for the facilities and services which the
10 proposed bank will offer in the community where it is to
11 be located, giving particular consideration to the adequacy
12 of existing banking and trust facilities and services;

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

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

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

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

25 (1) Public convenience and advantage will be promot-
26 ed by the establishment of the proposed bank;

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

30 (3) The proposed capital structure is adequate;

31 (4) The proposed officers and directors have sufficient
32 banking experience and trust experience, if the bank pro-
33 poses to engage in the trust business, ability, character and
34 standing to assure reasonable promise of successful opera-
35 tion;

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

39 (6) Provision has been made for suitable banking
40 house quarters in the community specified in the applica-
41 tion.

42 (c) In the course of its examination and investigation,
43 the board may call upon the attorney, agent or other re-
44 sponsible person representing the incorporators and upon

45 the incorporators for additional information and discl-
46 sures it deems necessary in taking appropriate action on
47 and making proper disposition of the application.

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

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

1 For every state-chartered banking institution there
2 shall be a board of not less than five nor more than
3 twenty-five directors, who shall meet at least once each
4 month and who shall have power to do, or cause to be
5 done, all things that are proper to be done by the banking
6 institution; and a majority of whom shall at all times be
7 United States citizens and residents of this state. Every
8 such director shall own capital stock in the banking insti-
9 tution of which he is a director. Said director must own
10 shares in the aggregate par value of not less than five hun-
11 dred dollars, an exception being that if a bank holding
12 company has control of that banking institution, shares
13 owned by a director of the subsidiary bank in the control-
14 ling bank holding company will satisfy the requirements
15 of this section: *Provided*, That the director owns, in his
16 own right, common or preferred stock of the controlling
17 bank holding company in an amount equal to or greater
18 than any one of the following: (i) Aggregate par value of
19 five hundred dollars; (ii) aggregate shareholders' equity of
20 five hundred dollars; or (iii) aggregate fair market value
21 of five hundred dollars. Determination of the fair market
22 value of the controlling bank holding company's stock
23 shall be based upon the value of that stock on the date it
24 was purchased or on the date the person became a direc-
25 tor, whichever is greater. If a bank holding company con-
26 trols more than one bank subsidiary, a director owning at
27 least five hundred dollars of the shares of a bank holding
28 company is qualified, if otherwise permitted by applicable

29 law, to serve as a director of every bank subsidiary con-
30 trolled by that bank holding company. Before entering on
31 the discharge of his duties as such director, he shall take
32 an oath that he will, so far as the duty devolves upon him,
33 diligently and honestly administer the affairs of the bank-
34 ing institution, and that he will not knowingly or willingly
35 permit to be violated any of the provisions of the laws of
36 this state relative to banking and banking institutions, and
37 that the stock standing in his name upon the books of the
38 banking institution is not hypothecated or pledged in any
39 way as security for loans obtained from or debts owing to
40 the banking institution of which he is a director, and that
41 the number of shares necessary to qualify a stockholder to
42 be a director are not now, and shall not at any time while
43 he serves as a director be pledged or hypothecated in any
44 manner for any debt or obligation of the director, or any
45 other person; which oath subscribed by him and certified
46 by the officer before whom it was taken shall be filed and
47 preserved in the office of the commissioner of banking.
48 Should a director fail to subscribe to or renew the oath
49 herein provided within sixty days after notice of his elec-
50 tion or re-election, or at any time after qualifying as such,
51 sell or dispose of, or in any manner hypothecate or pledge
52 as security for a debt or obligation, such qualifying shares,
53 or any number thereof, necessary for his qualification,
54 thereupon the remaining directors shall elect another di-
55 rector in his stead. No person shall serve as a director of
56 any banking institution who has evidenced personal dis-
57 honesty and unfitness to serve as such director by his
58 conduct or practice with another financial institution
59 which resulted in a substantial financial loss or damage
60 thereto or who has been convicted of any crime involving
61 personal dishonesty.

