WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1996

ENROLLED

Committee Substitute For
SENATE BILL NO. 280

(By Senator TOMBULL, Mr. President, et al.)

PASSED March 8, 1996
In Effect NINETY DAYS FROM Passage
AN ACT to repeal section four-a, article eighteen, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section two, article one, chapter thirty-one-a of said code; to amend and reenact sections five and eleven, article two of said chapter; to further amend said article by adding thereto a new section, designated section twelve-a; to amend and reenact sections fourteen, fourteen-a and forty-two, article four of said chapter; to amend and reenact section twelve, article eight of said chapter; to amend and reenact article eight-a of said chapter; to further amend said chapter by adding
thereto three new articles, designated articles eight-d, eight-e and eight-f; to amend and reenact section three, article five, chapter forty-four of said code; to amend and reenact section seven, article ten of said chapter; and to amend and reenact section eleven, article one, chapter forty-four-a of said code, all relating generally to the definition of "bank" and "banking institution"; licensing of financial institutions; trust authority of interstate banks; the acquisition, by in-state and out-of-state bank holding companies, of banks and bank holding companies in West Virginia and the application process, standards for approval, effect on competition, acquisition deposit limitations in lieu of antitrust depository caps, provision of reports, examinations, issuance of rules, business of banking, enforcement and penalties relating thereto; interstate bank branching by merger, and the authority, effect on competition, acquisition deposit limitations, notice and filing requirements, powers and additional branches, examinations, reports, cooperative regulatory agreements and fees, enforcement and rules relating thereto; interstate branch banking by de novo entry; authority for West Virginia state banks to branch interstate de novo or by branch acquisition; authority for out-of-state state banks to branch into West Virginia de novo or by branch acquisition; notice and approval requirements, additional powers for out-of-state branches of West Virginia banks, examinations, reports, cooperative regulatory agreements, fees, enforcement, rules and orders and notices relating to interstate branching; and the establishment and authority of agency and representative offices of foreign banks to conduct limited banking activities, and the examinations, reports, cooperative regulatory agreements, fees, enforcement, rules and orders and notices relating thereto.

Be it enacted by the Legislature of West Virginia:

That section four-a, article eighteen, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section two, article one,
chapter thirty-one-a of said code be amended and reenacted; that sections five and eleven, article two of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section twelve-a; that sections fourteen, fourteen-a and forty-two, article four of said chapter be amended and reenacted; that section twelve, article eight of said chapter be amended and reenacted; that article eight-a of said chapter be amended and reenacted; that said chapter be further amended by adding thereto three new articles, designated articles eight-d, eight-e and eight-f; that section three, article five, chapter forty-four of said code be amended and reenacted; that section seven, article ten of said chapter be amended and reenacted; and that section eleven, article one, chapter forty-four-a of said code be amended and reenacted, all to read as follows:

CHAPTER 31A. BANKS AND BANKING.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.


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

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

9. (b) The words "bank" and "banking institution" mean a corporation or association heretofore or hereafter chartered to conduct a banking business under the laws of the United States or any state, territory, district or possession thereof, which is authorized in West Virginia to accept deposits that the depositor has a legal right to withdraw on demand and is authorized to engage in the business of commercial lending, and meets the criteria set forth in Section 2(c) of the Bank Holding Company Act, as amended, 12 U.S.C. §1841(c), and shall embrace and include a savings bank, savings and loan association,
trust company or an institution combining banking and trust company facilities, functions and services so chartered or authorized to conduct such business in this state;

(c) The words “bankers’ bank” mean a banking institution, insured by the federal deposit insurance corporation, the stock of which is owned exclusively by banks and other depository institutions, and such banking institution and all subsidiaries thereof are engaged exclusively in providing services for banks and other depository institutions and their officers, directors and employees;

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

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

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

1. A bank’s principal place of business;
2. Any customer bank communication terminals installed and operated pursuant to section twelve-b, article eight of this chapter; and
3. Any loan origination office authorized by section twelve-c, article eight of this chapter;

g) The words “commissioner” or “commissioner of banking” mean the commissioner of banking of West Virginia;

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

(i) The word “department” means the department of
banking of West Virginia;

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

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

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

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

(n) The words "out-of-state bank" or "out-of-state banking institution" mean a bank chartered under the laws of a state or United States territory, possession or
district, other than West Virginia, or organized under federal law and having its main office located in a state, United States territory, possession or district, other than West Virginia;

(c) The words “person” or “persons” mean any individual, partnership, society, association, firm, institution, company, public or private corporation, state, governmental agency, bureau, department, division or instrumentality, political subdivision, county commission, municipality, trust, syndicate, estate or any other legal entity whatsoever, formed, created or existing under the laws of this state or any other jurisdiction;

(p) The words “safe-deposit box” mean a safe-deposit box, vault or other safe-deposit receptacle maintained by a lessor bank, and the rules relating thereto apply to property or documents kept therein in the bank’s vault under the joint control of lessor and lessee;

(q) The words “state bank” or “state banking institution” mean, unless the context requires otherwise, a bank chartered under the laws of West Virginia, as distinguished from either an out-of-state bank or a national banking association and is also referred to as a “West Virginia state bank” or “West Virginia state banking institution”; and

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

ARTICLE 2. DIVISION OF BANKING.

§31A-2-5. Certificate or license to engage in business; filing of amendments to charter, bylaws and foreign statutes.

(a) No person shall engage or continue in the business of a financial institution in this state without a license or certificate to do so issued in accordance with this section, or other applicable law, which license or certificate
remains unsuspended, unexpired and unrevoked except that a corporation which proposes to apply for such license or certificate may secure its charter, adopt bylaws, elect its directors and officers and perfect its organization.

(b) Application for such license or certificate shall be upon such forms and contain such information as the commissioner may prescribe. In connection with such applications every corporate financial institution shall file a certified copy of its charter and bylaws, a statement as to the amount of capital that has been subscribed and paid in and a statement of its financial condition duly verified under oath by its president or vice president and its cashier or secretary as the case may be and every financial institution other than a corporation shall file a verified statement of its financial condition.

(c) If the application be that of a West Virginia state banking institution, the commissioner of banking shall examine the information, documents and statements submitted and, if he finds that such banking institution has adopted bylaws which provide practical, safe, just and equitable rules and methods for the management of its business and it has complied in all respects with the provisions of this chapter and other applicable laws, he shall issue to it a certificate or license permitting it to engage in business. If the application be that of a financial institution other than a banking institution, the commissioner of banking shall examine the information, documents and statements submitted, and, if he finds that such financial institution has adequate resources for the proposed business and has provided practical, safe, just and equitable rules and methods for the management of its business, and it has complied in all respects with the provisions of this chapter and other applicable laws and that the public convenience and advantage will be promoted by the issuance of a certificate or license thereto, he shall issue to it a certificate or license permitting it to engage in business: Provided, That any supervised lender which is operating in good standing in
44 accordance with the provisions of article four, chapter
45 forty-six-a of this code shall be presumed to have estab-
46 lished that the public convenience and advantage will be
47 promoted in regard to its application for a certificate of
48 authority to operate as an industrial loan company as
49 defined in article seven, chapter thirty-one of this code in
50 the same location for which it is licensed as a supervised
51 lender. Such certificate or license shall be preserved and
52 displayed in the place of business of such banking or
53 other financial institution.

54 (d) In addition to the requirements of subsection (b) of
55 this section, every foreign corporation applying for a
56 license or certificate to engage in the business of a
57 financial institution in this state, other than an out-of-
58 state banking institution, shall file with the commissioner
59 of banking a copy of the laws of the jurisdiction under
60 which it is organized which pertain to its organization
61 and powers and the conduct of its business. The commis-
62 sioner shall examine the information, documents and
63 statements submitted by such foreign corporation and if
64 he finds that they provide practical, safe, just and equita-
65 ble rules and methods for the management of the busi-
66 ness of the corporation, that it has adequate resources for
67 the proposed business and it has complied in all respects
68 with the provisions of this chapter and other applicable
69 laws and that the public convenience and advantage will
70 be promoted by the issuance of a license or certificate
71 thereto, he shall issue to such corporation a certificate or
72 license permitting it to engage in business in this state,
73 which certificate or license shall authorize such corpora-
74 tion to engage in the business of the type of financial
75 institution specified therein, until the thirtieth day of the
76 following June. Thereafter a new certificate or license
77 shall be secured annually by any such foreign corpora-
78 tion. The fee for the original and each additional license
79 or certificate issued to a foreign corporation shall be one
80 hundred dollars, unless otherwise provided by statute. A
81 verified statement of the financial condition of every such
82 foreign corporation shall be filed with the commissioner
before the issuance of each annual certificate or license. Such certificate or license shall be preserved and displayed in the place of business of such corporation.

(e) No amendment of the charter or bylaws of any domestic or foreign corporation, other than an out-of-state banking institution, engaging in business in this state as a financial institution shall become effective until the proposed change shall have been submitted to and approved by the commissioner of banking; but, if the commissioner does not disapprove such proposed change within twenty days after it is received by him, it shall be deemed to have been approved.

(f) Nothing contained in this code shall authorize any person to engage in the banking business in this state except corporations chartered to conduct a banking business under the laws of West Virginia and which hold a license or certificate to do so issued under this section, associations authorized to conduct a banking business in West Virginia under the laws of the United States and having their principal place of business in this state, out-of-state banks authorized to conduct the business of banking in this state pursuant to articles eight-a, eight-d and eight-e of this chapter, or foreign banks authorized to conduct limited banking activities through licensed agency and representative offices in this state pursuant to article eight-f of this chapter or through licensed federal branches or agencies permitted under section seven, article eight-f of this chapter.

§31A-2-11. Annual deposit and loan reports by banking institutions.

1 In addition to other reports that may be required under this chapter, every banking institution with a main office or branch located in this state shall file with the commissioner an annual report specifying for its main office and each branch (excluding automated teller machines) in this state:

1 (1) The location of each such office, including county
8 and, where applicable, municipality;

9 (2) The amount of deposits held by each such office as
10 of the end of the preceding calendar year; and

11 (3) The amount of loans outstanding by each such office
12 at the end of the preceding calendar year.

13 The foregoing report shall be based upon the bank’s
14 allocation of its deposit base and loan portfolio among its
15 offices. The report shall be filed with the commissioner
16 on or before the fifteenth day of February of each year on
17 forms prescribed by the commissioner. This requirement
18 may be met by the filing of such report by the bank’s
19 bank holding company pursuant to subsection (a), section
20 seven, article eight-a of this chapter.

§31A-2-12a. Establishment of deposit acquisition limitation.

1 After a review of the structure of depository institu-
2 tions in the state of West Virginia, the Legislature hereby
3 determines that:

4 (a) It is in the best interest of this state and its citizens
5 to foster and encourage healthy competition among its
6 domestic depository institutions;

7 (b) Obtaining excessive concentration or control of the
8 deposit resources of this state by merger or acquisition is
9 antithetical to fostering a competitive environment; and

10 (c) Therefore, an acquisition or merger shall not be
11 permitted under this chapter or otherwise if upon con-
12 summation of the transaction, the resulting depository
13 institution or its holding company, including any deposi-
14 tory institution(s) affiliated therewith, would assume
15 sufficient additional deposits to cause it to control
16 deposits in this state in excess of the following acquisi-
17 tion deposit limitation amount: Twenty percent of the
18 total amount of all deposits held by insured depository
19 institutions, which permissible amount shall increase to
20 twenty-five percent of such total deposits on the thirty-
21 first day of May, one thousand nine hundred ninety-
22 seven.
(d) The term "depository institutions", as used in this section, shall include, but is not limited to, state-chartered banking institutions, national banking associations, federal savings and loan associations, bank holding companies, savings and loan holding companies, federal savings banks, state-chartered credit unions and federally-chartered credit unions.

(e) Any merger or acquisition contrary to this provision is unlawful: Provided, That the commissioner may by rule adopt a procedure whereby said acquisition deposit limitation as set forth herein may be waived for good cause shown.

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

§31A-4-14. Trust powers of banking institutions.

(a) Every state banking institution which files the reports required in the following section and which is not otherwise prohibited by the commissioner or federal bank regulators from doing so, shall have and exercise the following powers:

(1) All the powers, rights and privileges of any state banking institution;

(2) To act as trustee, assignee, special commissioner, general or special receiver, guardian, executor, administrator, committee, agent, curator or in any other fiduciary capacity, and to take, assume, accept and execute trusts of every description not inconsistent with the constitution and laws of the United States of America or of this state; and to receive, hold, manage and apply any sinking fund on the terms and for the purposes specified in the instrument creating such fund;

(3) To act as registrar, transfer agent or dividend or coupon paying agent for any corporation;

(4) To make, hold and dispose of investments and establish common trust funds, and account therefor, pursuant to the provisions of chapter forty-four of this code;
(5) To purchase and sell and take charge of and receive the rents, issues and profits of any real estate for other persons or corporations;

(6) To act as trustee or agent in any collateral trust and in order to secure the payment of any obligations of any person, firm, private corporation, public corporation, public body or public agency to receive and hold in trust any items of personal property (including without limitation notes, bonds, debentures, obligations and certificates for shares of stock) with the right in case of default to sell and dispose of such personal property and to collect, settle and adjust any obligations for the payment of money, and at any sale of such personal property held by it, to purchase the same for the benefit of all or any of the holders of the obligations, to secure the payment of which such items of personal property were pledged and delivered to the trustee or agent. Any such sale may be made without any proceedings in any court, and at such times and upon such terms as may be specified in the instrument or instruments creating the trust, or, in the absence of any specification of terms, at such time and upon such terms as the trustee shall deem reasonable; and

(7) To do and perform any act or thing requisite or necessary in, or incidental to, the exercise of the general powers herein set forth.

