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WEST VIRGINIA  
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# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 2000

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## ENROLLED

SENATE BILL NO. 207

(By Senator Helmick, et al )

—●—

PASSED March 10, 2000

In Effect ninety days from Passage

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STANDARD

## ENROLLED

### Senate Bill No. 207

(BY SENATORS HELMICK, KESSLER, ROSS AND SPROUSE)

[Passed March 10, 2000; in effect ninety days from passage.]

AN ACT to amend and reenact section six, article one, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section eight, article two of said chapter; to amend and reenact sections two, thirteen, fourteen, fourteen-a, fifteen, sixteen, seventeen, eighteen and forty-two, article four of said chapter; to further amend said article by adding thereto a new section, designated section fourteen-b; to amend and reenact sections one, two, three, four and five, article six of said chapter; and to amend and reenact section two, article eight-e of said chapter, all relating to the exercise of trust powers of banking institutions through nonbank affiliates or subsidiaries; giving banks trust powers so that those banks may conduct trust activities, both in-state and at out-of-state branches, through their nonbank affiliates, subsidiaries, or through entities that are jointly owned by a group of banks; providing that nonbanking trust entities may be assessed for examination costs and expenses in the same manner as other

financial institutions; and providing civil and criminal penalties.

*Be it enacted by the Legislature of West Virginia:*

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

**ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.**

**§31A-1-6. Deposit insurance required for banking and other depository institutions.**

1 All credit unions established pursuant to article ten,  
2 chapter thirty-one of this code and all banking institutions  
3 governed by the provisions of this chapter except banks  
4 that do not accept deposits and offer only trust or other  
5 nondepository services must qualify for and obtain federal  
6 deposit insurance.

**ARTICLE 2. DIVISION OF BANKING.**

**§31A-2-8. Commissioner's assessments and examination fund; assessments, costs and expenses of examinations; collection.**

1 (a) All moneys collected by the commissioner from  
2 financial institutions and bank holding companies for  
3 assessments, examination fees, investigation fees or other  
4 necessary expenses incurred by the commissioner in  
5 administering such duties shall be paid to the commis-  
6 sioner and paid by the commissioner to the treasurer of the

7 state to the credit of a special revenue account to be  
 8 known as the "commissioner's assessment and examina-  
 9 tion fund" which is hereby established. The assessments  
 10 and fees paid into this account shall be appropriated by  
 11 law and used to pay the costs and expenses of the division  
 12 of banking and all incidental costs and expenses necessary  
 13 for its operations. At the end of each fiscal year, if the  
 14 fund contains a sum of money in excess of twenty percent  
 15 of the appropriated budget of the division of banking, the  
 16 amount of the excess shall be transferred to the general  
 17 revenue fund of the state. The Legislature may appropri-  
 18 ate money to start the special revenue account.

19 (b) The commissioner of banking shall charge and collect  
 20 from each state banking institution or other financial  
 21 institution or bank holding company and pay into a special  
 22 revenue account in the state treasury for the division of  
 23 banking assessments as follows:

24 (1) For each state banking institution, a semiannual  
 25 assessment payable on the first day of January and the  
 26 first day of July, each year, computed upon the total assets  
 27 of the banking institution shown on the report of condition  
 28 of the banking institution filed as of the preceding thirti-  
 29 eth day of June and the thirty-first day of December,  
 30 respectively, as follows:

31 Total Assets

| 32 |         | But Not |           |            | Of Excess |
|----|---------|---------|-----------|------------|-----------|
| 33 | Over    | Over    | This      |            | Over      |
| 34 | Million | Million | Amount    | Plus       | Million   |
| 35 | \$ 0    | \$ 2    | \$ 0      | .001645020 | 0         |
| 36 | 2       | 20      | 3,290     | .000205628 | 2         |
| 37 | 20      | 100     | 6,991     | .000164502 | 20        |
| 38 | 100     | 200     | 20,151    | .000106926 | 100       |
| 39 | 200     | 1,000   | 30,844    | .000090476 | 200       |
| 40 | 1,000   | 2,000   | 103,225   | .000074026 | 1,000     |
| 41 | 2,000   | 6,000   | 177,251   | .000065801 | 2,000     |
| 42 | 6,000   | 20,000  | 440,454   | .000055988 | 6,000     |
| 43 | 20,000  | 40,000  | 1,224,292 | .000052670 | 20,000    |