**§31A-4-20. Stockholders' annual meeting; financial statement;
appointment, duties and report of examining
committee; employment of accountants; examiners
may require presence of executive or exam-
ining committee.**

- 1 (a) The stockholders of each state banking institution
- 2 shall meet annually and at such annual meeting it shall be
- 3 the duty of the cashier or other executive officer of such

4 banking institution to prepare and submit to the stock-
5 holders a clear and concise statement of the financial con-
6 dition of the corporation as of the close of business on the
7 last day of the month next preceding.

8 (b) At such meeting, the stockholders present in per-
9 son or by proxy shall elect an examining committee com-
10 posed of not less than three nor more than five persons,
11 each of whom shall be a stockholder either in such bank-
12 ing institution, or, if such banking institution is controlled
13 by a bank holding company, in that bank holding compa-
14 ny.

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

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

34 (e) The workpapers of any audit, including any mate-
35 rials associated with an audit of the bank's electronic data
36 procedures, shall be made available to the commissioner
37 or to the examiners of the department of banking upon
38 request, and will be accorded confidentiality in conformity
39 with section four, article two of this chapter.

40 (f) Any official examiner of the department of bank-
41 ing may require the presence of the examining committee
42 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.

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

9 (2) Where the total loans and extensions of credit by a
10 state-chartered banking institution to any one person or
11 common enterprise are fully secured by readily market-
12 able collateral having a market value, as determined by
13 reliable and continuously available price quotations, at
14 least equal to the outstanding amount of such loans and
15 extensions, then the bank may provide such loans or ex-
16 tensions of up to ten percent of the unimpaired capital and
17 unimpaired surplus of that state-chartered banking institu-
18 tion initially determined for the period such loan or exten-
19 sion is made. This limitation shall be separate from and in
20 addition to the limitation contained in subdivision (1) of
21 this subsection.

22 (3) For the purposes of this subsection:

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

32 (B) The term "person" shall include an individual,
33 partnership, sole proprietorship, society, association, firm,
34 institution, company, public or private corporation,

35 not-for-profit corporation, state, governmental agency,
36 bureau, department, division or instrumentality, political
37 subdivision, county commission, municipality, trust, syndi-
38 cate, estate or any other legal entity whatsoever, formed,
39 created or existing under the laws of this state or any other
40 jurisdiction;

41 (C) The term "unimpaired capital and unimpaired
42 surplus" means the amount of total equity capital out-
43 standing as indicated in the bank's most recent quarterly
44 report of condition and income as filed with the commis-
45 sioner of banking pursuant to section nineteen of this
46 article, plus the amount of the allowance for loan losses,
47 minus the amount of goodwill or other nonmarketable
48 intangible assets included in such quarterly report pursu-
49 ant to generally accepted accounting principles. Unreal-
50 ized gains and losses on the bank's securities and loan
51 portfolios shall be included in the calculation of total
52 equity capital to the extent required by generally accepted
53 accounting principles and applicable federal or state law,
54 rule or regulation; and

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

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

62 (A) Loans or extensions of credit arising from the
63 discount of commercial or business paper evidencing an
64 obligation to the person negotiating it with recourse shall
65 not be subject to any limitation based on capital and sur-
66 plus;

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

71 (C) Loans and extensions of credit having a term of
72 ten months or less and secured by bills of lading, ware-
73 house receipts, or similar documents transferring or secur-

74 ing title to readily marketable staples shall be subject to a
75 limitation of twenty percent of unimpaired capital and
76 unimpaired surplus in addition to the general limitations
77 set forth in subdivision (1) of this subsection, provided the
78 market value of the staples securing each additional loan
79 or extension of credit at all times equals or exceeds one
80 hundred fifteen percent of the outstanding amount of
81 such loan or extension of credit. The staples shall be fully
82 covered by insurance whenever it is customary to insure
83 such staples. If collateral values of the staples fall below
84 the levels required herein, to the extent that the loan is no
85 longer in conformance with its collateral requirements and
86 exceeds the general fifteen percent limitation, the loan
87 must be brought into conformance within five business
88 days, except where judicial proceedings, regulatory actions
89 or other extraordinary occurrences prevent the bank from
90 taking action;