(b) All national banks having their main office in this state which have been, or hereafter may be, authorized under the laws of the United States to act as trustee and in other fiduciary capacities in the state of West Virginia shall have all the rights, powers, privileges and immunities conferred hereunder, provided they comply with the requirements hereof.

(c) Banks having their main office in another state which lawfully have a branch in this state pursuant to the provisions of federal law or articles eight-d or eight-e of this chapter which have been, or hereafter may be, authorized under the laws of the United States or the
§31A-4-14a. Transfer of fiduciary accounts or relationships between affiliated subsidiary banks of a bank holding company.

(a) Notwithstanding any other provision of this code, and unless the will, deed or other instrument creating a trust or fiduciary account or relationship specifically provides otherwise, any affiliate subsidiary which is empowered with and authorized to exercise trust powers, or otherwise performs fiduciary services for a fee, may, without any order or other action on the part of any court or otherwise, transfer to any other affiliate subsidiary exercising or authorized to exercise trust powers any or all rights, franchises and interests in its fiduciary accounts or relationships including, but not limited to, any or all appointments, designations and nominations and any other rights, franchises and interests, as trustee, executor, administrator, guardian, committee, escrow agent, transfer and paying agent of stocks and bonds and every other fiduciary capacity; and the transferee or receiving affiliate subsidiary shall hold and enjoy all rights of property, franchises and interests in the same manner and to the same extent as such rights, franchises and interests were held or enjoyed by the transferor affiliate subsidiary. As to transfers to an affiliate subsidiary pursuant to this section, the receiving affiliate subsidiary shall take, receive, accept, hold, administer and discharge any grants, gifts, bequests, devises, conveyances, trusts, powers and appointments made by deed, deed of trust, will, agreement, order of court or otherwise to, in favor of, or in the name of, the transferor affiliate subsidiary, whether made, executed or entered before or after such transfer and whether to vest or become effective before or after such transfer, as fully and to the same
effect as if the receiving affiliate subsidiary had been named and in such deed, deed of trust, will, agreement, order or other instrument instead of such transferor affiliate subsidiary. All acts taken or performed in its own name or in the name of or on behalf of the transferor affiliate subsidiary by any receiving affiliate subsidiary as trustee, agent, executor, administrator, guardian, depository, registrar, transfer agent or other fiduciary with respect to fiduciary accounts or relationships transferred pursuant to this section are as good, valid and effective as if made by the transferor affiliate subsidiary.

(b) For purposes of this section, the term “affiliate subsidiary” means any two or more subsidiaries (as defined in section two, article eight-a of this chapter) which are “banks” or “banking institutions” (as those terms are defined in section two, article one of this chapter) and which have a common bank holding company as their parent company. For purposes of this section, the term “bank holding company” shall have the meaning set forth in section one, article eight-a of this chapter.

(c) At least thirty days before any transfer authorized by this section, the transferor affiliate subsidiary shall send a statement of intent to transfer together with the name and address of the transferee or receiving affiliated subsidiary by regular United States mail to the most recent known address of all persons who appear in the records of the transferor affiliate subsidiary as having a vested present interest in the trust, fiduciary account or relationship to be transferred.

(d) This section shall be applicable to both domestic and foreign bank holding company affiliate subsidiaries.

§31A-4-42. Unlawful for persons other than banking institutions to engage in the banking business; penalties.

1 No person, except banking institutions chartered under the laws of this state, or authorized to conduct a banking
business in this state under the laws of the United States
of America or those chartered under the laws of another
state or the United States of America with branch offices
in this state under the provisions of articles eight-d and
eight-e of this chapter, shall engage in the business of
banking or the trust business in the state of West Virginia,
or shall receive or accept deposits of money, or borrow
money by receiving and giving credits for deposits, or by
issuing certificates of deposits or certificates of indebted-
ness, or by making and negotiating any writing purport-
ing to be a bond, contract or other obligation, the perfor-
mance of which requires the holder or other party to
make deposits of money with the issuer or receive or
accept deposits by means of any other plan, pretext,
scheme, shift or device.

Nothing contained in this section shall affect the rights,
privileges, objects or purposes delegated to other corpo-
rations by the general corporation law or other laws of
this state.

Any corporation or individual who violates any of the
provisions of this section shall be guilty of a misde-
meanor, and, upon conviction, shall be fined not more
than five thousand dollars, and, in addition to such
penalty, every corporation so offending shall forfeit its
corporate franchise, and every individual so offending
shall be subject to a further penalty by confinement in
jail for not more than one year.

ARTICLE 8. HEARINGS; ADMINISTRATIVE PROCEDURES; JUDICIAL
REVIEW; UNLAWFUL ACTS; PENALTIES.

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

(a) Except as otherwise provided herein, no banking
institution shall engage in business at any place other
than at its principal office in this state, at a branch bank
in this state, at a customer bank communication terminal
permitted by section twelve-b of this article or at any loan origination office permitted by section twelve-c of this article.

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

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

(3) Any banking institution which on the first day of January, one thousand nine hundred eighty-four, was authorized to operate an off-premises walk-in or drive-in
facility, pursuant to the law then in effect, may, as of the seventh day of June, one thousand nine hundred eighty-four, operate such facility as a branch bank and it shall not be necessary, for the continued operation of such branch bank, to obtain additional approvals, notwithstanding the provisions of subsection (d) of this section and subdivision (6), subsection (b), section two, article three of this chapter.

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

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

(1) The construction, lease or acquisition of branch bank facilities within any county of this state; or

(2) The purchase of the business and assets and assumption of the liabilities of, or merger or consolidation with, another banking institution.

(d) Notwithstanding any other provision of this chapter to the contrary, subject to and in furtherance of the board’s authority under the provisions of subdivision (6), subsection (b), section two, article three of this chapter, and subdivision (g) of this section, the board may approve or disapprove the application of any state banking institution to establish a branch bank.

(e) The main office or a branch of a West Virginia state banking institution may not be relocated without the approval by order of the commissioner.

(f) Any banking institution which is authorized to establish branch banks pursuant to this section may
provide the same banking services and exercise the same
powers at each such branch bank as may be provided and
exercised at its principal banking house.

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

(h) The commissioner shall prescribe the form of the
application for a branch bank and shall collect an
examination and investigation fee of one thousand
dollars for each filed application for a branch bank that
is to be established by the construction, lease or acquisi-
tion of a branch bank facility, and two thousand five
hundred dollars for a branch bank that is to be estab-
lished by the purchase of the business and assets and
assumption of the liabilities of, or merger or consolida-
tion with another banking institution. Notwithstanding
the above, if the merger or consolidation is between an
existing banking institution and a bank newly incorpo-
rated solely for the purpose of facilitating the acquisition
of the existing banking institution, the commissioner
shall collect an examination and investigation fee of five
hundred dollars. The board shall complete the examina-
tion and investigation within ninety days from the date
on which such application and fee are received, unless
the board requests in writing additional information and
disclosures concerning the proposed branch bank from
the applicant banking institution, in which event such
ninety-day period shall be extended for an additional
period of thirty days plus the number of days between the
date of such request and the date such additional infor-

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

1. Notice of such hearing shall be given to the banking institution with respect to which the hearing is to be conducted in accordance with the provisions of section two, article seven, chapter twenty-nine-a of this code, and such hearing and the administrative procedures in connection therewith shall be governed by all of the provisions of article five, chapter twenty-nine-a of this code, and shall be held at a time and place set by the board but shall not be less than ten nor more than thirty days after such notice is given.

2. At any such hearing a party may represent himself or be represented by an attorney at law admitted to practice before any circuit court of this state.

3. After such hearing and consideration of all the testimony and evidence, the board shall make and enter an order approving or disapproving the application, which order shall be accompanied by findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this code, and a copy of such order and accompanying findings and conclusions shall be served upon all parties to such hearing, and their attorneys of record, if any.

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

1. Public convenience and advantage will be promoted by the establishment of the proposed branch bank;

2. Local conditions assure reasonable promise of
154  successful operation of the proposed branch bank and of
155  those banks and branches thereof already established in
156  the community;
157  (3) Suitable physical facilities will be provided for the
158  branch bank;
159  (4) The applicant state-chartered banking institution
160  satisfies such reasonable and appropriate requirements
161  as to sound financial condition as the commissioner or
162  board may from time to time establish by regulation;
163  (5) The establishment of the proposed branch bank
164  would not result in a monopoly, nor be in furtherance of
165  any combination or conspiracy to monopolize the busi-
166  ness of banking in any section of this state; and
167  (6) The establishment of the proposed branch bank
168  would not have the effect in any section of the state of
169  substantially lessening competition, nor tend to create a
170  monopoly or in any other manner be in restraint of trade,
171  unless the anticompetitive effects of the establishment of
172  that proposed branch bank are clearly outweighed in the
173  public interest by the probable effect of the establish-
174  ment of the proposed branch bank in meeting the conve-
175  nience and needs of the community to be served by that
176  proposed branch bank.
177  If the branch results from the merger or acquisition of
178  banking institutions, the findings of fact required in
179  subdivisions (1) through (3) of this subsection may be
180  based on the performance and suitability of the previous
181  banking offices.
182  (k) Any party who is adversely affected by the order of
183  the board shall be entitled to judicial review thereof in
184  the manner provided in section four, article five, chapter
185  twenty-nine-a of this code. Any such party adversely
186  affected by a final judgment of a circuit court following
187  judicial review as provided in the foregoing sentence may
188  seek review thereof by appeal to the supreme court of
189  appeals in the manner provided in article six, chapter
190  twenty-nine-a of this code.
Pursuant to the resolution of its board of directors and with the prior written approval of the commissioner, a state banking institution may discontinue the operation of a branch bank upon at least thirty days' prior public notice given in such form and manner as the commissioner prescribes.

Any violation of any provision of this section shall constitute a misdemeanor offense punishable by applicable penalties as provided in section fifteen of this article.

ARTICLE 8A. ACQUISITIONS OF BANKS BY BANK HOLDING COMPANIES.


For purposes of this article:

(a) "Acquire" means:

(1) For a company to merge or consolidate with a bank holding company;

(2) For a company to assume direct or indirect ownership or control of:

(i) More than twenty-five percent of any class of voting shares of a bank holding company or a bank, if the acquiring company was not a bank holding company prior to such acquisition;

(ii) More than five percent of any class of voting shares of a bank holding company or a bank, if the acquiring company was a bank holding company prior to such acquisition;

(iii) All or substantially all of the assets of a bank holding company or a bank; or

(3) For a company to take any other action that results in the direct or indirect acquisition of control by such company of a bank holding company or a bank.

(b) "Affiliate" means any company that controls, is controlled by, or is under common control with a bank or another company or otherwise meets the criteria set forth in Section 2(k) of the Bank Holding Company Act, 12

25 (c) "Bank" means a corporation or association heretofore or hereafter chartered to conduct a banking business under the laws of the United States or any state, territory, district or possession thereof, which is authorized to accept deposits that the depositor has a legal right to withdraw on demand and is authorized to engage in the business of commercial lending and meets the criteria set forth in Section 2(c) of the Bank Holding Company Act, 12 U.S.C. §1841(c).

26 (d) "Bank holding company" means any company which has control over any bank or over any company that is or becomes a bank holding company as that term is set forth in Section 2(a) of the Bank Holding Company Act, 12 U.S.C. §1841(a), and unless the context requires otherwise, includes a West Virginia bank holding company, an out-of-state bank holding company and a foreign bank holding company.


28 (f) "Bank supervisory agency" means any of the following:

29 (1) Any agency of another state with primary responsibility for chartering and supervising banks; and

30 (2) The office of the comptroller of the currency, the federal deposit insurance corporation, the board of governors of the federal reserve system and any successor to these agencies.

31 (g) "Board of Banking and Financial Institutions" means the board created pursuant to article three of this chapter and is referred to herein as "board".

32 (h) "Branch" or "branch bank" has the meaning set forth in subsection (f), section two, article one of this chapter.
(i) "Commissioner" means the West Virginia commissioner of banking then in office and, where appropriate, all of his or her successors and predecessors in office.

(j) "Company" has the meaning set forth in Section 2(b) of the Bank Holding Company Act, 12 U.S.C. §1841(b), and includes a bank holding company.

(k) "Control" shall be construed consistently with Section 2(a) of the Bank Holding Company Act, 12 U.S.C. §1841(a).

