WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 1999

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 2281

(By Delegates H. White, Douglas, Collins, Varner, Stalnaker and Willison)

Passed March 4, 1999

In Effect Ninety Days from Passage
AN ACT to amend and reenact section two, article three, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section twelve, article eight of said chapter; to further amend said article by adding thereto a new section, designated section twelve-d; and to amend and reenact section three, article eight-e of said chapter, all relating to branch banking; authorizing the board of banking and financial institutions to receive and hear appeals from parties adversely affected by an order of the commissioner issued under section twelve-d, article eight, chapter thirty-one-a; reducing the examination and investigation fee of applicants for a branch bank and authorizing the commissioner to require examinations of financial institutions that are merged into a state-chartered bank; providing new standards for an applicant state-chartered banking institution to qualify for branch banking; providing an alternative procedure for a banking institution to establish a branch bank by de novo construction or lease; and procedures for interstate branching by West Virginia state banks.
Be it enacted by the Legislature of West Virginia:

That section two, article three, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section twelve, article eight of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section twelve-d; and that section three, article eight-e of said chapter be amended and reenacted, all to read as follows:

ARTICLE 3. BOARD OF BANKING AND FINANCIAL INSTITUTIONS.

§31A-3-2. General powers and duties.

(a) In addition to other powers conferred by this chapter, the board has the power to:

(1) Regulate its own procedure and practice;

(2) Promulgate reasonable rules to implement any provision of this article in accordance with the provisions of article three, chapter twenty-nine-a of this code;

(3) Advise the commissioner in all matters within his or her jurisdiction;

(4) Study the organization, programs and services of financial institutions and the laws relating thereto in this state and in other jurisdictions, and to report and recommend to the governor and the Legislature all such changes and amendments in laws, policies and procedures relating thereto as it considers proper;

(5) Grant permission and authority to a financial institution:

(A) To participate in a public agency hereafter created under the laws of this state or of the United States, the purpose of which is to afford advantages or safeguards to financial institutions or to depositors therein, and to comply with all lawful requirements and conditions imposed upon those participants;

(B) To engage in any financial institution activity, services, procedures and practices in which financial institutions of the same type subject to the jurisdiction of the federal government
may hereafter be authorized by federal laws, rules or regulations to engage, notwithstanding any contrary provision of this code; and

(C) To pay interest on demand deposits of the United States or any agency thereof, if the payment of interest is permitted under any applicable federal law, rule or regulation.

Any permission and authority granted by the board pursuant to this subdivision shall terminate upon the adjournment of the next regular session of the Legislature, unless the Legislature enacts legislation authorizing the financial institution participation, activity, services and procedures or payment of interest with respect to which such permission and authority were granted, in which event the permission and authority shall continue in effect until the effective date of the legislation; and

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

(b) The board also has the power, by entering appropriate orders, to:

(1) Restrict the withdrawal of deposits from any financial institution when, in the judgment of the board, extraordinary circumstances make the restrictions necessary for the protection of creditors of and depositors in the affected institution;

(2) Compel the holder of shares in any corporate financial institution to refrain from voting the shares on any matter when, in the judgment of the board, the order is necessary to protect the institution against reckless, incompetent or careless management, to safeguard funds of depositors in the institution or to prevent willful violation of any applicable law or of any rule and regulation or order issued thereunder. In such a case the shares of the holder may not be counted in determining the existence of a quorum or a percentage of the outstanding shares necessary to take any corporate action;

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

(5) Exempt a bankers' bank from any provision of this chapter if the board finds that the provision is inconsistent with the purpose for which a bankers' bank is incorporated and organized and that the welfare of the public or any banking institution or other financial institution would not be jeopardized thereby;

(6) Revoke the certificate of authority, permit, certificate or license of any state banking institution to engage in business in this state if that institution fails or refuses to comply with any order of the commissioner entered pursuant to the provisions of paragraph (A) or (B), subdivision (15), subsection (c), section four, article two of this chapter, or at the board's election to direct the commissioner to apply to any court having jurisdiction for a prohibitory or mandatory injunction or other appropriate remedy to compel obedience to such order;

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

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

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

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

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

(12) To receive an appeal from any party who is adversely
affected by an order of the commissioner issued pursuant to
section twelve-d, article eight of this chapter, and hold hearings
in accordance with the provisions of article five, chapter
twenty-nine-a of this code.