91 (D) Loans or extensions of credit secured by bonds,
92 notes, certificates of indebtedness or treasury bills of the
93 United States or by other such obligations fully guaran-
94 teed as to principal and interest by the United States or by
95 bonds, notes, certificates of indebtedness which are general
96 obligations of the state of West Virginia or by other such
97 obligations fully guaranteed as to principal and interest by
98 the state of West Virginia shall not be subject to any limi-
99 tation based on capital and surplus;

100 (E) Loans or extensions of credit to or secured by
101 unconditional takeout commitments or guarantees of any
102 department, agency, bureau, board, commission or estab-
103 lishment of the United States or of the state of West Vir-
104 ginia or any corporation wholly owned directly or indi-
105 rectly by the United States shall not be subject to any
106 limitation based on capital and surplus;

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

110 (G) Loans or extensions of credit to any banking
111 institution or to any receiver, conservator or other agent in
112 charge of the business and property of such banking insti-
113 tution or other federally insured depository institution,

114 when such loans or extensions of credit are approved by
115 the commissioner of banking, shall not be subject to any
116 limitation based on capital and surplus;

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

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

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

147 (ii) Loans and extensions of credit which arise from
148 the discount by dealers in livestock of paper given in pay-
149 ment for livestock, which paper carries a full recourse
150 endorsement or unconditional guarantee of the seller and
151 which are secured by the livestock being sold, shall be
152 subject under this section, to a limitation of twenty-five
153 percent of such unimpaired capital and unimpaired sur-

154 plus, notwithstanding the collateral requirements set forth
155 in subdivision (2) of this subsection;

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

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

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

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

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

187 (C) The commissioner of banking also shall have
188 authority to determine when a loan putatively made to a
189 person shall for purposes of this subsection be attributed
190 to another person.

191 (b) (1) Except as hereinafter provided or otherwise
192 permitted by law, nothing herein contained shall autho-
193 rize the purchase by a state-chartered banking institution
194 for its own account of any shares of stock of any cor-
195 poration: *Provided*, That a state-chartered banking institu-
196 tion may purchase and sell securities and stock without
197 recourse, solely upon the order and for the account of
198 customers.

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

205 (3) For purposes of this subsection:

206 (A) The term "investment securities" means a market-
207 able obligation in the form of a stock, bond, note, or de-
208 benture, commonly regarded as an investment security
209 and that is salable under ordinary circumstances with rea-
210 sonable promptness at a fair value. "Derivative security"
211 means a type of investment security involving a financial
212 contract whose value depends on the values of one or
213 more underlying assets or indexes of asset values. The
214 term derivative refers inter alia to financial contracts such
215 as collateralized mortgage obligations ("CMOs"), forwards,
216 futures, forward rate agreements, swaps, options, and caps
217 /floors/collars, whose primary purpose is to transfer price
218 risks associated with fluctuations in asset values;

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

228 (C) The term "unimpaired capital and unimpaired
229 surplus" shall have the same meaning as set forth in sub-
230 section (a) of this section.

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

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

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

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

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

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

250 (F) Obligations, participations or other instruments of
251 or issued by the federal national mortgage association or
252 the government national mortgage association, or mort-
253 gages, obligations or other securities which are or ever
254 have been sold by the federal home loan mortgage corpo-
255 ration pursuant to Section 305 or 306 of the federal
256 Home Loan Mortgage Corporation Act, 12 U.S.C. §1454
257 or §1455;

258 (G) Obligations of the federal financing bank;

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

261 (I) Obligations of the environmental financing author-
262 ity;

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

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

280 (i) By an agreement between the public housing agen-
281 cy and the secretary in which the public housing agency
282 agrees to borrow from the secretary, and the secretary
283 agrees to lend to the public housing agency, prior to the
284 maturity of such obligations, moneys in an amount which,
285 together with any other moneys irrevocably committed to
286 the payment of interest on such obligations, will suffice to
287 pay the principal of such obligations with interest to matu-
288 rity thereon, which moneys under the terms of said agree-
289 ment are required to be used for the purpose of paying
290 the principal of and the interest on such obligations at
291 their maturity;