(l) "Deposit" has the meaning set forth in 12 U.S.C. §1813(l) plus all deposits held by credit unions within this state.

(m) "Depository institution" means any institution included for any purpose within the definitions of "insured depository institution" as set forth in 12 U.S.C. §§1813(c)(2) and (3).

(n) "Foreign bank holding company" means a bank holding company that is organized under the laws of a country other than the United States (including any territory or possession thereof).

(o) "Home state regulator" means, with respect to an out-of-state bank holding company, the bank supervisory agency of the state in which such company maintains its principal place of business.

(p) "Out-of-state bank holding company" means:

(1) A bank holding company that is not a West Virginia bank holding company; and

(2) Unless the context requires otherwise, includes a foreign bank holding company.

(q) "Principal place of business" of a bank holding company means the state in which the total deposits of its bank subsidiaries were the greatest on the later of the first day of July, one thousand nine hundred sixty-six, or the date on which such company became a bank holding company.
94 (r) “State” means any state, territory or other possession of the United States, including the District of Columbia.

97 (s) “Subsidiary” has the meaning set forth in Section 2(d) of the Bank Holding Company Act, 12 U.S.C. §1841(d).

100 (t) “West Virginia bank” means a bank that is:

101 (1) Organized under the laws of the state of West Virginia; or

103 (2) Organized under federal law and has its main office in this state.

105 (u) “West Virginia bank holding company” means a bank holding company that:

107 (1) Had its principal place of business in this state on the first day of July, one thousand nine hundred sixty-six or the date on which it became a bank holding company, whichever is later; and

111 (2) Is not controlled by a bank holding company other than a West Virginia bank holding company.

113 (v) “West Virginia state bank” means a bank organized under the laws of the state of West Virginia.


This article sets forth the conditions under which a company may acquire a West Virginia state bank or may form or acquire a West Virginia bank holding company. This article is intended not to discriminate against out-of-state bank holding companies or against foreign bank holding companies in any manner that would violate Section 3(d) of the Bank Holding Company Act, 12 U.S.C. §1842(d), as amended effective September 29, 1995, by Section 101 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Public Law No. 103-328.

(a) Except as otherwise expressly permitted by federal law, no company may form a West Virginia bank holding company or acquire a West Virginia state bank or a bank holding company controlling a West Virginia state bank without the prior application and approval upon order of the board.

(b) The prohibition in subsection (a) of this section shall not apply where the acquisition is made:

(1) Solely for the purpose of facilitating an acquisition otherwise permitted under this article;

(2) In a transaction arranged by the commissioner with the consent of the West Virginia board of banking and financial institutions with another state or federal bank supervisory agency to prevent the insolvency or closing of the acquired bank; or

(3) In a transaction in which a national bank or out-of-state state bank forms its own bank holding company, if the ownership rights of the former bank shareholders are substantially similar to those of the shareholders of the new bank holding company.

(c) In any transaction involving the acquisition or change in control of a West Virginia bank, West Virginia bank holding company, bank branch located in West Virginia by a bank holding company, the formation of a West Virginia bank holding company or the acquisition of a thrift institution in West Virginia by a bank holding company for which an application to the board for approval is not initially required under subsection (a) or (b) of this section, the party seeking the action shall give written notice to the commissioner at the time the application or notice is filed with the responsible federal bank supervisory agency and at least forty-five days before the effective date of the acquisition, unless a shorter period of notice is required under applicable federal law. In addition, the parties shall give the commissioner copies of all final federal and state applications filed in connection with the transaction together with a
two hundred fifty dollar filing fee. Unless preempted by federal law, the commissioner shall have thirty days from receipt of the written notice to object to any proposed transaction, require an application and request a hearing before the board on the basis that the transaction is contrary to applicable West Virginia law. The failure to object within thirty days shall be construed as consent by the commissioner, or, in his or her discretion, the commissioner may, at any time, consent in writing.

(d) To the extent that any acquisition under this section involves the merger of a bank with and into a West Virginia state bank, the merger transaction remains subject to the jurisdiction and approval of the board pursuant to section seven, article seven of this chapter.

(e) An acquisition shall not be permitted under this article or otherwise if upon consummation of the transaction, the resulting bank or bank holding company, including any depository institution(s) affiliated with the applicant, would assume sufficient additional deposits to cause it to control deposits in this state in excess of that allowed by section twelve-a, article two of this chapter: Provided, That the commissioner may by rule adopt a procedure whereby said acquisition deposit limitation as set forth in this code may be waived for good cause shown. The commissioner shall calculate the acquisition deposit limitation based upon the most recently available reports containing such deposit information filed with state or federal authorities.

§31A-8A-4. Required application.

1 (a) A company that proposes to make an acquisition under this article shall:

3 (1) File with the commissioner a copy of the application that such company has filed with the responsible federal bank supervisory agency, together with such additional information as the commissioner may prescribe; and

7 (2) Pay to the commissioner a four thousand five hundred dollar application fee.
(b) To the extent consistent with the effective discharge of the commissioner's responsibilities, the forms established under this article for application and reporting shall conform to those established by the board of governors of the federal reserve system under the Bank Holding Company Act.

(c) In connection with an application received under this article, the commissioner shall:

1. Require that prior notice of the application be published once in a daily newspaper of general circulation and provide an opportunity for public comment; and

2. Make the application available for public inspection to the extent required or permitted under applicable state law.

(d) If the applicant is an out-of-state bank holding company that is not incorporated under the laws of this state, it shall submit with the application proof that the applicant has complied with applicable requirements of West Virginia law requiring foreign corporations to qualify to do business in the state of West Virginia.

§31A-8A-5. Standards for approval.

(a) In deciding whether to approve an application for a proposed acquisition under this article, the board shall consider whether the acquisition may:

1. Be detrimental to the safety and soundness of the West Virginia state bank or the West Virginia bank holding company to be acquired which controls a West Virginia state bank, or be contrary to the best interests of the customers or shareholders of the bank whose shares are affected by the action, taking into consideration the financial and managerial resources and further prospects of the company or companies and the banks concerned;

2. Result in a substantial reduction of competition in any section of this state, or result in a monopoly, or would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the
(3) Have a significantly adverse effect on the convenience and needs of the community or communities in this state that are served by the West Virginia state bank or the West Virginia bank holding company to be acquired; or

(4) Violate the acquisition deposit limitation set forth in section three of this article.

(b) The board shall not approve an application for, nor shall the commissioner consent to, an acquisition under this article unless the West Virginia bank to be acquired, or all West Virginia bank subsidiaries of the bank holding company to be acquired, have as of the proposed date of acquisition been in existence and in continuous operation for more than two years: Provided, That this limitation shall not apply to acquisitions made on or after the thirty-first day of May, one thousand nine hundred ninety-seven.

(c) The board may approve an application which may lessen competition if the anticompetitive effects of the proposed action are clearly outweighed in the public interest by the probable effect of the action in meeting the convenience and needs of the community to be served.

(d) In deciding whether to approve an application for an acquisition under this article, the board shall consider the applicant’s record of compliance with all applicable state(s) and federal community reinvestment laws.

§31A-8A-6. Procedures relating to applications.

(a) The board shall decide whether to approve an acquisition under this article within one hundred twenty days after receipt of a completed application: Provided, That if the board or commissioner requests additional information from the applicant following receipt of a completed application, the time limit for decision by the board shall be the later of:

(i) The date set forth above in this subsection; or
(ii) Thirty days after the board's or commissioner's receipt, whichever is applicable, of the requested additional information.

(b) The board shall, in accordance with its rules, hold a public hearing in connection with an application and determine any significant issue of law or fact raised with respect to the proposed acquisition relevant and necessary for proper disposition of the application.

(c) If the board holds a full public hearing under the provisions set forth in article five, chapter twenty-nine-a of this code in connection with an application, the time limit specified in subsection (a) of this section shall be extended to the later of thirty days after the conclusion of the public hearing or thirty days after submission of all documents and materials necessary for proper adjudication of the matter, including transcripts.

(d) An application shall be deemed approved if the board takes no action on the application within the time limits specified in this section.

§31A-8A-7. Reports; examinations.

(a) To the extent specified by the commissioner by rule, order or written request, each bank holding company that directly or indirectly controls a West Virginia bank, bank branch in West Virginia or a West Virginia bank holding company shall submit to the commissioner an annual report specifying for each bank and branch (excluding automated teller machines) in this state controlled by the bank holding company:

(i) The location of each such office, including county and, where applicable, municipality;

(ii) The amount of deposits held by each such office as of the end of the preceding calendar year; and

(iii) The amount of loans outstanding by each such office at the end of the preceding calendar year.

The foregoing report shall be based upon each bank's
allocation of its deposit base and loan portfolio among its main office and branches. The report shall be filed with the commissioner on or before the fifteenth day of February of each year on forms prescribed by the commissioner.

(b) A parent bank holding company controlling a bank or bank holding company having, or through a subsidiary having, a place of business in this state shall, on or before the thirty-first day of March of each year, register with the commissioner on forms provided or prescribed by said office, which shall include such information with respect to the financial condition, operation, management and intercompany relationships of the parent bank holding company and its subsidiaries and related matters as the commissioner may deem necessary or appropriate to carry out the purposes of this article. The information required herein may be supplied by submission of copies of other similar federal or state regulatory filings or forms containing the information, unless otherwise required by order or rule.

(c) The commissioner may enter into cooperative agreements with any other bank supervisory agencies to facilitate the examination of any bank holding company that: (i) Has acquired or has an application pending to acquire a West Virginia bank or West Virginia bank holding company pursuant to this article; or (ii) operates a subsidiary doing business in this state which is subject to the jurisdiction or supervision of the commissioner. The commissioner may accept reports of examinations and other records from such other authorities in lieu of conducting his or her own examination of such bank holding companies or their subsidiaries. The commissioner may take any action jointly with other regulatory agencies having concurrent jurisdiction over such bank holding companies or subsidiaries, or may take action independently in order to carry out his or her responsibilities under this chapter.

(d) When the commissioner considers it necessary, he or
she may require any bank holding company that has
acquired a West Virginia bank, bank branch in West
Virginia or West Virginia bank holding company to
submit such reports to the commissioner as he or she
determines to be necessary or appropriate for the purpose
of carrying out his or her responsibilities.

(e) When the commissioner of banking considers it
necessary or appropriate, he or she may examine any
bank holding company that has acquired or has an
application pending to acquire a West Virginia bank,
bank branch in West Virginia or West Virginia bank
holding company. The cost of an examination in connec-
tion with an application, if in excess of the initial fee,
shall be assessed against and paid by the bank holding
company examined. The commissioner may request the
bank holding company to be examined pursuant to this
subsection to advance the estimated cost of such exami-
nation. The cost of an examination for a bank holding
company controlling a West Virginia bank or West
Virginia bank holding company regarding compliance
with the law of this state or safe and sound banking
practices shall be assessed against and paid by the bank
holding company examined.

§31A-8A-8. Authority to issue rules; cooperative agreements;
fees.

1 In order to carry out the purposes of this article, the
2 commissioner may:
3
4 (a) Adopt rules and issue orders;
5 (b) Enter into cooperative, coordinating or information-
6 sharing agreements with any other bank supervisory
7 agency or any organization affiliated with or representing
8 one or more bank supervisory agencies;
9 (c) Accept any report of examination or investigation by
10 another bank supervisory agency having concurrent
11 jurisdiction over a West Virginia state bank or a bank
12 holding company that controls a West Virginia state bank
13 in lieu of conducting the commissioner's own examina-
tion or investigation of such bank holding company or
bank;
(d) Enter into contracts with any bank supervisory
agency having concurrent jurisdiction over a West
Virginia state bank or a bank holding company that
controls a West Virginia state bank to engage the services
of such agency's examiners at a reasonable rate of
compensation, or to provide the services of the commis-
sioner's examiners to such agency at a reasonable rate of
compensation: Provided, That any such contract shall be
deemed excluded from the requirements of article three,
chapter five-a of this code;
(e) Enter into joint examinations or joint enforcement
actions with any other bank supervisory agency having
concurrent jurisdiction over any West Virginia state bank
or any bank holding company that controls a West
Virginia state bank: Provided, That the commissioner
may take any such action independently if the commis-
sioner determines that such action is necessary to carry
out his or her responsibilities under this article or to
enforce compliance with the laws of this state: Provided,
however, That in the case of an out-of-state bank holding
company, the commissioner shall recognize the authority
of the home state regulator over corporate governance
matters and the primary responsibility of the home state
regulator with respect to safety and soundness matters;
and
(f) Assess supervisory and examination fees that shall
be payable by any bank holding company operating a
bank or bank branch in West Virginia in connection with
the commissioner's performance of his or her duties
under this article. The commissioner shall charge and
collect from each bank holding company and pay into a
special revenue account in the state treasury for the
department of banking an annual assessment payable on
the fifteenth day of February computed upon the total
deposits in this state of the bank holding company as of
the last business day in December of the previous year as
is set out in section eight, article two of this chapter. The payment of such registration fee shall be accompanied by the report prescribed by the commissioner under subsection (a), section seven of this article. Examination fees may be shared with other bank supervisory agencies or any organizations affiliated with or representing one or more bank supervisory agencies in accordance with agreements between them and the commissioner.