44 (2) For each regulated consumer lender, an annual  
45 assessment payable on the first day of July, each year,  
46 computed upon the total outstanding gross loan balances  
47 and installment sales contract balances net of unearned  
48 interest of the regulated consumer lender shown on the  
49 report of condition of the regulated consumer lender as of  
50 the preceding thirty-first day of December, respectively, as  
51 follows:

52 Total Outstanding Balances

| 53 |            | But Not     | This   |         | Of Excess  |
|----|------------|-------------|--------|---------|------------|
| 54 | Over       | Over        | Amount | Plus    | Over       |
| 55 | \$ 0       | \$1,000,000 | 800    | —       | —          |
| 56 | 1,000,000  | 5,000,000   | 800    | .000400 | 1,000,000  |
| 57 | 5,000,000  | 10,000,000  | 2,400  | .000200 | 5,000,000  |
| 58 | 10,000,000 | —           | 4,200  | .000100 | 10,000,000 |

59 If a regulated consumer lender's records or documents  
60 are maintained in more than one location in this state,  
61 then eight hundred dollars may be added to the assessment  
62 for each additional location.

63 (3) For each credit union, an annual assessment as  
64 provided for in section eight, article one, chapter thirty-  
65 one-c of this code as follows:

66 Total Assets

| 67 |            | But Not    | This   |         | Of Excess  |
|----|------------|------------|--------|---------|------------|
| 68 | Over       | Over       | Amount | Plus    | Over       |
| 69 | \$ 0       | \$100,000  | 100    | —       | —          |
| 70 | 100,000    | 500,000    | 300    | —       | —          |
| 71 | 500,000    | 1,000,000  | 500    | —       | —          |
| 72 | 1,000,000  | 5,000,000  | 500    | .000400 | 1,000,000  |
| 73 | 5,000,000  | 10,000,000 | 2,100  | .000200 | 5,000,000  |
| 74 | 10,000,000 | —          | 3,100  | .000100 | 10,000,000 |

75 (4) For each bank holding company, an annual assess-  
76 ment as provided for in section eight, article eight-a of this  
77 chapter. The annual assessment may not exceed ten dollars

78 per million dollars in deposits rounded off to the nearest  
79 million dollars.

80 (c) The commissioner shall each December and each  
81 June prepare and send to each state banking institution a  
82 statement of the amount of the assessment due. The  
83 commissioner shall, further, each June, prepare and send  
84 to each regulated consumer lender and each state credit  
85 union a statement of the amount of the assessment due.  
86 The commissioner shall, annually, during the month of  
87 January, prepare and send to each bank holding company  
88 a statement of the amount of the assessment due.

89 Assessments shall be prescribed annually, not later than  
90 the fifteenth day of June, by written order of the commis-  
91 sioner, but shall not exceed the maximums as set forth in  
92 subsection (b) of this section. In setting the assessments the  
93 primary consideration shall be the amount appropriated  
94 by the Legislature for the division of banking for the  
95 corresponding annual period. Reasonable notice of the  
96 assessments shall be made to all interested parties. All  
97 orders of the commissioner for the purpose of setting  
98 assessments are not subject to the provisions of the West  
99 Virginia administrative procedures act, under chapter  
100 twenty-nine-a of this code.