292 (ii) By a pledge of annual contributions under an
293 annual contributions contract between such public hous-
294 ing agency and the secretary if such contract shall contain
295 the covenant by the secretary which is authorized by Sec-
296 tion 11, 42 U.S.C. §1437i (a)(1)(B) of the United States
297 Housing Act of 1937, as amended, and if the maximum
298 sum and the maximum period specified in such contract
299 pursuant to said section, shall not be less than the annual
300 amount and the period for payment which are requisite to
301 provide for the payment when due of all installments of
302 principal and interest on such obligations; or

303 (iii) By a pledge of both annual contributions under
304 an annual contributions contract containing the covenant
305 by the secretary which is authorized by Section 11 of the
306 United States Housing Act of 1937, 42 U.S.C. §1437i(a)
307 (1)(B), and a loan under an agreement between the local
308 public housing agency and the secretary in which the
309 public housing agency agrees to borrow from the secre-
310 tary, and the secretary agrees to lend to the public housing
311 agency, prior to the maturity of the obligations involved,
312 moneys in an amount which, together with any other mon-
313 eys irrevocably committed under the annual contributions
314 contract to the payment of principal and interest on such
315 obligations will suffice to provide for the payment when
316 due of all installments of principal and interest on such
317 obligations, which moneys under the terms of the agree-
318 ment are required to be used for the purpose of paying
319 the principal and interest on such obligations at their ma-
320 turity; and

321 (L) Obligations of a corporation owning the property
322 in which that state-chartered banking institution is located
323 when that state-chartered banking institution has an unim-
324 paired capital and unimpaired surplus of not less than one
325 million dollars or when approved in writing by the com-
326 missioner of banking.

327 (5) Notwithstanding any other provision in this sub-
328 section, a state-chartered banking institution may purchase
329 for its own account shares of stock issued by a corporation
330 authorized to be created pursuant to Title IX of the Hous-
331 ing and Urban Development Act of 1968, 42 U.S.C.
332 §3931 et seq., and may make investments in a partnership,
333 limited partnership, or joint venture formed pursuant to
334 Section 907 (a) or 907 (c) of that act, 42 U.S.C. §3937 (a)
335 or (c), and may purchase shares of stock issued by any
336 West Virginia housing corporation and may make invest-
337 ments in loans and commitments for loans to any such
338 corporation: *Provided*, That in no event shall the total
339 amount of such stock held for its own account and such
340 investments in loans and commitments made by the
341 state-chartered banking institution exceed at any time five
342 percent of the unimpaired capital and unimpaired sur-
343 plus of that state-chartered banking institution.

344 (6) Notwithstanding any other provision in this sub-
345 section, a state-chartered banking institution may pur-
346 chase, for its own account, shares of stock of small busi-
347 ness investment companies chartered under the laws of this
348 state, which are licensed under the act of Congress known
349 as the "Small Business Investment Act of 1958", as amend-
350 ed, and of business development corporations created and
351 organized under the act of the Legislature known as the
352 "West Virginia Business Development Corporation Act", as
353 amended: *Provided*, That in no event shall any such
354 state-chartered banking institution hold shares of stock in
355 small business investment companies and/or business de-
356 velopment corporations in any amount aggregating more
357 than fifteen percent of the unimpaired capital and unim-
358 paired surplus of that state-chartered banking institution.

359 (7) Notwithstanding any other provision of this sub-
360 section, a state-chartered banking institution may purchase
361 for its own account shares of stock of a bankers' bank or a
362 bank holding company which owns or controls such
363 bankers' bank, but in no event shall the total amount of
364 such stock held by such state-chartered banking institution
365 exceed at any time fifteen percent of the unimpaired capi-
366 tal and unimpaired surplus of that state-chartered banking
367 institution and in no event shall the purchase of such stock
368 result in that state-chartered banking institution acquiring
369 more than twenty percent of any class of voting securities
370 of such bankers' bank or of the bank holding company
371 which owns or controls such bankers' bank.