§31A-8A-9. Authority to conduct banking business; credit card processing.

(a) Except as authorized in this article or articles eight-d, eight-e or eight-f of this chapter, no banking institution incorporated under the laws of any other state or having its principal place of business in any other state may receive deposits or transact any banking business of any kind in this state other than the lending of money.

(b) A bank holding company with its principal place of business in another state or foreign country may establish electronic data processing facilities and credit card processing facilities in West Virginia. Such facilities are those established solely for the purpose of processing accounts and/or processing transactions relating to the issuance of credit cards.


(a) The commissioner or board may enforce the provisions of this article by any appropriate action in the circuit court of Kanawha county or other court having proper jurisdiction, including an action for civil money penalties or injunctive relief: Provided, That the commissioner shall promptly give notice to the home state regulator of any enforcement action initiated against an out-of-state bank holding company and, to the extent practicable, shall consult and cooperate with the home state regulator in pursuing and resolving said enforcement action.

(b) Any violation of any provision of this article shall constitute a misdemeanor offense, which, upon conviction...
thereof, shall be punishable by applicable penalties as provided in section fifteen, article eight of this chapter.

ARTICLE 8D. INTERSTATE BRANCHING BY BANK MERGERS.

§31A-8D-1. Legislative purpose.

It is the express intent of this article to permit interstate branching by merger under Section 102 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Public Law No. 103-328, in accordance with the provisions set forth in this article.

§31A-8D-2. Definitions.

As used in this article, unless a different meaning is required by the context, the following words and phrases shall have the following meanings:

(a) “Bank” has the meaning set forth in 12 U.S.C. §1813(h): Provided, That the term “bank” shall not include any “foreign bank” as defined in 12 U.S.C. §3101(7), except that such term shall include any foreign bank organized under the laws of a territory of the United States, Puerto Rico, Guam, American Samoa or the Virgin Islands, the deposits of which are insured by the federal deposit insurance corporation.

(b) “Bank holding company” has the meaning set forth in 12 U.S.C. §1841(a)(1).

(c) “Bank supervisory agency” means:

(1) Any agency of another state with primary responsibility for chartering and supervising banks; and

(2) The office of the comptroller of the currency, the federal deposit insurance corporation, the board of governors of the federal reserve system and any successor to these agencies.

(d) “Board of Banking and Financial Institutions” means the board created pursuant to the provisions of article three of this chapter and referred to herein as “board”.

(e) "Branch" or "branch bank" has the meaning set forth in subsection (f), section two, article one of this chapter.

(f) "Commissioner" means the West Virginia commissioner of banking then in office and, where appropriate, all of his or her successors and predecessors in office.

(g) "Control" shall be construed consistently with the provisions of 12 U.S.C. §1841(a)(2).

(h) "Home state" means:

(1) With respect to a state bank, the state by which the bank is chartered;

(2) With respect to a national bank, the state in which the main office of the bank is located;

(3) With respect to a foreign bank, the state determined to be the home state of such foreign bank under 12 U.S.C. §3103(c).

(i) "Home state regulator" means, with respect to an out-of-state state bank, the bank supervisory agency of the state in which such bank is chartered.

(j) "Host state" means a state, other than the home state of a bank, in which the bank maintains, or seeks to establish and maintain a branch.

(k) "Insured depository institution" has the meaning set forth in 12 U.S.C. §1813(c)(2) and (3).

(l) "Interstate merger transaction" means:

(1) The merger or consolidation of banks with different home states, and the conversion of branches of any bank involved in the merger or consolidation into branches of the resulting bank; or

(2) The purchase of all or substantially all of the assets (including all or substantially all of the branches) of a bank whose home state is different from the home state of the acquiring bank.
58 (m) "Out-of-state bank" means a bank whose home state is a state other than West Virginia.
59 (n) "Out-of-state state bank" means a bank chartered under the laws of any state other than West Virginia.
60 (o) "Resulting bank" means a bank that has resulted from an interstate merger transaction under this article.
62 (p) "State" means any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, the Virgin Islands and American Samoa.
64 (q) "West Virginia bank" means a bank whose home state is West Virginia.
69 (r) "West Virginia state bank" means a bank chartered under the laws of West Virginia.

§31A-8D-3. Authority of West Virginia state banks to establish interstate branches by merger.

1 Beginning on the thirty-first day of May, one thousand nine hundred ninety-seven, and with prior approval upon order of the board, a West Virginia state bank may establish, maintain and operate one or more branches in a state other than West Virginia pursuant to an interstate merger transaction in which the West Virginia state bank is the resulting bank. Not later than the date on which the required application for the interstate merger transaction is filed with the responsible federal bank supervisory agency, the applicant West Virginia state bank shall file an application on a form prescribed by the commissioner together with a three thousand dollar application fee. The applicant shall also comply with the applicable provisions of section twelve, article eight of this chapter. If the board finds that: (i) The proposed transaction will not be detrimental to the safety and soundness of the applicant or the resulting bank, including that local conditions assure reasonable promise of successful operation of the proposed bank branch; (ii) any new officers and directors of the resulting bank are qualified
by character, experience and financial responsibility to
direct and manage the resulting bank; (iii) the acquired
branch offices of which will provide suitable physical
facilities for their intended business; (iv) establishment of
the proposed branch bank would not result in a substan-
tial reduction of competition in any section of this state
unless the anticompetitive effects of the proposed action
are clearly outweighed in the public interest by the
probable effect of the action in meeting the convenience
and needs of the community to be served, or result in a
monopoly, or be in furtherance of any combination or
conspiracy to monopolize, or any attempt to monopolize
the business of banking in any section of this state; (v) the
proposed merger is consistent with the convenience and
needs of the communities to be served by the resulting
bank in this state and is otherwise in the public interest;
and (vi) the new branch is in conformity with, and would
be permitted under the laws of the state where the
branch is to be located, it shall approve the interstate
merger transaction and the operation of branches outside
of West Virginia by the West Virginia state bank. The
findings required herein shall supplant any other findings
of fact otherwise required by subdivisions (1) through (6),
subsection (j), section twelve, article eight of this chapter.
Such an interstate merger transaction may be consum-
mated only after the applicant has received the board’s
written approval by entry of an order granting the
application.

§31A-8D-4. Interstate merger transactions and branching
involving out-of-state banks permitted.

(a) Beginning on the thirty-first day of May, one
thousand nine hundred ninety-seven, one or more West
Virginia banks may enter into an interstate merger
transaction with one or more out-of-state banks under
this article, and an out-of-state bank resulting from such
transaction may maintain and operate the branches and
offices in West Virginia of a West Virginia bank that
participated in such transaction: Provided, That the
conditions and filing requirements of this article are met.
(b) A merger transaction shall not be permitted under this article if, upon consummation of such transaction, the resulting bank (including all insured depository institution affiliates of the resulting bank) would assume sufficient additional deposits to cause it to control deposits in this state in excess of that allowed by section twelve-a, article two of this chapter: Provided, That the commissioner may by rule adopt a procedure whereby said acquisition deposit limitation as set forth in this code may be waived for good cause shown. The commissioner shall calculate the acquisition deposit limitation based upon the most recently available reports containing such deposit information filed with state or federal authorities.

(c) A merger transaction resulting in the acquisition by an out-of-state bank of a West Virginia state bank, or all or substantially all of the branches of a West Virginia state bank, or resulting in the acquisition by an out-of-state state bank of a West Virginia bank or the change of control over a branch operating in West Virginia, shall not be permitted under this article unless: (i) The out-of-state bank confirms in writing to the commissioner that as long as it maintains a branch in West Virginia, it will comply with all applicable laws of this state, including consumer protection laws; (ii) deposits of the resulting bank in this state are insured in conformity with the provisions of section six, article one of this chapter; and (iii) the resulting bank, if state chartered, meets the capital requirements set forth in section three, article four of this chapter.

§31A-8D-5. Notice and filing requirements.

(a) Any out-of-state state bank that will be the resulting bank pursuant to a merger transaction involving a West Virginia bank, or will be the resulting bank pursuant to a merger transaction affecting the change of control over a branch operating in West Virginia shall notify the commissioner of the proposed merger not later than the date on which it files an application for the
merger transaction with the responsible federal bank supervisory agency, and shall submit a copy of that application to the commissioner and pay a filing fee of two hundred fifty dollars.

(b) Any West Virginia state bank which is a party to an interstate merger transaction shall comply with state law governing shareholder rights and director and officer duties with respect to affecting the merger and with other applicable state and federal laws. In addition, the West Virginia state bank shall give written notice to the commissioner at least forty-five days before the effective date of a merger where the resulting bank will be an out-of-state bank, unless a shorter period of notice is required under applicable federal law.

(c) Unless preempted by federal law, the commissioner shall have thirty days from receipt of the written notice under subsection (a) of this section to object to the proposed transaction and request a hearing before the board on the basis that the transaction is contrary to applicable West Virginia law. The failure to object within thirty days shall be construed as consent by the commissioner, or, in his or her discretion, the commissioner may, at any time, consent in writing. The commissioner may also request a hearing on the basis that the bank supervisory agency of the home state of the resulting out-of-state bank is without authority or procedures under its state's law to review the transaction, or is not under its state's law viewed as the primary regulator of its chartered banks' out-of-state branches, in which event the criteria, fees and procedures set forth in section three of this article shall apply.

(d) Any out-of-state state bank which shall be the resulting bank in such an interstate or other merger transaction shall provide satisfactory evidence to the commissioner of compliance with applicable requirements of West Virginia law requiring foreign corporations to qualify to do business in West Virginia.

§31A-8D-6. Powers; additional branches.
(a) An out-of-state state bank which establishes and maintains one or more branches in West Virginia under this article may conduct any activities at such branch or branches that are authorized under the laws of this state for West Virginia state banks.

(b) A West Virginia state bank may conduct any activities at any branch outside West Virginia that are expressly permissible for a bank chartered by the host state where the branch is located. Prior to commencing any such activities, the West Virginia state bank shall give the commissioner forty-five days advance notice of the intention to exercise any such powers which are not permitted to West Virginia state banks in their operations in this state under state law. This notice shall be made together with a filing providing a written summary with details of the proposed action or program, along with legal analysis for the authority to conduct the activities and how the exercise of the authority will not impair the safety and soundness of the bank and will be kept separate from its operations within West Virginia. Unless, within thirty days after receipt of the notice and filing, the commissioner objects or requests a hearing on the matter before the board, the exercise of the powers shall be deemed authorized. In the discretion of the commissioner or the board, authorization of such powers may be given in writing at any time.

(c) An out-of-state bank that has established or acquired a branch in West Virginia under this article may establish or acquire additional branches in West Virginia to the same extent that any West Virginia bank may establish or acquire a branch in West Virginia under applicable federal and state law. To the extent that an out-of-state bank has already established or acquired a branch in West Virginia and proposes to create additional branches by merger with a West Virginia bank, the provisions of this article govern the transaction.

§31A-8D-7. Examinations; periodic reports; cooperative agreements; assessment of fees.
(a) To the extent consistent with subsection (c) of this section, the commissioner may make such examinations of any branch established and maintained in this state pursuant to this article by an out-of-state state bank as the commissioner may deem necessary to determine whether the branch is being operated in compliance with the laws of this state and in accordance with safe and sound banking practices. The provisions of article two of this chapter shall apply to such examinations.

(b) The commissioner may prescribe requirements for periodic reports regarding any out-of-state bank that operates a branch in West Virginia pursuant to this article. The required reports shall be provided by such bank, or upon request of the commissioner by the bank supervisory agency having primary responsibility for such bank. Any reporting requirements prescribed by the commissioner under this subsection shall be: (i) Consistent with the reporting requirements applicable to West Virginia state banks; and (ii) appropriate for the purpose of enabling the commissioner to carry out his or her responsibilities under this article. Unless the information is filed by its bank holding company pursuant to subsection (a), section seven, article eight-a of this chapter, an out-of-state bank with a branch in West Virginia shall also file the information required by said section within the time stated in said section.

(c) The commissioner may enter into cooperative, coordinating and information-sharing agreements with any other bank supervisory agencies or any organization affiliated with or representing one or more bank supervisory agencies with respect to the periodic examination or other supervision of any branch in West Virginia of an out-of-state state bank, or any branch of a West Virginia state bank in any host state, and the commissioner may accept such parties' reports of examination and reports of investigation in lieu of conducting his or her own examinations or investigations.

(d) The commissioner may enter into contracts with any
bank supervisory agency that has concurrent jurisdiction over a West Virginia state bank or an out-of-state state bank operating a branch in this state pursuant to this article to engage the services of such agency's examiners at a reasonable rate of compensation, or to provide the services of the commissioner's examiners to such agency at a reasonable rate of compensation: Provided, That any such contract shall be deemed excluded from the requirements of article three, chapter five-a of this code.