101 (d) For making an examination within the state of any  
102 other financial institution for which assessments are not  
103 provided by this code, the commissioner of banking shall  
104 charge and collect from such other financial institution  
105 and pay into the special revenue account for the division  
106 of banking the actual and necessary costs and expenses  
107 incurred in connection therewith, as fixed and determined  
108 by the commissioner. Banks that provide only trust or  
109 other nondepository services, nonbanking subsidiaries of  
110 bank holding companies that provide trust services,  
111 nonbanking subsidiaries of banks that provide trust  
112 services and any trust entity that is jointly owned by

113 federally insured depository institutions may be assessed  
114 for necessary costs and expenses associated with an  
115 examination pursuant to this subsection.

116 (e) If the records of an institution are located outside  
117 this state, the institution at its option shall make them  
118 available to the commissioner at a convenient location  
119 within the state, or pay the reasonable and necessary  
120 expenses for the commissioner or his or her representatives  
121 to examine them at the place where they are maintained.  
122 The commissioner may designate representatives, includ-  
123 ing comparable officials of the state in which the records  
124 are located, to inspect them on his or her behalf.

125 (f) The commissioner of banking may maintain an action  
126 for the recovery of all assessments, costs and expenses in  
127 any court of competent jurisdiction.

#### ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

##### **§31A-4-2. Use of terms; unlawfully engaging in banking business; penalties; enforcement.**

1 (a) No person doing business in this state, except a  
2 banking institution or a person authorized by the commis-  
3 sioner under the terms of this section, may use or advertise  
4 in connection with such business, or as a designation or  
5 title thereof, the term “bank”, “banker”, “banking”,  
6 “banking company”, “industrial bank”, “savings bank”, or  
7 “trust company”, or engage in the banking or trust busi-  
8 ness in this state. A nonbanking subsidiary of a bank  
9 holding company or a nonbanking subsidiary of a banking  
10 institution having a bank branch or bank main office in  
11 this state that provides trust services pursuant to section  
12 fourteen of this article may use the term “trust company”  
13 in its title and advertising. A trust entity owned jointly by  
14 federally insured depository institutions located within  
15 this state and authorized by the commissioner to operate

16 in this state may use the term “trust company” in its title  
17 and advertising.

18 (b) It is unlawful for any such person other than banking  
19 institutions as herein excepted, to advertise or hold  
20 himself, itself, or themselves, as the case may be, out to the  
21 public in any manner indicating, directly, indirectly or by  
22 implication, that any of them is engaged in the banking or  
23 trust business or is authorized and approved to engage  
24 therein in this state. A nonbanking subsidiary of a bank  
25 holding company or nonbanking subsidiary of a banking  
26 institution having a bank branch or bank main office in  
27 this state that provides trust services pursuant to section  
28 fourteen of this article may hold itself out to the public as  
29 engaged in the trust business. A trust entity owned jointly  
30 by federally insured depository institutions located within  
31 this state and authorized by the commissioner to operate  
32 in this state may hold itself out to the public as engaged in  
33 the trust business.

34 (c) The commissioner may authorize a person to utilize  
35 the term “bank” or “banc” in connection with nonprofit  
36 organizations or medical businesses where the term would  
37 have a common meaning separate and apart from a  
38 financial institution and would not result in confusion to  
39 the public (e.g., food bank; medical databank); and in  
40 connection with bank holding companies or their  
41 nonbanking affiliates where the term denotes the entities’  
42 common affiliation and would not result in confusion to  
43 the public.

44 (d) Any violation of the provisions of this section consti-  
45 tutes a misdemeanor offense, punishable as provided in  
46 section fifteen, article eight of this chapter.

47 (e) The commissioner of banking or any one or more  
48 banking institutions, acting individually or jointly, may  
49 petition the circuit court of the county in which any



50 violation of the provisions of this section occur or are  
51 threatened to occur for injunction or other appropriate  
52 judicial remedies for enforcement of the provisions hereof  
53 and the prevention of further or continued violations  
54 thereof.