372 (8) Notwithstanding any other provision of this sub-
373 section, a state-chartered banking institution may invest its
374 funds in any investment authorized for national banking
375 associations. Such investments by state-chartered banking
376 institutions shall be on the same terms and conditions
377 applicable to national banking associations: *Provided*,
378 That (i) the purchase of investment securities under this
379 subdivision shall be made only when in the bank's pru-
380 dent judgment, which judgment may be based in part on
381 estimates which it believes to be reliable, there is adequate
382 evidence that the obligor will be able to perform all it
383 undertakes to perform in connection with the securities,
384 including all debt service requirements, and that the secu-

385 rities may be sold with reasonable promptness at a price
386 that corresponds to their fair value; and (ii) the purchase
387 conforms to the requirement of subparagraph (9) of this
388 subdivision. The commissioner of banking may, from
389 time to time, provide notice to state-chartered banking
390 institutions of authorized investments under this para-
391 graph.

392 (9) The purchase of investment securities, including
393 derivative securities, in which the investment characteristics
394 are considered distinctly or predominantly speculative, or
395 the purchase of such securities that are in default, whether
396 as to principal or interest, is prohibited. The proper man-
397 agement of interest rate risk through the use of derivative
398 or other investment securities shall not be held a specula-
399 tive purpose.

400 (10) The commissioner of banking may prescribe
401 rules to administer and carry out the purposes of this sub-
402 section, including rules to define or further define terms
403 used in this subsection and to establish limits or require-
404 ments other than those specified in this subsection for
405 particular classes or categories of investment securities.

406 (c) In the event of a material decline of unimpaired
407 capital and unimpaired surplus of a state-chartered bank
408 during any quarterly reporting period of more than twen-
409 ty percent from that amount reported in the bank's most
410 recent report of income and condition, or where there is a
411 decrease of more than thirty percent in any twelve-month
412 period, the bank shall review its outstanding loans, exten-
413 sions of credit and investments and report to the commis-
414 sioner of banking those loans, extensions and investments
415 that exceed the limitations of this section using the bank's
416 current re-evaluated unimpaired capital and unimpaired
417 surplus. The report shall detail the bank's position in each
418 such loan, extension of credit, and investment. The com-
419 missioner may, within his or her discretion, require that
420 such loans, extensions of credit and investments be
421 brought into conformity with the bank's current
422 re-evaluated legal lending and investment limitation.

423 (d) Notwithstanding any other provision of this sec-
424 tion, in order to ensure a bank's safety and soundness, the

425 commissioner of banking retains the authority to direct
426 any state-chartered bank to recalculate its lending and
427 investment limits at more frequent intervals than otherwise
428 provided herein and to require all outstanding loans, ex-
429 tensions of credit and investments be brought into confor-
430 mance with the re-evaluated limitations. In such cases, the
431 commissioner will provide the bank a written notice ex-
432 plaining briefly the specific reasons why the determination
433 was made to require the more frequent calculations.

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

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

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

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

454 (A) A person who participates or has authority to
455 participate, other than in the capacity of a director, in
456 major policy-making functions of the company or bank,
457 regardless of any official title, salary or other compensa-
458 tion. The chairman of the board, the president, every vice
459 president, the cashier, the secretary and the treasurer of a
460 company or bank are considered executive officers unless
461 the officer is excluded, by resolution of the board of di-
462 rectors or by the bylaws of the bank or company from
463 participation, other than in the capacity of director, in

464 major policy-making functions of the bank or company,
465 and the officer does not actually participate therein.

466 (B) An executive officer of a company of which the
467 bank is a subsidiary, and any other subsidiary of that com-
468 pany, unless the executive officer of the subsidiary is ex-
469 cluded, by name or by title, from participation in major
470 policy-making functions of the bank by resolutions of the
471 boards of directors of both the subsidiary and the bank
472 and does not actually participate in such major
473 policy-making functions.