(c) A provision of this section may not be construed to
alter, reduce or modify the rights of shareholders, or obligations
of a banking institution in regard to its shareholders, as set forth
in section one hundred seventeen, article one, chapter thirty-one
of this code and section seven, article seven of this chapter, and
other applicable provisions of this code.
(d) Any order entered by the West Virginia board of banking and financial institutions pursuant to this section is a matter of public record.

ARTICLE 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) A banking institution may not engage in business in this state 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 affiliate, as defined in section one, 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 does this activity constitute a violation of section forty-two, article four of this chapter: Provided, That a banking institution may not 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 educational institution located in the 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 is not necessary, for the continued operation of the 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 is 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) Subject to and in furtherance of the board’s authority under the provisions of subdivision (6), subsection (b), section two, article three of this chapter, and subsection (g) of this
section, the board, by order, 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 under the provisions of this section, provide notice of the application to all banking institutions. A banking institution may, within ten days after receipt of the notice, file a petition to intervene and shall, if it files a 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 under the provisions of this section and shall collect an examination and investigation fee of five hundred dollars for each filed application for a branch bank that is to be established by the construction, lease or acquisition of a branch bank facility, and five hundred dollars for a branch bank that is to be established by the purchase of the business and assets and assumption of the liabilities of, or merger or consolidation with another banking institution. Notwithstanding the above, if the merger or consolidation is between an existing banking institution and a bank newly incorporated solely for the purpose of facilitating the acquisition of the existing banking institution, the commissioner shall collect an examination and investigation fee of one hundred dollars. The commissioner may require an examination of a financial institution or an office of a financial institution that is being merged into a state-chartered bank. If an examination is required, the applicant is responsible for paying the examination costs at a rate of fifty dollars per examiner hour. The board
shall complete the examination and investigation within ninety
days from the date on which the 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. If the board makes
that request, the ninety-day period shall be extended for an
additional period of thirty days plus the number of days
between the date of the request and the date the additional
information and disclosures are received.

(i) Upon completion of the examination and investigation
with respect to the 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 hearing must be given to the banking institu-
tion 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 the hearing and the
administrative procedures in connection therewith are governed
by all of the provisions of article five, chapter twenty-nine-a of
this code, and must be held at a time and place set by the board
but may not be less than ten nor more than thirty days after the
notice is given;

(2) At the hearing a party may represent himself or herself
or be represented by an attorney at law admitted to practice
before any circuit court of this state;

(3) After the hearing and consideration of all the testimony
and evidence, the board shall make and enter an order approv-
ing 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 the order and accompanying findings
and conclusions shall be served upon all parties to the hearing,
and their attorneys of record, if any.

(j) A state banking institution may not 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 a hearing is not 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) The applicant state-chartered banking institution
satisfies such reasonable and appropriate requirements as to
sound financial condition as the commissioner or board may
from time to time establish;

(2) The establishment of the proposed branch bank would
not result in a monopoly, nor be in furtherance of any combina-
tion or conspiracy to monopolize the business of banking in any
section of this state;

(3) The establishment of the proposed branch bank would
not have the effect in any section of the state of substantially
lessening competition, nor tend to create a monopoly or in any
other manner be in restraint of trade, unless the anticompetitive
effects of the establishment of that proposed branch bank are
clearly outweighed in the public interest by the probable effect
of the establishment of the proposed branch bank in meeting the
convenience and needs of the community to be served by that
proposed branch bank;