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

1 (a) Any state-chartered banking institution has and may  
2 exercise all of the powers necessary for, or incidental to,  
3 the business of banking and without limiting or restricting  
4 such general powers, it shall have the right to buy or  
5 discount promissory notes and bonds; negotiate drafts,  
6 bills of exchange and other evidences of indebtedness;  
7 borrow money; receive deposits on such terms and condi-  
8 tions as its officers may prescribe; buy, sell or exchange  
9 bank notes, bullion or coin; loan money on personal or  
10 other security; rent safe-deposit boxes and receive on  
11 deposit for safekeeping jewelry, plate, stocks, bonds and  
12 personal property of whatsoever description; and provide  
13 customer services incidental to the business of banking,  
14 including, but not limited to, the issuance and servicing of  
15 and lending money by means of credit cards as letters of  
16 credit or otherwise. Any state-chartered banking institu-  
17 tion may accept, for payment at a future date not to exceed  
18 one year, drafts drawn upon it by its customers. Any  
19 state-chartered banking institution may issue letters of  
20 credit, with a specified expiration date or for a definite  
21 term, authorizing the holders thereof to draw drafts upon  
22 it or its correspondents, at sight or on time. Any such  
23 banking institution may organize, acquire, own, operate,  
24 dispose of and otherwise manage wholly owned subsidiary  
25 corporations or entities that are jointly owned with other  
26 insured depository institutions for purposes incident to the  
27 banking powers and services authorized by this chapter  
28 provided any wholly owned or jointly owned entities are

29 subject to federal and state examination and supervision  
30 as if the activities are conducted by the bank.

31 (b) Any state-chartered banking institution may acquire,  
32 own, hold, use and dispose of real estate which may not be  
33 carried on its books at a value greater than the actual cost:  
34 *Provided*, That the property must be necessary for the  
35 convenient transaction of its business, including any  
36 buildings, office space or other facilities to rent as a source  
37 of income: *Provided, however*, That the investment  
38 hereafter made may not exceed sixty-five percent of the  
39 amount of its capital stock and surplus, unless the consent  
40 in writing of the commissioner of banking is first secured.

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

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

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

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

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

59 (e) Any real estate acquired by any such banking institu-  
60 tion under subdivisions (2) and (3), subsection (c) of this

61 section shall be disposed of by the banking institution at  
62 the earliest practicable date, but the officers thereof shall  
63 have a reasonable discretion in the matter of the time to  
64 dispose of such property in order to save the banking  
65 institution from unnecessary losses: *Provided*, That in  
66 every case such property shall be disposed of within ten  
67 years from the time it is acquired by the banking institu-  
68 tion, unless an extension of time is given in writing by the  
69 commissioner of banking.

70 (f) The sale of insurance by state-chartered banking  
71 institutions is subject to the following:

72 Any state-chartered banking institution having its main  
73 or a branch office in any place the population of which  
74 does not exceed five thousand inhabitants, as shown by the  
75 last preceding decennial census, through its employees or  
76 agents, may, from that place or office, directly or through  
77 a controlled subsidiary, act as agent for any fire, life,  
78 casualty, liability or other insurance company authorized  
79 by the authorities of the state to do business in this state,  
80 by soliciting and selling insurance and collecting premi-  
81 ums on policies issued by such company; and may receive  
82 for services so rendered all permissible fees or commissions  
83 as may be agreed upon between the bank and the insur-  
84 ance company for which it may act as agent: *Provided*,  
85 That no bank may in any case assume or guarantee the  
86 payment on insurance policies issued through its agency by  
87 its principal: *Provided, however*, That the bank may not  
88 guarantee the truth of any statement made by an insured  
89 in filing his, her or its application for insurance. For  
90 purposes of this section, a "controlled subsidiary" is one in  
91 which the state-chartered banking institution owns at  
92 least eighty percent of all classes of stock. This provision  
93 is intended to give state-chartered banking institutions  
94 parity with national banks operating in this state with  
95 regard to the marketing and sale of insurance, notwith-

96 standing the prohibitions and limitations contained in  
97 article eight-c or elsewhere in this chapter, and shall be  
98 construed consistently with interpretations of 12 U.S.C.  
99 §92, the regulations promulgated thereunder, and any  
100 successor legislation or regulations.