474 (f) The commissioner of banking and any employee
475 of the department of banking may not borrow, directly or
476 indirectly, any sum of money from a state-chartered bank-
477 ing institution which is subject to examination by the com-
478 missioner or the department.

479 (g) Securities purchased by a state-chartered banking
480 institution shall be entered upon the books of the bank at
481 actual cost. For the purpose of calculating the undivided
482 profits applicable to the payment of dividends, securities
483 shall not be valued at a valuation exceeding their present
484 cost as determined by amortization of premiums and ac-
485 cretion of discounts pursuant to generally accepted ac-
486 counting principles, that is, by charging to profit and loss
487 a sum sufficient to bring them to par at maturity: *Provid-*
488 *ed*, That securities held for trade or permissible market-
489 able equity securities and any other types of debt securi-
490 ties which pursuant to generally accepted accounting prin-
491 ciples are to be carried on the bank's books at fair market
492 value shall have the unrealized market appreciation and
493 depreciation included in the income and capital as permit-
494 ted by such generally accepted accounting principles.

495 (h) The market value of securities purchased and loans
496 extended by a state-chartered banking institution shall be
497 reported in all public reports and quarterly reports to the
498 commissioner pursuant to section nineteen of this article
499 in accordance with generally accepted accounting princi-
500 ples and any applicable state or federal law, rule or regula-
501 tion.

**ARTICLE 8. HEARINGS; ADMINISTRATIVE PROCEDURES;
JUDICIAL REVIEW; UNLAWFUL ACTS; PEN-
ALTIES.**

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

1 Any person having a duty to the financial institution
2 or to a state agency to maintain the confidentiality of
3 examination reports by the department of banking, who
4 willfully and knowingly makes an unauthorized public
5 disclosure of confidential information or records from a
6 state-chartered depository financial institution examina-
7 tion report shall be subject to suit by the commissioner or
8 attorney general for civil penalties of up to one thousand
9 dollars: *Provided*, That no such suit shall lie where the
10 person was ordered to make the disclosure by a court of
11 competent jurisdiction, or lawfully compelled to make the
12 disclosure as part of a legislative or executive agency in-
13 vestigation. Officials of the financial institution or the
14 commissioner may refer matters of possible wrongdoing
15 discovered by the examination which impact on the insti-
16 tution's soundness or financial integrity, or which concern
17 possible criminal conduct to law enforcement officials, or
18 other appropriate governmental regulatory agencies, in-
19 cluding appropriate state bar or ethics officials and such
20 referral shall not constitute public disclosure.

**§31A-8-12. Procedure for authorizing of branch banks; pen-
alties for violation of section.**

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

7 (1) Acceptance of a deposit or allowing a withdrawal
8 at the banking offices of any subsidiary, as defined in
9 section two, article eight-a of this chapter, for credit or
10 debit to the customer's account at any other subsidiary of
11 the same bank holding company is permissible and does
12 not constitute branch banking. In addition, the conduct of
13 activity at bank offices as an agent for any bank subsid-

14 iary of the same bank holding company shall be permitted
15 to the same extent allowed by federal law for national
16 banks pursuant to 12 U.S.C. 1828, and does not constitute
17 branch banking; nor shall such activity constitute a viola-
18 tion of section forty-two, article four of this chapter: *Pro-*
19 *vided*, That no banking institution may utilize that agency
20 relationship to evade state consumer protection laws, in-
21 cluding usury laws, or any other applicable laws of this
22 state, or to conduct any activity that is not
23 financially-related, as that term is defined by section two,
24 article eight-c of this chapter.

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

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

49 (b) Except for a bank holding company, it shall be
50 unlawful for any individual, partnership, society, associa-
51 tion, firm, institution, trust, syndicate, public or private
52 corporation, or any other legal entity, or combination of
53 entities acting in concert, to directly or indirectly own,

54 control or hold with power to vote, twenty-five percent or
55 more of the voting shares of each of two or more banks,
56 or to control in any manner the election of a majority of
57 the directors of two or more banks.