(e) The commissioner may enter into joint examinations or joint enforcement actions with other bank supervisory agencies having concurrent jurisdiction over any branch in West Virginia of an out-of-state state bank or any branch of a West Virginia state bank in any host state: Provided, That the commissioner may at any time take such actions independently if the commissioner deems such actions to be necessary or appropriate to carry out his or her responsibilities under this article or to ensure compliance with the laws of this state: Provided, however, That in the case of an out-of-state state bank, the commissioner shall recognize the authority of the home state regulator over corporate governance matters and the primary responsibility of the home state regulator with respect to safety and soundness matters.

(f) Each out-of-state state bank that maintains one or more branches in this state may be assessed and, if assessed, shall pay supervisory and examination fees in accordance with the laws of this state and rules of the commissioner. Such fees may be shared with other bank supervisory agencies or any organization affiliated with or representing one or more bank supervisory agencies in accordance with agreements between such parties and the commissioner.


1 If the commissioner determines that a branch maintained by an out-of-state state bank in this state is being operated in violation of any provision of the laws of this
state, or that such branch is being operated in an unsafe
and unsound manner, the commissioner shall have the
authority to take all such enforcement actions as he or
she would be empowered to take if the branch were a
West Virginia state bank: Provided, That the commis-

sioner shall promptly give notice to the home state
regulator of each enforcement action taken against an
out-of-state state bank and, to the extent practicable,
shall consult and cooperate with the home state regulator
in pursuing and resolving said enforcement action.


The commissioner and board may promulgate such
rules and issue such orders as they determine to be
necessary or appropriate to implement the provisions of
this article.

§31A-8D-10. Notice of subsequent merger.

An out-of-state state bank that has established and
maintains a branch in this state pursuant to this article,
shall give at least forty-five days' prior written notice (or,
in the case of an emergency transaction, such shorter
notice as is consistent with applicable state or federal
law) to the commissioner of any merger, consolidation or
other transaction that would cause a change of control
with respect to such bank or any bank holding company
that controls such bank, with the result that an applica-
tion would be required to be filed pursuant to the federal
Change in Bank Control Act of 1978, as amended, 12
U.S.C. §1817(j), or the federal Bank Holding Company
Act of 1956, as amended, 12 U.S.C. §§1841 et seq., or any
successor statutes thereto. Notice under this section shall
not obviate the need the acquiring entity may have to file
with the commissioner or board pursuant to section five
of this article, or section three, article eight-a of this
chapter.

§31A-8D-11. Applicability to thrift institutions.

This article shall apply to interstate mergers involving
banks with any savings bank, savings and loan associa-
3 tion or other thrift institution maintaining federal deposit
4 insurance where the nonthrift bank survives the merger
5 transaction.

ARTICLE 8E. INTERSTATE BRANCHING BY DE NOVO ENTRY AND ACQUI-
SITION OF BRANCHES.

§31A-8E-1. Legislative purpose.
1 It is the express intent of this article to permit inter-
2 state branching under Sections 102 and 103 of the
3 Riegle-Neal Interstate Banking and Branching Efficiency
4 Act of 1994, Public Law No. 103-328, in accordance with
5 the provisions set forth in this article and thereby permit
6 interstate branch banking through de novo entry or by
7 acquisition of branches in transactions not involving a
8 whole bank merger or acquisition.

§31A-8E-2. Definitions.
1 As used in this article, unless a different meaning is
2 required by the context, the following words and phrases
3 shall have the following meanings:
4 (a) "Acquisition of a branch" means the acquisition of
5 a branch located in a host state, without either engaging
6 in an "interstate merger transaction" as defined in article
7 eight-d of this chapter or acquiring all or substantially all
8 of the assets of another bank by merger or purchase.
9 (b) "Bank" has the meaning set forth in 12 U.S.C.
10 §1813(h): Provided, That the term "bank" shall not
11 include any "foreign bank" as defined in 12 U.S.C.
12 §3101(7), except that such term shall include any foreign
13 bank organized under the laws of a territory of the
14 United States, Puerto Rico, Guam, American Samoa or
15 the Virgin Islands, the deposits of which are insured by
16 the federal deposit insurance corporation.
17 (c) "Bank holding company" has the meaning set forth
19 (d) "Bank supervisory agency" means:
20 (1) Any agency of another state with primary responsi-
bility for chartering and supervising banks; and

(2) The office of the comptroller of the currency, the federal deposit insurance corporation, the board of governors of the federal reserve system and any successor to these agencies.

(e) "Board of banking and financial institutions" means the board created pursuant to the provisions of article three of this chapter and referred to herein as "board".

(f) "Branch" has the meaning set forth in subsection (f), section two, article one of this chapter.

(g) "Commissioner" means the West Virginia commissioner of banking then in office and, where appropriate, all of his or her successors and predecessors in office.

(h) "Control" shall be construed consistently with the provisions of 12 U.S.C. §1841(a)(2).

(i) "De novo branch" means a branch of a bank located in a host state which: (i) Is originally established by the bank as a branch; and (ii) does not become a branch of the bank as a result of: (A) The acquisition of another bank or a branch of another bank; or (B) the merger, consolidation or conversion involving any such bank or branch.

(j) "Home state" means:

(1) With respect to a state bank, the state by which the bank is chartered;

(2) With respect to a national bank, the state in which the main office of the bank is located; or

(3) With respect to a foreign bank, the state determined to be the home state of such foreign bank under 12 U.S.C. §3103(c).

(k) "Home state regulator" means, with respect to an out-of-state state bank, the bank supervisory agency of the state in which such bank is chartered.

(l) "Host state" means a state, other than the home state
§31A-8E-3. Interstate branching by West Virginia state banks through de novo establishment or acquisition of branches in other states.

(a) Beginning on the thirty-first day of May, one thousand nine hundred ninety-seven, and with the prior approval upon order of the board, any West Virginia state bank may establish and maintain a de novo branch or acquire a branch in a state other than West Virginia.

(b) A West Virginia state bank desiring to establish and maintain a branch in another state under this section shall file an application on a form prescribed by the commissioner and pay the branch application fee set forth in subsection (h), section twelve, article eight of this chapter. If the board finds that: (i) The applicant has the financial and managerial resources sufficient to undertake the proposed expansion without adversely affecting its safety or soundness, including that local conditions assure reasonable promise of successful operation of the proposed bank branch; (ii) any new officers and directors resulting from the creation of the branch bank are qualified by character, experience and financial responsibility to direct and manage the expanded bank; (iii) the proposed branch offices will provide suitable physical facilities for their intended business; (iv) establishment of
the proposed branch bank would not result in a substantial reduction of competition in any section of this state unless the anticompetitive effects of the proposed action are clearly outweighed in the public interest by the probable effect of the action in meeting the convenience and needs of the community to be served, or result in a monopoly, or would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any section of this state; (v) the establishment of the proposed branch is consistent with the convenience and needs of the communities to be served by the branch and is otherwise in the public interest; and (vi) the new branch is in conformity with, and would be permitted under the laws of the state where the branch is to be located, it may approve the application. In acting on the application, the board shall consider the views of the appropriate bank supervisory agencies. The applicant bank may establish the branch when it has received the board’s written approval by entry of an order granting the application. The findings required herein shall supplant any other findings of fact otherwise required by subdivisions (1) through (6), subsection (j), section twelve, article eight of this chapter.

§31A-8E-4. Interstate branching by out-of-state banks through de novo entry or acquisition of branches in West Virginia.

Beginning on the thirty-first day of May, one thousand nine hundred ninety-seven, an out-of-state bank that does not operate a branch in this state and that meets the requirements of this article may establish and maintain a de novo branch in this state, and may also establish and maintain a branch in this state through the acquisition of a branch: Provided, That branches may be so established in West Virginia by out-of-state banks only if the laws of the home state of the out-of-state bank permit West Virginia state banks to establish and maintain de novo branches or to acquire and maintain branches, as applicable, under substantially the same terms and conditions as set forth in this article. If the law of the other state
restricts such entry by a West Virginia state bank to that
other state, then the board may similarly limit the
authority granted by this article for banks having their
main office located in that state.

§31A-8E-5. Requirement of notice.
1 An out-of-state bank desiring to establish and maintain
2 a de novo branch or to acquire a branch in this state
3 pursuant to this article shall provide written notice of the
4 proposed transaction to the commissioner not later than
5 the date on which the bank applies to the responsible
6 federal or state bank supervisory agency for approval to
7 establish the branch. The filing of such notice shall be
8 accompanied by the filing fee of two hundred fifty
9 dollars.

§31A-8E-6. Conditions for approval.
1 No branch of an out-of-state bank may be established
2 in this state under this article, unless:
3 (a) The out-of-state bank confirms in writing to the
4 commissioner that as long as it maintains a branch in
5 West Virginia, it will comply with all applicable laws of
6 this state, including consumer protection laws and any
7 acquisition deposit limitations, as well as maintenance of
8 deposit insurance and capital requirements in the same
9 manner as required for West Virginia state banks.
10 (b) The applicant provides satisfactory evidence to the
11 commissioner of compliance with the applicable require-
12 ments of West Virginia law requiring foreign corpora-
13 tions to qualify to do business in West Virginia.
14 (c) The commissioner, acting within thirty days after
15 receiving notice of an application under section five of
16 this article, or within seven days after a decision if a
17 hearing is held, certifies to the responsible federal bank
18 supervisory agency that the requirements of this article
19 have been met. Unless preempted by federal law, the
20 commissioner shall have thirty days from receipt of the
21 written notice by the out-of-state bank to object to the
proposed transaction and request a hearing before the board on the basis that the transaction is contrary to applicable West Virginia law. The failure to object within thirty days shall be construed as consent by the commissioner, or, in his or her discretion, the commissioner may, at any time, consent in writing. The commissioner may also request a hearing on the basis that the bank supervisory agency of the home state of the out-of-state bank is without authority or procedures under its state’s law to review the transaction, or is not under its state’s law viewed as the primary regulator of its chartered banks’ out-of-state branches, in which event the criteria, fees and procedures set forth in section three of this article shall apply.

§31A-8E-7. Powers; additional branches.

(a) An out-of-state state bank which establishes and maintains one or more branches in West Virginia under this article may conduct any activities at such branch or branches that are authorized under the laws of this state for West Virginia state banks.

(b) A West Virginia state bank may conduct any activity at a branch outside West Virginia that is expressly permissible for a bank chartered by the host state where the branch is located. Prior to commencing any such activity, the West Virginia state bank shall give the commissioner forty-five days advance notice of the intention to exercise any such powers which are not permitted to West Virginia state banks in their operations in this state under state law. This notice shall be made together with a filing providing a written summary with details of the proposed action or program, along with legal analysis for the authority to conduct the activities and how the exercise of the authority will not impair the safety and soundness of the bank and will be kept separate from its operations within West Virginia. Unless, within thirty days after receipt of the notice and filing, the commissioner objects or requests a hearing on the matter before the board, the exercise of the powers
shall be deemed authorized. In the discretion of the
commissioner or the board, authorization of such powers
may be given in writing at any time.

(c) An out-of-state bank that has established or ac-
quired a branch in West Virginia under this article may
establish or acquire additional branches in West Virginia
to the same extent that any West Virginia bank may
establish or acquire a branch in West Virginia under
applicable federal and state law. To the extent that an
out-of-state bank has already established or acquired a
branch in West Virginia and proposes to create additional
branches by establishing another de novo branch, or by
acquisition of another bank's branch in West Virginia,
the provisions of this article govern the transaction.

§31A-8E-8. Examinations; periodic reports; cooperative
agreements; assessment of fees.

(a) To the extent consistent with subsection (c) of this
section, the commissioner may make such examinations
of any branch established and maintained in this state
pursuant to this article by an out-of-state state bank as
the commissioner may deem necessary to determine
whether the branch is being operated in compliance with
the laws of this state and in accordance with safe and
sound banking practices. The provisions of article two of
this chapter shall apply to such examinations.

(b) The commissioner may require periodic reports
regarding any out-of-state bank that has established and
maintained a branch in this state pursuant to this article.
The required reports shall be provided by the bank, or
upon request of the commissioner by the bank supervi-
sory agency having primary responsibility for such bank.
Any reporting requirements prescribed by the commis-
sioner under this subsection shall be: (i) Consistent with
the reporting requirements applicable to West Virginia
state banks; and (ii) appropriate for the purpose of
enabling the commissioner to carry out his or her respon-
sibilities under this article. Unless the information is
filed by its bank holding company pursuant to subsection
(a), section seven, article eight-a of this chapter, an out-of-state bank with a branch in West Virginia shall also file the information required by said section within the time stated in said section.

(c) The commissioner may enter into cooperative, coordinating and information-sharing agreements with any other bank supervisory agencies or any organization affiliated with or representing one or more bank supervisory agencies with respect to the periodic examination or other supervision of any branch in West Virginia of an out-of-state state bank, or any branch of a West Virginia state bank in any host state, and the commissioner may accept such parties' reports of examination and reports of investigation in lieu of conducting his or her own examinations or investigations.