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

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

123 (i) The commissioner shall promulgate rules in accor-  
124 dance with chapter twenty-nine-a of this code relating to  
125 the sale of insurance or annuities, including, but not  
126 limited to, rules requiring notice of the intention to engage  
127 in such activities and relating to the policies and proce-  
128 dures state-chartered banking institutions should adopt in  
129 connection with these activities.

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

136 (k) No state-chartered banking institution may hereafter  
137 invest more than twenty percent of the amount of its  
138 capital and surplus in furniture and fixtures, whether the  
139 same be installed in a building owned by the banking  
140 institution, or in quarters leased by it, unless the consent  
141 in writing of the commissioner of banking is first secured.

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

1 (a) Every state banking institution which files the  
2 reports required in section fifteen of this article and which  
3 is not otherwise prohibited by the commissioner or federal  
4 bank regulators from doing so, has and may exercise the  
5 following powers:

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

8 (2) To act as trustee, assignee, special commissioner,  
9 general or special receiver, guardian, executor, administra-  
10 tor, committee, agent, curator or in any other fiduciary  
11 capacity, and to take, assume, accept and execute trusts of  
12 every description not inconsistent with the constitution  
13 and laws of the United States of America or of this state;  
14 and to receive, hold, manage and apply any sinking fund  
15 on the terms and for the purposes specified in the instru-  
16 ment creating the fund;

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

19 (4) To make, hold and dispose of investments and  
20 establish common trust funds, and account therefor,  
21 pursuant to the provisions of chapter forty-four of this  
22 code;

23 (5) To purchase and sell and take charge of and receive  
24 the rents, issues and profits of any real estate for other  
25 persons or corporations;

26 (6) To act as trustee or agent in any collateral trust and  
27 in order to secure the payment of any obligations of any  
28 person, firm, private corporation, public corporation,  
29 public body or public agency to receive and hold in trust  
30 any items of personal property (including, without limita-  
31 tion, notes, bonds, debentures, obligations and certificates  
32 for shares of stock) with the right in case of default to sell  
33 and dispose of such personal property and to collect, settle  
34 and adjust any obligations for the payment of money, and  
35 at any sale of personal property held by it, to purchase the  
36 same for the benefit of all or any of the holders of the  
37 obligations, to secure the payment of which the items of  
38 personal property were pledged and delivered to the  
39 trustee or agent. Any such sale may be made without any  
40 proceedings in any court, and at such times and upon such  
41 terms as may be specified in the instrument or instruments  
42 creating the trust, or, in the absence of any specification of  
43 terms, at the time and upon the terms as the trustee  
44 considers reasonable; and

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

48 (b) All national banks having their main office in this  
49 state which have been, or hereafter may be, authorized  
50 under the laws of the United States to act as trustee and in  
51 other fiduciary capacities in the state of West Virginia  
52 shall have all the rights, powers, privileges and immunities

53 conferred hereunder, provided they comply with the  
54 requirements hereof.

55 (c) Banks having their main office in another state which  
56 lawfully have a branch in this state pursuant to the  
57 provisions of federal law or articles eight-d or eight-e of  
58 this chapter which have been, or hereafter may be, autho-  
59 rized under the laws of the United States or the laws of the  
60 state in which the bank is chartered to act as trustee and  
61 in other fiduciary capacities in the state in which their  
62 main office is located have all the rights, powers, privi-  
63 leges and immunities conferred hereunder, provided they  
64 comply with the requirements hereof.