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

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

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

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

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

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

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

88 (f) Any banking institution which is authorized to
89 establish branch banks pursuant to this section may pro-
90 vide the same banking services and exercise the same

91 powers at each such branch bank as may be provided and
92 exercised at its principal banking house.

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

100 (h) The commissioner shall prescribe the form of the
101 application for a branch bank and shall collect an exami-
102 nation and investigation fee of one thousand dollars for
103 each filed application for a branch bank that is to be es-
104 tablished by the construction, lease or acquisition of a
105 branch bank facility, and two thousand five hundred dol-
106 lars for a branch bank that is to be established by the pur-
107 chase of the business and assets and assumption of the
108 liabilities of, or merger or consolidation with another
109 banking institution. Notwithstanding the above, if the
110 merger or consolidation is between an existing banking
111 institution and a bank newly incorporated solely for the
112 purpose of facilitating the acquisition of the existing
113 banking institution, the commissioner shall collect an
114 examination and investigation fee of five hundred dollars.
115 The board shall complete the examination and investiga-
116 tion within ninety days from the date on which such appli-
117 cation and fee are received, unless the board request in
118 writing additional information and disclosures concerning
119 the proposed branch bank from the applicant banking
120 institution, in which event such ninety-day period shall be
121 extended for an additional period of thirty days plus the
122 number of days between the date of such request and the
123 date such additional information and disclosures are re-
124 ceived.

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

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

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

143 (3) After such hearing and consideration of all the
144 testimony and evidence, the board shall make and enter an
145 order approving or disapproving the application, which
146 order shall be accompanied by findings of fact and con-
147 clusions of law as specified in section three, article five,
148 chapter twenty-nine-a of this code, and a copy of such
149 order and accompanying findings and conclusions shall
150 be served upon all parties to such hearing, and their attor-
151 neys of record, if any.

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

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

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

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

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

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

177 (6) The establishment of the proposed branch bank
178 would not have the effect in any section of the state of
179 substantially lessening competition, nor tend to create a
180 monopoly or in any other manner be in restraint of trade,
181 unless the anticompetitive effects of the establishment of
182 that proposed branch bank are clearly outweighed in the
183 public interest by the probable effect of the establishment
184 of the proposed branch bank in meeting the convenience
185 and needs of the community to be served by that pro-
186 posed branch bank: *Provided*, That where the branch
187 results from the merger or acquisition of banking institu-
188 tions, the findings of fact required in subdivisions (1)
189 through (3) hereof may be based on the performance and
190 suitability of the previous banking offices.

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

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

206 (m) Any violation of any provision of this section
207 shall constitute a misdemeanor offense punishable by

208 applicable penalties as provided in section fifteen of this
209 article.

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

1 (a) Any banking institution as defined in section two,
2 article one of this chapter, individually or jointly with one
3 or more other banking institutions or other federally in-
4 sured financial institutions having their principal offices in
5 this state, or any combination thereof, may upon thirty
6 days prior written notice filed with the commissioner,
7 install, operate and engage in banking business by means
8 of one or more customer bank communication terminals.
9 Any banking institution which installs and operates a cus-
10 tomer bank communication terminal:

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

14 (2) May make such customer bank communication
15 terminal available for use by other federally insured finan-
16 cial institutions, all in accordance with regulations promul-
17 gated by the commissioner. Such customer bank commu-
18 nication terminals shall not be considered to be branch
19 banks or branch offices, agencies or places of business or
20 off-premises walk-in or drive-in banking facilities; nor
21 shall the operation of such customer bank communication
22 terminals to communicate with and permit financial trans-
23 actions to be carried out through a nonexclusive access
24 interchange system be considered to make any banking
25 institution which is part of such a nonexclusive access
26 interchange system to have illegal branch banks or branch
27 offices, agencies or places of business or off-premises
28 walk-in or drive-in banking facilities.

29 (b) Notwithstanding the provisions of subdivision (1),
30 subsection (a) of this section, a customer bank communi-
31 cation terminal located on the premises of the principal
32 office or branch bank of a banking institution or on the
33 premises of an authorized off-premises facility need not
34 be made available for use by any other banking institution
35 or its customers.