(4) The applicant state-chartered banking institution meets
a satisfactory standard of compliance with federal and state
community reinvestment act requirements as evidenced by its
most recent state or federal examination;

(5) The applicant state-chartered banking institution meets
a satisfactory standard of compliance with federal and state
consumer compliance law and regulations as evidenced by its
most recent state or federal regulatory examination; and

(6) The applicant state-chartered banking institution meets
acceptable standards for investment in premises and fixed
assets as permitted by section thirteen, article four of this
chapter.
(k) Any party who is adversely affected by the order of the board is entitled to judicial review thereof in the manner provided in section four, article five, chapter twenty-nine-a of this code. Any such party adversely affected by a final judgment of a circuit court following judicial review as provided in the foregoing sentence may seek review thereof by appeal to the supreme court of appeals in the manner provided in article six, chapter twenty-nine-a of this code.

(1) Pursuant to the resolution of its board of directors and with the prior written approval of the commissioner, a state banking institution may discontinue the operation of a branch bank upon at least thirty days prior public notice given in such form and manner as the commissioner prescribes.

(m) Any violation of any provision of this section is a misdemeanor offense punishable by applicable penalties as provided in section fifteen of this article.

§31A-8-12d. Expedited procedure for authorization of de novo branch banks.

(a) As an alternative to using the procedures established in subdivisions (g) through (j) of section twelve of this article, a banking institution desiring to establish a branch bank by de novo construction or lease may file a notice, containing information as prescribed by the commissioner, of its intent which must be received by the commissioner at least thirty-five days prior to the date on which the proposed branch will be established accompanied by a fee of two hundred fifty dollars. The commissioner must provide written notice of his or her acceptance or rejection of the branch notice prior to the expiration of the thirty-five day period. However, if the commissioner requests additional information from the branching institution, the period for the commissioner’s consideration of the notice shall be extended an additional fifteen days from the time the information requested is received by the commissioner.

(b) A state banking institution may not establish a branch bank under this section until the commissioner provides written
approval of the notice for that branch bank. The commissioner’s approval or rejection of the notice must be accompanied by findings of fact on whether the applicant bank:

(1) Satisfies such reasonable and appropriate requirements as to sound financial condition as the commissioner or board, from time to time, may establish;

(2) Meets a satisfactory standard of compliance with federal and state community reinvestment act requirements as evidenced by its most recent state or federal examination;

(3) Meets a satisfactory standard of compliance with federal and state consumer compliance law and regulations as evidenced by its most recent state or federal regulatory examination; and

(4) Meets the acceptable standards for investment in premises and fixed assets as permitted by section thirteen, article four of this chapter.

Any party who is adversely affected by an action of the commissioner taken pursuant to the criteria established by subsection (b) of this section may appeal within ten business days of the commissioner’s decision to the board of banking and financial institutions which must, after holding a hearing pursuant to the provisions of subdivision (12), subsection (b), section two, article three of this chapter, affirm, reverse or modify the order of the commissioner. Any party who is adversely affected by an order of the board of banking and financial institutions issued pursuant to the provisions of this subsection is entitled to judicial review in the same manner as provided by the provisions of subsection (k), section twelve of this article.

ARTICLE 8E. INTERSTATE BRANCHING BY DE NOVO ENTRY AND ACQUISITION OF BRANCHES.

§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 pursuant to the procedures and
standards established in either section twelve or section twelve-
d, article eight of this chapter, any West Virginia state bank
may establish and maintain a de novo branch or acquire a
branch in a state other than West Virginia, if the new branch is
in conformity with, and would be permitted under the laws of
the state where the branch is to be located.

(b) A West Virginia state bank desiring to establish and
maintain a branch in another state under this section shall file
a notice on a form prescribed by the commissioner and pay the
branch notice fee set forth in subsection (a), section twelve-d,
article eight of this chapter.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within approved this the 18th day of March, 1999.

Governor