65 (d) Any bank having its main office or a branch located  
66 in this state pursuant to subsection (c) of this section may  
67 offer trust services, but not deposit taking services, as  
68 described, permitted and authorized in this section or  
69 other applicable sections of this code through an affiliated  
70 nonbanking subsidiary of a bank holding company, a  
71 nonbanking entity in which the bank owns an interest  
72 along with other insured depository institutions, or its own  
73 nonbanking subsidiary if the nonbanking affiliate, subsid-  
74 iary or jointly owned entity:

75 (1) Maintains a fidelity bond in the same form and  
76 amount as would be required of a banking institution  
77 providing trust services;

78 (2) Maintains unimpaired tangible capital and surplus of  
79 at least two million dollars, or more if determined neces-  
80 sary by the commissioner;

81 (3) Is subject to examination and supervision by the  
82 bank's federal or state chartering authority, the federal  
83 deposit insurance corporation or by the board of governors  
84 of the federal reserve system or both the federal deposit  
85 insurance corporation and the board of governors of the  
86 federal reserve system to the same extent and in the same

87 manner as if the trust services were offered directly by the  
88 bank or banks;

89 (4) Has as its primary purpose the provision of trust  
90 services; and

91 (5) Registers with the commissioner of banking, on a  
92 form prescribed by him or her, at least sixty days prior to  
93 providing or offering to provide those services in this state.

**§31A-4-14a. Transfer of fiduciary accounts or relationships  
between affiliated subsidiary banks of a bank  
holding company or affiliated nonbanking  
entities or entities jointly owned by federally  
insured depository institutions.**

1 (a) Notwithstanding any other provision of this code and  
2 unless the will, deed or other instrument creating a trust or  
3 fiduciary account or relationship specifically provides  
4 otherwise, any affiliated banking institution, nonbanking  
5 subsidiary of a bank, nonbanking subsidiary of a bank  
6 holding company, or entity jointly owned by federally  
7 insured depository institutions which is empowered with  
8 and authorized to exercise trust powers within this state,  
9 or otherwise performs fiduciary services for a fee, may,  
10 without any order or other action on the part of any court  
11 or otherwise, transfer to any other affiliate banking  
12 institution or nonbanking subsidiary of a bank or affiliate  
13 or entity jointly owned by federally insured depository  
14 institutions exercising or authorized to exercise trust  
15 powers within this state pursuant to the provisions of  
16 section fourteen of this article any or all rights, franchises  
17 and interests in its fiduciary accounts or relationships,  
18 including, but not limited to, any or all appointments,  
19 designations and nominations and any other rights,  
20 franchises and interests, as trustee, executor, administra-  
21 tor, guardian, committee, escrow agent, transfer and  
22 paying agent of stocks and bonds and every other fiduciary



23 capacity; and the transferee or receiving affiliate or jointly  
24 owned entity shall hold and enjoy all rights of property,  
25 franchises and interests in the same manner and to the  
26 same extent as such rights, franchises and interests were  
27 held or enjoyed by the transferor affiliate. As to transfers  
28 to an affiliate or jointly owned entity pursuant to this  
29 section, the receiving affiliate or jointly owned entity shall  
30 take, receive, accept, hold, administer and discharge any  
31 grants, gifts, bequests, devises, conveyances, trusts, powers  
32 and appointments made by deed, deed of trust, will,  
33 agreement, order of court or otherwise to, in favor of, or in  
34 the name of, the transferor affiliate or jointly owned  
35 entity, whether made, executed or entered before or after  
36 such transfer and whether to vest or become effective  
37 before or after such transfer, as fully and to the same  
38 effect as if the receiving affiliate or jointly owned entity  
39 had been named in such deed, deed of trust, will, agree-  
40 ment, order or other instrument instead of such transferor  
41 affiliate or jointly owned entity. All acts taken or per-  
42 formed in its own name or in the name of or on behalf of  
43 the transferor affiliate or jointly owned entity by any  
44 receiving affiliate or jointly owned entity as trustee, agent,  
45 executor, administrator, guardian, depository, registrar,  
46 transfer agent or other fiduciary with respect to fiduciary  
47 accounts or relationships transferred pursuant to this  
48 section are as good, valid and effective as if made by the  
49 transferor entity.