36 (c) For purposes of this section, "customer bank com-
37 munication terminal" means any electronic device or ma-
38 chine owned, leased, or operated by a bank, together with
39 all associated equipment, structures and systems, including,
40 without limitation, point of sale terminals, through or by
41 means of which a customer and a banking institution may
42 engage in any banking transactions, whether transmitted to
43 the banking institution instantaneously or otherwise, in-
44 cluding, without limitation, the receipt of deposits of every
45 kind, the receipt and dispensing of cash, requests to with-
46 draw money from an account or pursuant to a previously
47 authorized line of credit, receiving payments payable at
48 the bank or otherwise transmitting instructions to receive,
49 transfer or pay funds for a customer's benefit. Personal
50 computers, telephones, and associated equipment which
51 enable a bank customer to conduct banking transactions at
52 their home or office through links to their bank's comput-
53 er or telephone network, do not constitute a "customer
54 bank communication terminal" under this section. All
55 transactions initiated through a customer bank communi-
56 cation terminal shall be subject to verification by the
57 banking institution.

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

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

74 (f) Nothing in this section prevents point of sale termi-
75 nals and associated equipment from being owned, leased,

76 or operated by non-banking entities: *Provided, however,*
77 That such persons may not engage in the business of
78 banking by using point of sale devices. The use of a point
79 of sale terminal to enable a customer or other person to
80 withdraw and obtain cash of more than fifty dollars in
81 excess of the sales transaction purchase amount, will be
82 presumed to constitute engaging in the business of bank-
83 ing.

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

91 (1) Employees of the banking institution may be pres-
92 ent at such terminal not located on the premises of an
93 authorized off-premises facility solely for the purposes of
94 installing, maintaining, repairing and servicing same; and

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

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

§31A-8-15. General Penalties.

1 (a) Upon conviction for any misdemeanor offense
2 under the provisions of this chapter, an offending finan-
3 cial institution shall be fined not more than five thousand
4 dollars nor less than fifty dollars and may, in the discre-
5 tion of the court in consideration of the nature of the
6 offense, be required to forfeit its corporate charter and
7 franchise. Upon conviction of any individual, whether
8 officer, director, agent, employee or any other person
9 connected or not connected with a financial institution, of
10 any misdemeanor offense under the provisions of this

11 chapter, the offending individual shall be fined not more
 12 than five thousand dollars nor less than fifty dollars and
 13 may, in the discretion of the court, be confined in the
 14 county jail for not more than twelve months.

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

§31A-8-16. Misdemeanors and felonies.

1 The willful failure to perform any duty required of
 2 any financial institution or individual pursuant to provi-
 3 sions of this chapter, or the willful doing of any act by any
 4 financial institution or individual forbidden by the provi-
 5 sions of this chapter, shall constitute a misdemeanor of-
 6 fense, except any act which is made a felony offense by
 7 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 (1) Subject to the provisions on rebate upon prepay-
 2 ment, the consumer may repay in full the unpaid balance
 3 of a consumer credit sale or a consumer loan, refinancing
 4 or consolidation at any time without penalty.

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

15 assessed on a refinancing within one year from the date of
16 the prior loan.

17 (3) Housing loans originated by the West Virginia
18 Housing Development Fund are exempt from the restric-
19 tions set forth in this section.

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

Randy Schreiber
Chairman Senate Committee

Rudy DeLoach
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Carroll Adams
Clerk of the Senate

Bryan W. Ray
Clerk of the House of Delegates

Earl Ray Tomblin
President of the Senate

Robert Cole
Speaker of the House of Delegates

The within is approved this the 19th
day of March, 1996.

Yaston Caputo
Governor

PRESENTED TO THE

GOVERNOR

Date

3/4/96

Time

3:40 pm

RECEIVED

96 MAR 19 PM 3:40

OFFICE OF THE GOVERNOR
SECRETARY'S OFFICE