WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 1998

ENROLLED

HOUSE BILL No. 4038

(By Delegates Thompson and Kominar)

Passed February 16, 1998

In Effect Ninety Days from Passage
AN ACT to amend and reenact section thirteen, article four, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing West Virginia state-chartered banks authority and parity with national banks in the marketing and sale of insurance and annuities.

Be it enacted by the Legislature of West Virginia:

That section thirteen, article four, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

§31A-4-13. Powers of state banking institutions generally.

(a) Any state-chartered banking institution shall have and exercise all of the powers necessary for, or incidental to, the business of banking, and without limiting or restricting such general powers, it shall have the right to buy or discount promissory notes and bonds, negotiate drafts, bills of exchange and other evidences of indebtedness, borrow money, receive deposits on such terms and conditions as its officers may prescribe, buy and sell, exchange, bank notes, bullion or coin, loan money on personal or other security, rent safe-deposit boxes and...
receive on deposit, for safekeeping, jewelry, plate, stocks, bonds and personal property of whatsoever description and provide customer services incidental to the business of banking, including, but not limited to, the issuance and servicing of and lending money by means of credit cards as letters of credit or otherwise. Any state-chartered banking institution may accept, for payment at a future date, not to exceed one year, drafts drawn upon it by its customers. Any state-chartered banking institution may issue letters of credit, with a specified expiration date or for a definite term, authorizing the holders thereof to draw drafts upon it or its correspondents, at sight or on time. Any such banking institution may organize, acquire, own, operate, dispose of, and otherwise manage wholly owned subsidiary corporations for purposes incident to the banking powers and services authorized by this chapter.

(b) Any state-chartered banking institution may acquire, own, hold, use and dispose of real estate, which shall in no case be carried on its books at a value greater than the actual cost: Provided, That such property shall be necessary for the convenient transaction of its business, including any buildings, office space or other facilities to rent as a source of income: Provided, however, That such investment hereafter made shall not exceed sixty-five percent of the amount of its capital stock and surplus, unless the consent in writing of the commissioner of banking is first secured.

(c) Any state-chartered banking institution may acquire, own, hold, use and dispose of real estate, which shall be carried on its books at the lower of fair value or cost as defined in rules promulgated by the commissioner of banking, subject to the following limitations:

(1) Such as shall be mortgaged to it in good faith as security for debts in its favor;

(2) Such as shall be conveyed to it in satisfaction of debts previously contracted in the course of its business dealings; and

(3) Such as it shall purchase at sales under judgments, decrees, trust deeds or mortgages in its favor, or shall
purchase at private sale, to secure and effectuate the payment of debts due to it.

(d) The value at which any real estate is held shall not be increased by the addition thereto of taxes, insurance, interest, ordinary repairs, or other charges which do not materially enhance the value of the property.

(e) Any real estate acquired by any such banking institution under subdivisions (2) and (3) of subsection (c) of this section shall be disposed of by the banking institution at the earliest practicable date, but the officers thereof shall have a reasonable discretion in the matter of the time to dispose of such property in order to save the banking institution from unnecessary losses: Provided, That in every case such property shall be disposed of within ten years from the time it is acquired by the banking institution, unless an extension of time is given in writing by the commissioner of banking.

(f) The sale of insurance by state-chartered banking institutions shall be subject to the following:

Any state-chartered banking institution having its main or a branch office in any place the population of which does not exceed five thousand inhabitants, as shown by the last preceding decennial census, through its employees or agents, may, from that place or office, directly or through a controlled subsidiary, act as agent for any fire, life, casualty, liability or other insurance company authorized by the authorities of the state to do business in this state, by soliciting and selling insurance and collecting premiums on policies issued by such company; and may receive for services so rendered all permissible fees or commissions as may be agreed upon between the bank and the insurance company for which it may act as agent: Provided, That no such bank shall in any case assume or guarantee the payment on insurance policies issued through its agency by its principal: Provided, however, That the bank shall not guarantee the truth of any statement made by an insured in filing his, her or its application for insurance. For purposes of this section, a "controlled subsidiary" is one in which the state-chartered banking institution owns at least eighty percent
of all classes of stock. This provision is intended to give state-chartered banking institutions parity with national banks operating in this state with regard to the marketing and sale of insurance notwithstanding the prohibitions and limitations contained in article eight-c or elsewhere in this chapter, and shall be construed consistently with interpretations of 12 U.S.C. §92, the regulations promulgated thereunder, and any successor legislation or regulations.

(g) Any state-chartered banking institution may, through its employees or agents, market and sell, as agent, annuities, either at its main office or at any of its branches. The marketing and sale of annuities may be made by the bank, through its employees or agents, directly, or through a controlled subsidiary, as defined in subsection (f) above. This provision is intended to give state-chartered banks parity with national banks operating in this state with regard to the sale of annuities, notwithstanding the prohibitions and limitations contained in article eight-c or elsewhere in this chapter.

(h) Unless waived in writing by the commissioner, a state-chartered bank may not invest or otherwise expend in excess of ten percent of its capital and surplus calculated at the end of the previous calendar year on the activities permitted by subsections (f) and (g) on an aggregate basis together with any of its approved financially related products and services. For purposes of this section, approved financially related products and services means those products and services offered by a state-chartered bank pursuant to an approved application submitted under article eight-c of this chapter.

(i) The commissioner shall promulgate rules in accordance with chapter twenty-nine-a of this code relating to the sale of insurance or annuities, including, but not limited to, rules requiring notice of the intention to engage in such activities and relating to the policies and procedures state-chartered banking institutions should adopt in connection with such activities.

(j) Any state-chartered banking institution and its employees or agents engaged in the sale of insurance or
annuities permitted hereby must also comply with all applicable requirements for the sale of such products imposed by the West Virginia commissioner of insurance and by any state or federal securities regulator.

(k) No state-chartered banking institution shall hereafter invest more than twenty percent of the amount of its capital and surplus in furniture and fixtures, whether the same be installed in a building owned by such banking institution, or in quarters leased by it, unless the consent in writing of the commissioner of banking is first secured.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Patty Shroeder
Chairman Senate Committee

Neil Fantano
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

Earl Ray Tomblin
President of the Senate

Speaker of the House of Delegates

The within approved this the 27th day of January, 1998.

Governor