50 (b) For purposes of this section, the term "affiliate"  
51 means: (1) Any two or more subsidiaries (as the term  
52 "subsidiary" is defined in section one, article eight-a of  
53 this chapter) which are "banks" or "banking institutions"  
54 (as those terms are defined in section two, article one of  
55 this chapter) or nonbanking institutions providing trust  
56 services pursuant to subsection (d), section fourteen of this  
57 article and which have a common bank holding company;  
58 (2) "any bank" or "banking institution" (as those terms are

59 defined in section two, article one of this chapter) and its  
60 nonbanking subsidiary providing trust services pursuant  
61 to the provisions of subsection (d), section fourteen of this  
62 article; or (3) any entity created to offer trust services that  
63 is jointly owned by federally insured depository institu-  
64 tions authorized to do banking business in this state. For  
65 purposes of this section, the term “bankholding company”  
66 shall have the meaning set forth in section one, article  
67 eight-a of this chapter.

68 (c) At least thirty days before any transfer authorized by  
69 this section, the transferor shall send a statement of intent  
70 to transfer together with the name and address of the  
71 transferee or receiving entity by regular United States  
72 mail to the most recent known address of all persons who  
73 appear in the records of the transferor as having a vested  
74 present interest in the trust, fiduciary account or relation-  
75 ship to be transferred.

76 (d) This section shall be applicable to both domestic and  
77 foreign bank holding company affiliates.

**§31A-4-14b. Delegation and fiduciary responsibility.**

1 (a) Any bank, nonbanking subsidiary of a bank holding  
2 company, nonbanking subsidiary of a banking institution  
3 or trust entity jointly owned by federally insured deposi-  
4 tory institutions located in this state and authorized by the  
5 commissioner to operate in this state that acts as a trustee  
6 pursuant to this chapter may delegate any investment,  
7 management or administrative function if it exercises  
8 reasonable care, judgment and caution in:

9 (1) Selecting the delegate, taking into account the  
10 delegate’s financial standing and reputation;

11 (2) Establishing the scope and other terms of any delega-  
12 tion; and

13 (3) Reviewing periodically the delegate's actions in order  
14 to monitor overall performance and compliance with the  
15 scope and other terms of any delegation.

16 (b) Notwithstanding any delegation permitted by  
17 subsection (a) of this section, any bank, nonbanking  
18 subsidiary of a bank holding company, nonbanking  
19 subsidiary of a banking institution or trust entity jointly  
20 owned by federally insured depository institutions located  
21 in this state and authorized by the commissioner to  
22 operate in this state that acts as a trustee pursuant to this  
23 chapter shall retain at all times responsibility for the due  
24 performance of any delegated fiduciary function.

**§31A-4-15. Required annual filings before exercising trust  
powers; penalties; notice of failure to comply.**

1 No banking institution, nonbanking subsidiary of a bank  
2 holding company, nonbanking subsidiary of a bank, or  
3 entity jointly owned by federally insured depository  
4 institutions authorized to conduct banking business in this  
5 state shall exercise any of the trust powers mentioned in  
6 this article until it shall have filed with the commissioner  
7 of banking an annual report of trust assets each calendar  
8 year. To meet the requirements of this section, the com-  
9 missioner may accept a report similar to the report filed by  
10 banking institutions with federal regulators. If any such  
11 banking institution or its nonbanking subsidiary or the  
12 nonbanking subsidiary of a bank holding company or  
13 entity jointly owned by federally insured depository  
14 institutions authorized to do banking business in this state  
15 shall exercise, or attempt to exercise, any such powers or  
16 rights without having complied with the requirements of  
17 this section as to the filing of such report, it is guilty of a

18 misdemeanor and, upon conviction thereof, shall be fined  
19 not more than five hundred dollars; and in every such case,  
20 whether or not there has been a prosecution or conviction  
21 of the company so offending, the commissioner of banking,  
22 being satisfied of the facts, may publish a notice of the fact  
23 that it has failed to comply with the requirements of this  
24 section and is therefore not entitled to exercise the trust  
25 powers and rights mentioned in the preceding section. In  
26 the event a notice is published as aforesaid, it shall be  
27 published as a Class II legal advertisement in compliance  
28 with the provisions of article three, chapter fifty-nine of  
29 this code, and the publication area for such publication  
30 shall be the county or counties in which such entity is  
31 offering such trust services. The cost of publication shall  
32 be paid by the person failing to comply with this section.