(d) The commissioner may enter into contracts with any bank supervisory agency that has concurrent jurisdiction over a West Virginia state bank or an out-of-state state bank maintaining a branch in this state to engage the services of such agency's examiners at a reasonable rate of compensation, or to provide the services of the commissioner's examiners to such agency at a reasonable rate of compensation: Provided, That any such contract shall be deemed excluded from the requirements of article three, chapter five-a of this code.

(e) The commissioner may enter into joint examinations or joint enforcement actions with other bank supervisory agencies having concurrent jurisdiction over any branch established and maintained in West Virginia by an out-of-state state bank or any branch established and maintained by a West Virginia state bank in any host state: Provided, That the commissioner may at any time take such actions independently if the commissioner deems such actions to be necessary or appropriate to carry out his or her responsibilities under this article or to ensure compliance with the laws of this state: Provided, however, That, in the case of an out-of-state state bank, the commissioner shall recognize the authority of
the home state regulator over corporate governance matters and the primary responsibility of the home state regulator with respect to safety and soundness matters.

(f) Each out-of-state state bank that maintains one or more branches in this state may be assessed and, if assessed, shall pay supervisory and examination fees in accordance with the laws of this state and rules of the commissioner. Such fees may be shared with other bank supervisory agencies or any organization affiliated with or representing one or more bank supervisory agencies in accordance with agreements between such parties and the commissioner.

1 If the commissioner determines that a branch maintained by an out-of-state state bank in this state is being operated in violation of any provision of the laws of this state, or that such branch is being operated in an unsafe and unsound manner, the commissioner shall have the authority to take all such enforcement actions as he or she would be empowered to take if the branch were a West Virginia state bank: Provided, That the commissioner shall promptly give notice to the home state regulator of each enforcement action taken against an out-of-state state bank and, to the extent practicable, shall consult and cooperate with the home state regulator in pursuing and resolving said enforcement action.

§31A-8E-10. Rules and orders.
1 The commissioner and board may promulgate such rules and issue such orders as they determine to be necessary or appropriate in order to implement the provisions of this article.

1 An out-of-state state bank that has established and maintains a branch in this state pursuant to this article, shall give at least forty-five days’ prior written notice (or, in the case of an emergency transaction, such shorter
notice as is consistent with applicable state or federal law) to the commissioner of any merger, consolidation or other transaction that would cause a change of control with respect to such out-of-state bank or any bank holding company that controls such bank, with the result that an application would be required to be filed pursuant to the federal Change in Bank Control Act of 1978, as amended, 12 U.S.C. §1817(j), or the federal Bank Holding Company Act of 1956, as amended, 12 U.S.C. §§1841 et seq., or any successor statutes thereto.

§31A-8E-12. Applicability to thrift institutions.

This article shall apply to interstate acquisition of branches of any savings bank, savings and loan association or other thrift institution maintaining federal deposit insurance by a bank where the nonthrift bank survives the transaction and maintains the branches.

ARTICLE 8F. THE WEST VIRGINIA INTERNATIONAL BANKING ACT.

§31A-8F-1. Legislative purpose.

(a) This article shall be known and may be cited as the "West Virginia International Banking Act".

(b) This article is intended generally to provide for state regulation of the participation by foreign banks in certain financial markets of this state.

(c) This article is intended:

(1) To authorize banking activities and operations in West Virginia by foreign banks having separately capitalized and domestically chartered banks in the United States through branches of such domestic banks in this state;

(2) To authorize agency and representative offices in this state of foreign banks; and

(3) To ensure that the banking laws and rules of this state otherwise apply to foreign banks, and to West Virginia and out-of-state banks and bank holding companies that are owned or controlled by foreign banks,
in a manner consistent with the laws and policies of the United States governing the operations in this country of foreign banks.

§31A-8F-2. Definitions.

For purposes of this article:

(a) The term "agency office" or "direct agency office" means an office of a foreign bank that is exercising the powers set forth and authorized by sections seven and eleven of this article.

(b) The term "bank supervisory agency" means:

(1) The office of the comptroller of the currency, the federal deposit insurance corporation, the board of governors of the federal reserve system and any successor to these agencies;

(2) Any agency of another state with primary responsibility for chartering and supervising banks; and

(3) Any agency of a country (including any colonies, dependencies, possessions or political subdivisions thereof) other than the United States with primary responsibility for supervising banks.

(c) The term "federal agency" means an agency of a foreign bank that is licensed by the comptroller of the currency pursuant to the provisions of Section 4 of the federal International Banking Act, 12 U.S.C. §3102.

(d) The term "foreign bank" means any company organized under the laws of a foreign country that engages directly in the business of banking. The term includes foreign commercial banks, foreign merchant banks and other foreign institutions that engage in banking activities usually in connection with the business of banking in the countries where such foreign institutions are organized or operating.

(e) The term "federal branch" means a branch of a foreign bank that is licensed by the comptroller of the currency pursuant to the provisions of Section 4 of the

(g) The term "foreign person" means a natural or juridical person who is a citizen or national of one or more countries (including any colonies, dependencies or possessions of such countries) other than the United States.


(i) The term "interstate branch" means a branch of a bank or a branch of a foreign bank, as the context may require, which is established after the twenty-ninth day of September, one thousand nine hundred ninety-four, pursuant to the authority contained in the Interstate Banking and Branching Efficiency Act, outside the home state of the bank or foreign bank. In the case of a foreign bank, the term shall not include a limited branch.

(j) The term "limited branch" means a branch of a foreign bank that accepts only such deposits as would be permissible for a corporation organized under Section 25a of the federal Reserve Act in accordance with the provisions of Section 5 (a)(7) of the federal International Banking Act, 12 U.S.C. §3103(a)(7).

(k) The term "out-of-state bank" means a bank organized under the laws of the United States having its main office in a state other than West Virginia or organized under the laws of a state other than West Virginia, which is authorized to engage in the business of banking including the taking of insured retail deposits. For purposes of this definition "state" shall include the District of Columbia and any territory of the United States, Puerto Rico, Guam, the Virgin Islands and Amer-
The term "representative office" shall have the same meaning as is set forth in Section 1(b)(15) of the federal International Banking Act, 12 U.S.C. §3101(15), and the term "West Virginia representative office" shall mean any such office that is located in this state.


(a) The commissioner is authorized and empowered to issue such rules and orders to perform his or her duties and functions under this article and to administer and carry out the provisions and purposes of this article and to prevent evasions thereof.

(b) It shall be required that all banks, including foreign banks, operating offices in this state use or make available on request the English language version of any customer contract or agreement when the customer is a United States corporation, citizen or resident. Upon demand of the commissioner of banking any bank or financial affiliate in West Virginia under the jurisdiction of the commissioner of banking shall provide at their own expense the translation of any document or record it holds into the English language. Unless otherwise provided for West Virginia licensed domestic banking institutions, all foreign banking offices licensed under the provisions of this article shall abide by U.S. general accounting principles in the maintenance of their financial records.

§31A-8F-4. Operations in this state of banks owned or controlled by foreign banks and other foreign persons.

(a) The laws and rules of this state governing the acquisition or ownership of controlling or other interests in West Virginia banks or in out-of-state banks seeking to establish and maintain one or more interstate branches in this state shall not generally prohibit ownership of such institutions by, or otherwise discriminate against,
foreign banks or other foreign persons.

(b) Notwithstanding the provisions of subsection (a) of this section, the commissioner is authorized to apply any standards or requirements of the laws and rules of this state governing the ownership, control or operations of West Virginia banks, including residency requirements for directors of West Virginia state-chartered banks, even if applicable specifically or exclusively to foreign banks or other foreign persons, to the extent such standards or requirements are determined by the commissioner to be either:

(1) Substantially equivalent to, or consistent with, the standards or requirements governing the ownership, control or operations of state or national banks in West Virginia by foreign banks or other foreign persons under applicable United States federal laws or regulations; or

(2) Otherwise consistent with the laws and policies of the United States, including its international agreements governing financial services.

§31A-8F-5. Branches by domestic subsidiary banks owned by a foreign bank.

An out-of-state bank which is a domestic subsidiary of, or controlled by a foreign bank, may establish branches in this state through merger, de novo entry or the acquisition of branches on the same terms as any other bank sharing that same home state pursuant to articles eight-d and eight-e of this chapter.

§31A-8F-6. Authority of affiliated bank or branch to act as agent for a foreign bank.

(a) A West Virginia bank or branch of any out-of-state bank owned or controlled by a foreign bank may at its main or branch offices in West Virginia receive deposits, renew time deposits, close loans, service loans and receive payments on loans and other obligations as an agent for any depository institution affiliate of such foreign bank, including branch, agency and other offices of that same
foreign bank located in other states, generally in accordance with the same terms, conditions, procedures and requirements that are applicable under the laws and rules of this state to such agency activities that may be conducted by West Virginia state banks.

(b) Notwithstanding any other provision of the laws or rules of this state no foreign controlled bank, branch or agency office shall be authorized by this article to accept retail deposits on behalf of a foreign bank or branch which is not authorized to take federally insured deposits, nor to act as agent on behalf of any affiliated foreign bank other than its controlling foreign bank or one which has been licensed to transact business in this state pursuant to this article.

(c) A bank or branch of any bank owned or controlled by a foreign bank may not at its main or branch offices in West Virginia:

(1) Conduct any activity as an agent under this section which such office is prohibited from conducting as a principal under any applicable federal or state law, including, but not limited to, the acceptance of impermissible deposits; or

(2) As a principal, have an agent conduct any activity under this section which such office is prohibited from conducting under any applicable federal or state law, including, but not limited to, the acceptance of impermissible deposits.

(d) Any agency relationship permitted under this section involving a depository institution affiliate or other affiliate of such foreign bank shall in any event be on terms that are consistent with safe and sound banking practices and all applicable rules and orders of the commissioner.

§31A-8F-7. Direct agency offices of foreign banks; necessity of licensure.

(a) A foreign bank may directly transact certain bank-
ing business in this state as permitted under this article upon obtaining a license to establish and maintain a West Virginia state agency office.

(b) Subsection (a) of this section does not prohibit:

(1) Any foreign bank which establishes and maintains a federal agency or federal branch in this state from transacting at such federal agency or federal branch such banking business as it may be authorized to transact under applicable federal laws and rules; or

(2) Any foreign bank which does not maintain a branch or agency office in West Virginia from making or enforcing loans in this state including loans secured by liens on real or personal property located in this state, as long as such lending is not conducted from an office in this state, and the loan, if a consumer loan, is governed by West Virginia law.

§31A-8F-8. Application to establish and maintain an agency office; contents.

A foreign bank seeking to establish and maintain a West Virginia state agency office shall submit an application to the West Virginia board of banking and financial institutions. Such application shall contain:

(a) The same information as required by the board of governors of the federal reserve system for an application to establish an agency in the United States;

(b) An instrument irrevocably appointing the West Virginia secretary of state or his or her successors in office to be such foreign bank's agent, representative and attorney to receive service of any lawful judicial and administrative process; and

(c) Such additional information as the board or commissioner may require.

§31A-8F-9. Application to establish and maintain an agency office; manner of filing and determination.

(a) A foreign bank making an application under this
article for a license to establish and maintain a West Virginia state agency shall deliver to the West Virginia board of banking and financial institutions:

1. At least two duplicate originals of the foreign bank's application on the form prescribed by the board;

2. At least two copies of its charter or articles of incorporation and all amendments thereto, duly authenticated by the proper officer of the country of such foreign bank's organization together with translation of such documents if they are in a language other than English, which translation is attested to for accuracy before a notary public or other verifying official;

3. A letter or resolution from its governing body or chief executive officer guaranteeing that the foreign bank's entire capital and surplus is and shall be available for all liabilities and obligations of its agency office doing business in this state;

4. An application fee of one thousand dollars payable by check or money order to the West Virginia board of banking and financial institutions;

5. A document granting power of attorney in favor of the person designated to be in charge of the business and affairs of the proposed office; and

6. Proof of fidelity bond coverage for active officers and employees, and the oath of the managing officer of the West Virginia office(s) to obey state banking laws as would be required were the institution a bank incorporated in this state.

(b) The board may approve issuance of a license to a foreign bank to establish and maintain a West Virginia state agency office if it finds:

1. That the foreign bank is of sound financial standing;

2. That the management of the foreign bank and the proposed management of the West Virginia state agency office are adequate and are of good reputation and
(3) That the convenience and needs of persons to be served by the proposed West Virginia state agency office will be promoted;

(4) That the foreign bank has committed to allocate and assign to its agency office within this state a capital equivalency deposit of not less than the greater of five hundred thousand dollars or five percent of the total liabilities of the agency, excluding accrued expenses, intercompany liabilities and any amounts due the foreign bank: Provided, That the board may in its discretion require a higher deposit amount or rate to ensure the agency office's financial safety or soundness;

(5) That the proposed office is not being formed for other than legitimate motives and purposes;

(6) That the bank supervisory agency of the foreign bank's country of organization does not object to the application;

(7) That the applicant has submitted a legal opinion indicating that the proposed agency office will be permissible under both the laws of the foreign bank's country of organization and the United States; and

(8) That the foreign bank has complied with this section and satisfies such other standards as the board may establish by rule.

(c) If the board after investigation, notice and hearing determines to issue a license to a foreign bank to establish and maintain a West Virginia state agency office, it shall issue a written order granting the application and authorize the commissioner of banking on its behalf upon payment of all fees required under this article to:

(1) Endorse on each document filed as part of the application the word "Filed", and the date of the filing thereof and return to the foreign bank a copy of each document so endorsed;
(2) File in the office of the commissioner of banking one of the duplicate originals of the application and copies of the charter or articles of incorporation and amendments thereto; and

(3) Issue a license to establish and maintain a West Virginia state agency office to such foreign bank.

(d) Each license issued to a foreign bank to establish and maintain a West Virginia state agency shall state fully the name of the foreign bank to which such license is issued, the place of business for the licensee’s office and all such other information as the commissioner may require.

(e) The board may, by rule or order, prescribe abbreviated application procedures and standards applicable to applications by foreign banks that have already established an initial West Virginia state agency office, subsequently to establish additional intrastate West Virginia state agency offices, as the case may be.

(f) Each licensee must register with the West Virginia secretary of state as a foreign corporation qualified to do business in this state and provide proof of such registration to the commissioner of banking prior to conducting business under its license.

§31A-8F-10. No concurrent maintenance of federal branches or agencies.

(a) No foreign bank which is licensed under this article to establish and maintain a West Virginia state agency shall concurrently maintain a federal branch or federal agency office in this state.

(b) No foreign bank which maintains a federal branch or federal agency office in this state shall concurrently be licensed under this article to maintain a West Virginia state agency office.


(a) A West Virginia state agency office of a foreign bank
established under this article may engage in the business of making loans and guaranteeing obligations for the financing of the international movement of goods and services and for all operational needs including working capital and short-term operating needs and for the acquisition of fixed assets. In addition, such agency may also:

(1) Borrow funds from banks and other financial institutions;

(2) Buy and sell foreign exchange;

(3) Receive checks, bills, drafts, acceptances, notes, bonds, coupons and other securities for collection abroad and collect such instruments in the United States for customers abroad;

(4) Hold securities for safekeeping for, or buy and sell securities upon the order and for the risk of, customers abroad;

(5) Act as paying agent for securities issued by foreign governments or other organizations organized under foreign law and not qualified under the laws of the United States, or any state or the District of Columbia to do business in the United States;

(6) In order to prevent the loss on debts previously contracted, an agency may acquire shares in a corporation: Provided, That the shares are disposed of as soon as practicable, but in no event later than two years from the date of acquisition;

(7) Issue letters of credit and create acceptances; and

(8) Conduct activities which are necessary and incidental to the above-enumerated power: Provided, That the commissioner maintains the authority to determine whether the power or activity sought or undertaken is necessary and incidental.

(b) No West Virginia state agency office may take deposits on behalf of any affiliated bank or other deposi-
(c) Any loan limitation or restriction based on the capital stock and surplus of a bank shall be deemed to refer, as applied to a West Virginia state agency, to the United States dollar equivalent of the capital and stock surplus of the parent foreign bank, and not to the capital equivalency deposit in section twenty-eight of this article.

§31A-8F-12. Representative office of foreign banks; necessity of licensure.

(a) No foreign bank shall establish or maintain a West Virginia state representative office unless the foreign bank is licensed by the commissioner to maintain a West Virginia representative office.

(b) Nothing in subsection (a) of this section shall be deemed to prohibit a foreign bank which maintains a federal agency or federal branch in this state from establishing or maintaining one or more West Virginia representative offices.

§31A-8F-13. Representative office; application.

(a) The application for a license to establish and maintain a West Virginia representative office shall be in writing under oath and shall be in such form and contain such information as the commissioner may require by regulation or order. The application shall be accompanied by a fee of two hundred fifty dollars.

(b) Each application to establish and maintain a West Virginia representative office shall include an instrument irrevocably appointing the West Virginia secretary of state or his or her successors in office to be such foreign bank’s agent, representative and attorney to receive service of any lawful judicial and administrative process.

§31A-8F-14. Representative office; factors for approval of application.

(a) A foreign bank making an application for a license
to establish and maintain a West Virginia representative office shall deliver to the commissioner two (or more as the commissioner may require in writing) duplicate originals of the foreign bank’s application.

(b) The commissioner may issue a license to a foreign bank to establish and maintain a West Virginia representative office if he or she finds:

(1) That the foreign bank is of sound financial standing;

(2) That the management of the foreign bank and the proposed management of the West Virginia representative office are adequate and are of good reputation and character;

(3) That the proposed office is not being formed for other than legitimate motives and purposes; and

(4) That the convenience and needs of persons to be served by the proposed West Virginia representative office will be promoted.

(c) If the commissioner determines to issue a license to a foreign bank to establish and maintain a West Virginia representative office, he or she shall, when all fees have been paid as required under this article:

(1) Endorse on each duplicate original of the application the word “Filed”, and the date of the filing thereof and return to the foreign bank one such duplicate original so endorsed;

(2) File in his or her office one of such duplicate originals of the application; and

(3) Issue a license to establish and maintain a West Virginia representative office to such foreign bank.

(d) Each license issued to a foreign bank to establish and maintain a West Virginia representative office shall state fully the name of the foreign bank to which such license is issued, the address or addresses at which the West Virginia representative office is to be located and all other information as the commissioner may require.
§31A-8F-15. Representative office; permissible activities.

1 (a) A foreign bank which is licensed to establish and
2 maintain a West Virginia representative office may,
3 subject to such rules as the commissioner may prescribe,
4 engage in the following activities:

5 (1) Solicitation for loans and in connection therewith
6 the assembling of credit information, making of property
7 inspections and appraisals, securing of title information,
8 preparing of applications for loans including making
9 recommendations with respect to action thereon, solicit-
10 ing of investors to purchase loans from the foreign
11 bank and searching for such investors to contract with
12 the foreign bank for servicing of such loans;

13 (2) The solicitation of new business;
14 (3) The conduct of research; and
15 (4) Back office administrative functions as may be more
16 specifically defined in rules issued by the commissioner.

17 (b) Any other activity which the foreign bank seeks to
18 conduct at such office shall be subject to the prior
19 written approval of the commissioner upon finding that
20 the character of such other business is such that the
21 granting of the authority would not facilitate evasions of
22 this article or chapter or the rules or orders lawfully
23 made hereunder.

§31A-8F-16. Posting of license.

1 Each foreign bank which is licensed to establish and
2 maintain a West Virginia state agency or West Virginia
3 representative office shall post its license in a conspicu-
4 ous place at the office.

§31A-8F-17. Licenses not transferable.

1 No license issued by the commissioner in accordance
2 with this article shall be transferable or assignable.

§31A-8F-18. Amended license to establish and maintain a
1 direct agency office or representative office.
(a) A foreign bank which is licensed to establish and maintain a West Virginia state agency or West Virginia representative office must secure an amended license if it changes its corporate name, changes corporate control, changes the duration of its corporate existence or desires to pursue in this state other or additional purposes than those set forth in its prior application under this article for a license, by making application therefor to the commissioner.

(b) The requirements with respect to the form and contents of an application under subsection (a) of this section, the manner of its execution, the filing of duplicate originals thereof with the commissioner, the issuance of an amended license and the effect thereof shall be the same as in the case of an initial application for a license to establish and maintain a West Virginia state agency or West Virginia representative office, except as may be provided by the commissioner in the case of a change of control which results merely from a corporate reorganization.


A foreign bank which is licensed to establish and maintain a West Virginia state agency or West Virginia representative office shall file with the commissioner a written notice and request an amended license under section eighteen of this article no later than fourteen calendar days after the foreign bank becomes aware of any acquisition of control of the foreign bank or the bank merges with another foreign or domestic bank.

§31A-8F-20. Relocation of office; written notice necessary.

No foreign bank which is licensed to establish and maintain a West Virginia state agency or West Virginia representative office shall relocate any office unless the foreign bank provides prior written notice to the commissioner and the commissioner has approved such relocation in writing.

§31A-8F-21. Examination; payment of fees.
(a) A West Virginia state agency or West Virginia representative office shall be subject to examination by the commissioner at intervals and in a manner as he or she shall establish by rule or order. Unless otherwise provided by rule or order the examinations may be conducted annually.

(b) In conducting an examination pursuant to this section, the commissioner shall:

(1) Have full access to the offices, books, accounts and records of each office located in this state as well as all of the books, accounts and records maintained in this state of any office not located in this state of such foreign bank; and

(2) Have authority to require the attendance of and to examine under oath all persons whose testimony may be required relative to the activities of such office.

(c) A foreign bank which is licensed to establish and maintain a West Virginia state agency or West Virginia representative office shall be assessed a reasonable fee for the expenses incurred by the commissioner in making an examination of the office.

(d) A foreign bank which is licensed to establish and maintain a West Virginia state agency or West Virginia representative office shall be subject to all reasonable fees and expenses in such amounts as the commissioner may require by rule or order.

(e) The commissioner may require a West Virginia state agency or West Virginia representative office to be audited by an independent accountant licensed to practice by the state of West Virginia. The accountant must have knowledge and experience with respect to auditing books of international corporations. The audit must be based on generally accepted accounting standards without limitation on its scope. The cost of the audits must be paid by the foreign bank.

§31A-8F-22. Supervision and enforcement.
(a) The commissioner shall have all of the powers granted to him or her by the laws of this state to the extent appropriate to enable him or her to supervise each West Virginia state agency or West Virginia representative office.

(b) If, after notice and a hearing, the commissioner finds that any person has violated any provision of this article or any regulation or order issued under this article, he or she may, in addition to any other remedy or action available to the commissioner under the laws of this state, seek a civil penalty in an amount in accordance with this chapter and rules thereunder.

(c) In order to carry out the purposes under this article, the commissioner may:

(1) Enter into cooperative, coordinating or information-sharing agreements with any other bank supervisory agency or any organization affiliated or representing one or more bank supervisory agencies;

(2) With respect to periodic examination or other supervision of a foreign bank that maintains a West Virginia state agency or West Virginia representative office, accept reports of examinations performed by, and reports submitted to, other bank supervisory agencies in lieu of conducting examinations, or of receiving reports, as might otherwise be required under this article;

(3) Enter into joint examinations or joint enforcement actions with any other bank supervisory agency having concurrent jurisdiction over any foreign bank: Provided, That the commissioner may at any time take any actions independently if the commissioner determines that the actions are necessary or appropriate to carry out his or her responsibilities under this article and to ensure compliance with the laws of this state;

(4) Enter into contracts with any bank supervisory agency having concurrent regulatory or supervisory jurisdiction over a foreign bank maintaining a West Virginia state agency or West Virginia representative
office, to engage the services of such agency's examiners at a reasonable rate of compensation or provide the services of the commissioner's examiners at a reasonable rate of compensation: Provided, That any such contract shall be deemed excluded from the requirements of article three, chapter five-a of this code; and

(5) Assess supervisory and examination fees that shall be payable by foreign banks maintaining a West Virginia state agency or West Virginia representative office in connection with the commissioner's performance of his or her duties under this article and in accordance with rules adopted by the commissioner.

(d) Supervisory or examination fees assessed by the commissioner in accordance with the provisions of this article may be shared with other bank supervisory agencies or any organizations affiliated with or representing one or more bank supervisory agencies in accordance with agreements between the commissioner and such agencies or organizations.

§31A-8F-23. Reports.

(a) Each foreign bank which is licensed to establish and maintain a West Virginia state agency or West Virginia representative office shall file with the commissioner such reports as and when the commissioner may require.

(b) Each report filed with the commissioner under this article or any rule or order issued under this article shall be in such form and contain such information, shall be signed in such manner, and shall be verified in such manner, as the commissioner may reasonably require.


All reports of examinations and other records relating to the financial condition of any foreign bank, branch, agency office or representative office shall be confidential and subject to subpoena in the same manner as those examinations and records of other financial institutions pursuant to section four, article two of this chapter.

1 Each foreign bank which is licensed to establish and maintain a West Virginia state agency or West Virginia representative office shall maintain or make available at any such office appropriate books, accounts and records in the English language reflecting: (i) All transactions effected by or on behalf of such office; and (ii) all actions taken in this state by employees of the foreign banking corporation located in this state to effect transactions on behalf of any office of the foreign bank located outside this state.

§31A-8F-26. Separate assets.

1 (a) Each foreign bank which is licensed to establish and maintain a West Virginia state agency in this state shall keep the assets of its business in this state separate and apart from the assets of its business outside this state as though the West Virginia office was conducted as a separate and distinct entity.

7 (b) The creditors of a foreign bank arising out of transactions with, and recorded on the books of, its West Virginia state agency shall be entitled to absolute preference and priority over the creditors of the foreign bank’s offices located outside this state with respect to the assets of the foreign bank in this state.

§31A-8F-27. Disclosure of lack of federal deposit insurance.

1 Each foreign bank which is licensed to establish and maintain a West Virginia state agency shall clearly and conspicuously disclose that moneys held by or credit balances in such office are not insured by the federal deposit insurance corporation.


1 (a) Each foreign bank which is licensed to establish and maintain a West Virginia state agency office shall keep on deposit with an unaffiliated West Virginia bank(s) as the foreign bank may designate and the commissioner may approve, the capital equivalency deposit required by
section nine of this article in the form of interest-bearing stocks and bonds, notes, debentures or other obligations of the United States or any agency or instrumentality thereof, or guaranteed by the United States, or of this state, or of a city, county, town, village, school district or instrumentality of this state or guaranteed by this state, or dollar deposits or obligations of the international bank for reconstruction and development, or obligations issued by the interAmerican development bank, or obligations of the Asian development bank, or obligations issued by the African development bank, or other assets as the commissioner may by rule or order permit, based upon principal amount or market value, whichever is lower, in the case of the above-described securities, and subject to the limitations as he or she shall prescribe.

(b) The West Virginia bank designated to hold the assets in deposit shall issue a written receipt addressed and delivered to the commissioner reciting that the deposit is being held for the sole benefit of the United States domiciled creditors of the foreign bank’s West Virginia state agency office and that the deposit is subject to the commissioner’s order without offset for the payment of the creditors. For the purpose of this subsection, the term “creditor” shall not include any other offices, branches, subsidiaries or affiliates of the foreign bank.

(c) So long as it shall continue business in the ordinary course, such foreign bank shall be permitted to collect interest on the securities deposited under this section and from time to time exchange, examine and compare such securities.

(d) The commissioner in his or her discretion may require additional capital equivalency deposits if: (i) The financial condition of either the office(s) or the foreign bank warrants such additional protection; or (ii) other circumstances exist which may impair the office(s) or foreign bank’s safety or soundness.

(e) West Virginia state agency offices must maintain a
capital equivalency ledger showing the amount of net liabilities requiring capital equivalency coverage for each business day. On the last day of business of each month the average daily balance shall be computed, and based upon this computation, an increase in the deposit, if necessary to maintain the deposit at the level required by this section, shall be made. Any such required increase must be made within the first two business days of the following month. For foreign banks having more than one agency office in this state, the deposit required shall be determined on an aggregate basis for all such agency offices in this state. If securities comprise all or part of the deposit, and interest rate changes or a decline in credit quality of the security results in the depreciation of its market value, the security shall be replaced with an instrument that qualifies under subsection (a) of this section or other appropriate action shall be taken to ensure the capital equivalency deposit is adequately maintained.

§31A-8F-29. Voluntary closure of agency or representative office; application.

1 (a) No foreign bank which is licensed to establish and maintain a West Virginia state agency or West Virginia representative office shall close the office without filing an application with, and obtaining the prior approval of, the commissioner. The failure of an agency or representative office to remain open to the public for business at least six hours per day four days per week (excluding legal holidays) shall, unless previous approval for lesser hours has been granted by the commissioner, constitute a closing, and may result in a suspension or revocation of license.

12 (b) If the commissioner finds, with respect to an application by a foreign bank under this section, that the closing of the office will not be substantially detrimental to the public convenience and advantage, the commissioner shall approve the application. If the commissioner finds otherwise, he or she shall deny the application.
(c) Whenever an application by a foreign bank under this section has been approved and all conditions precedent to the closing have been fulfilled, such foreign bank may close the office and shall promptly thereafter surrender to the commissioner the license which authorized the foreign bank to maintain the office.

CHAPTER 44. ADMINISTRATION OF ESTATES AND TRUSTS.

ARTICLE 5. GENERAL PROVISIONS AS TO FIDUCIARIES.

§44-5-3. Appointment of nonresident; bond; service of notice and process; fees; penalty.

(a) Notwithstanding any other provision of law, no individual who is a nonresident of this state, nor any banking institution which does not maintain a main office or branch office within this state nor any corporation having its principal office or place of business outside this state, may be appointed or act as executor, administrator, curator, testamentary guardian, guardian or conservator in this state, except that:

(1) An individual who is a nonresident of this state may be appointed ancillary administrator of a nonresident decedent's assets situate in this state if such nonresident individual is lawfully acting as executor in said decedent's state of domicile and submits letters of probate authenticated by the probate authorities of the decedent's state of domicile to the clerk of the county commission of any county of this state wherein ancillary administration is sought;

(2) An individual who is a nonresident of this state may be appointed ancillary administrator of a nonresident decedent's assets situate in this state if such nonresident individual is acting as administrator in said decedent's state of domicile and submits letters of administration authenticated by the probate authorities of the decedent's state of domicile to the clerk of the county commission of any county of this state wherein ancillary administration is sought;
(3) An individual who is a nonresident of this state may be appointed and act as testamentary guardian of a nonresident infant and thereby exercise dominion and control over such nonresident infant's assets situate in this state upon submission of authenticated documentation that such nonresident testamentary guardian was so appointed at the place of domicile of the nonresident infant. Such authenticated documentation shall be submitted to the clerk of the county commission of any county of this state wherein assets belonging to such nonresident infant are situate;

(4) An individual who is a nonresident of this state and who is named executor by a resident decedent may qualify and act as executor in this state;

(5) An individual who is a nonresident of this state may be appointed and act as administrator of a resident decedent's assets in this state if appointed in accordance with the provisions of section four, article one of this chapter;

(6) An individual who is a nonresident of this state may be appointed as the testamentary guardian of a resident infant if appointed in accordance with the provisions of section one, article ten of this chapter; and

(7) An individual who is a nonresident of this state may be appointed as guardian or conservator of a resident incompetent: Provided, That such appointment is made in accordance with the provisions of article two, chapter forty-four-a of this code and if such nonresident individual may otherwise qualify as guardian or conservator.

(b) Nonresident individuals enumerated in subsection (a) of this section shall give bond with corporate surety thereon, qualified to do business in this state, and the amount of such bond shall not be less than double the value of the personal assets and double the value of any real property authorized to be sold or double the value of any rents and profits from any real property which the nonresident individual is authorized to receive, except
that:

(1) Any nonresident individual enumerated in subsection (a) of this section who is the spouse, parent, sibling, lineal descendent or sole beneficiary of a resident or nonresident decedent shall give bond with corporate surety thereon qualified to do business in this state, with such penalty as may be fixed pursuant to the provisions of section seven, article one of this chapter, as approved by the clerk of the county commission;

(2) Where the terms of a decedent’s will directs that a nonresident individual enumerated in subdivisions (1), (3), (4) and (6) of subsection (a) of this section named in a decedent’s will shall not give bond or give bond at a specified amount, it shall not be required or shall be required only to the extent required under the terms of the will, unless at the time the will is admitted to record or at any time subsequently, on the application of any person interested, or from the knowledge of the commission or clerk admitting the will to record, it is deemed proper that greater bond be given.

(c) When a nonresident individual is appointed as executor, administrator, testamentary guardian, guardian or conservator pursuant to the provisions of subsection (a) of this section, said individual thereby constitutes the clerk of the county commission wherein such appointment was made as his true and lawful attorney-in-fact upon whom may be served all notices and process in any action or proceeding against him as executor, administrator, testamentary guardian, guardian or conservator or with respect to such estate, and such qualification shall be a manifestation of said nonresident individual’s agreement that any notice or process, which is served in the manner hereinafter provided in this subsection, shall be of the same legal force and validity as though such nonresident was personally served with notice and process within this state. Service shall be made by leaving the original and two copies of any notice or process together with a fee of five dollars with the clerk
102 of such county commission. The fee of five dollars shall
103 be deposited with the county treasurer. Such clerk shall
104 thereupon endorse upon one copy thereof the day and
105 hour of service and shall file such copy in his office and
106 such service shall constitute personal service upon such
107 nonresident: Provided, That the other copy of such notice
108 or process shall be forthwith sent by registered or certi-
109 fied mail, return receipt requested, deliver to addressee
110 only, by said clerk or to such nonresident at the address
111 last furnished by him to said clerk and either: (1) Such
112 nonresident's return receipt signed by him; or (2) the
113 registered or certified mail bearing thereon the stamp of
114 the post office department showing that delivery there-
115 fore was refused by such nonresident is appended to the
116 original notice or process filed therewith in the office of
117 the clerk of the county commission from which such
118 notice or process was issued. No notice or process may be
119 served on such clerk of the county commission or ac-
120 cepted by him less than thirty days before the return date
121 thereof. The clerk of such county commission shall keep
122 a record in his office of all such notices and processes and
123 the day and hour of service thereof. The provision for
124 service of notice or process herein provided is cumulative
125 and nothing herein contained shall be construed as bar to
126 service by publication where proper or the service of
127 notice or process in any other lawful mode or manner.

128 (d) The personal estate of a resident decedent, infant or
129 incompetent may not be removed from this state until the
130 inventory or appraisement of that resident decedent's,
131 infant's, or incompetent's assets have been filed and any
132 new or additional bond required to satisfy the penalty
133 specified in subsection (b) of this section has been
134 furnished. The liability of a nonresident executor,
135 administrator, testamentary guardian, guardian or
136 conservator and of any such surety shall be joint and
137 several and a civil action on any such bond may be
138 instituted and maintained against the surety, notwith-
139 standing any other provision of this code to the contrary,
140 even though no civil action has been instituted against
(e) Any such nonresident who removes from this state assets administered in and situate in this state without complying with the provisions of this section, the provisions of article eleven of this chapter or any other requirement pertaining to fiduciaries generally, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars or confined in the county jail for not more than one year, or, in the discretion of the court, by both such fine and imprisonment.

(f) If a nonresident appointed pursuant to subsection (a) of this section fails or refuses to file an accounting required by this chapter, and the failure continues for two months after the due date, he may, upon notice and hearing, be removed or subjected to any other appropriate order by the county commission, and if his failure or refusal to account continues for six months, he shall be removed by the county commission.

ARTICLE 10. GUARDIANS AND WARDS GENERALLY.

§44-10-7. Management of ward's estate; maintenance, education and custody; duration of guardianship; settlement.

Every guardian who is appointed as aforesaid, and gives bond when it is required, shall have the possession, care and management of his ward's estate, real and personal, and out of the proceeds of such estate shall provide for his maintenance and education; and shall have also, except as otherwise provided in this article, the custody of his ward. Unless the guardian shall die, be removed or resign his trust (and the court before which he qualified may allow him to resign), he shall continue in office until his ward shall attain the age of eighteen years notwithstanding the ward may marry before that time, or, in the case of a testamentary guardianship, until the termination of the period limited therefor. At the expiration of his trust, he shall deliver and pay all the estate and money in his hands, or with which he is
chargeable, to the person or persons entitled thereto. But
the father or mother of any minor child or children shall
be entitled to the custody of the person of such child or
children, and to the care of his or their education. If
living together, the father and mother shall be the joint
guardians of the person of their minor child or children,
with equal powers, rights and duties in respect to the
custody, control, services, earnings, and care of the
education of such minor child or children; and neither the
father nor the mother shall have any right paramount to
that of the other in respect to such custody, control,
services or earnings and care of the education of such
minor child or children. If the father and mother be living
apart, the court to which application is made from the
appointment of a guardian, or before which any such
matter comes in question, shall appoint, as guardian of
the person of the minor child or children of such father
and mother, that parent who is, in the court's opinion,
best suited for the trust, considering the welfare and best
interests of such minor child or children. No corporation
or trust company shall be guardian of any minor child or
children be entitled to the custody, control, services,
education of such minor child or children, and when any corporation or trust company is
 guardian of the estate of any minor child or children and
neither of the parents of such child or children is living,
or is a suitable person to act as guardian of the person of
such child or children, then the court shall appoint a
guardian of the person of such child or children who shall
be entitled to the custody, control, services, earnings and
care of the education of such minor child or children. Any
corporation or trust company appointed as guardian of
the estate of any minor child or children shall, unless for
such minor child or children a nonresident of this state
may be appointed guardian, be a corporation organized
under the laws of this state and doing business in this
state, or an authorized banking institution, defined as one
authorized to exercise trust and fiduciary powers within
this state under section fourteen, article four, chapter
thirty-one-a of this code.
CHAPTER 44A. WEST VIRGINIA GUARDIANSHIP AND CONSERVATORSHIP ACT.

ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS.

§44A-1-11. Guardian or conservator who resides out of state to designate resident agent.

1 A guardian or conservator who is or who later becomes a nonresident of this state shall file with the clerk of the circuit court in the county in which the proceeding is pending or where he or she was appointed guardian/conservator a designation of an agent residing in this state to accept service of process. Such filing shall be made promptly following the change of residence. No bank authorized to execute trust powers or engage in trust business in this state shall be considered to be a nonresident of this state for purposes of this section regardless of the location of the main office of the bank.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 1st day of April, 1996.

Governor
PRESENTED TO THE
GOVERNOR
Date 3/27/96
Time 10:18AM