**§31A-4-16. Trust funds to be kept separate; bookkeeping and management.**

1 Every banking institution, nonbanking subsidiary of a  
2 bank holding company, nonbanking subsidiary of a bank  
3 or entity jointly owned by federally insured depository  
4 institutions authorized to engage in the trust business  
5 pursuant to the provisions of section fourteen of this  
6 article, shall keep all trust funds and investments separate  
7 and distinct from the assets owned by the corporation; and  
8 shall keep a separate set of books and records showing in  
9 proper detail all transactions so engaged in; and all  
10 investments made by such institution as fiduciary shall be  
11 so designated that the trust to which such investments  
12 shall appertain or belong shall be clearly and distinctly  
13 shown on the books of the institution; and such funds shall  
14 be held for the uses of the trust designated and for the  
15 beneficiaries thereof, and shall not be liable for any other  
16 obligations of the institution.

**§31A-4-17. Oath as fiduciary.**

1 Whenever any court, or the clerk thereof, shall appoint  
2 any banking institution, nonbanking subsidiary of a bank  
3 holding company, nonbanking subsidiary of a bank or  
4 entity jointly owned by federally insured depository  
5 institutions exercising trust powers under section fourteen  
6 of this article, as trustee, receiver, assignee, guardian,  
7 executor, administrator, special commissioner, curator,  
8 committee, or in any other fiduciary capacity to perform  
9 any duty or execute any trust, the chairman of the board,  
10 the president, vice president, secretary, treasurer, trust  
11 officer or assistant trust officer of such appointee shall  
12 take the oath and make the affirmation required by law of  
13 any such fiduciary, before the court or the clerk thereof, or  
14 before any other officer authorized to administer oaths.

**§31A-4-18. Capital as fiduciary security; additional security.**

1 Whenever any banking institution, nonbanking subsid-  
2 iary of a bank holding company, nonbanking subsidiary of  
3 a bank or entity jointly owned by federally insured  
4 depository institutions authorized to exercise trust powers  
5 pursuant to the provisions of section fourteen of this  
6 article, and having complied with the requirements of this  
7 article, shall be appointed trustee, assignee, receiver,  
8 guardian, executor, administrator, special commissioner,  
9 curator, committee, or in any other fiduciary capacity, or  
10 shall be directed by the order or decree of any court to  
11 execute any trust whatsoever, the capital and other assets  
12 of the fiduciary corporation shall constitute the security  
13 required by law for the faithful performance of its duties  
14 and shall be absolutely liable in case of any default  
15 whatsoever but, where the liability under any such ap-  
16 pointment as trustee, assignee, receiver, guardian, execu-  
17 tor, administrator, special commissioner, curator or  
18 committee, or, in the execution of any trust by order or  
19 decree of any court, shall be equal to, or shall exceed the

20 capital and surplus of such fiduciary corporation, the court  
21 making such appointment or entering such order or decree  
22 may require, and the fiduciary shall give, additional  
23 security. No bond shall be required of any banking institu-  
24 tion, nonbanking subsidiary of a bank holding company,  
25 nonbanking subsidiary of a bank or entity jointly owned  
26 by federally insured depository institutions unless such  
27 additional security is required.

**§31A-4-42. Unlawful for persons other than banking institu-  
tions to engage in the banking business; penal-  
ties.**

1 No person, except banking institutions chartered under  
2 the laws of this state, or authorized to conduct a banking  
3 business in this state under the laws of the United States  
4 of America or those chartered under the laws of another  
5 state or the United States of America with branch offices  
6 in this state under the provisions of articles eight-d and  
7 eight-e of this chapter, may engage in the business of  
8 banking or the trust business in the state of West Virginia,  
9 or shall receive or accept deposits of money, or borrow  
10 money by receiving and giving credits for deposits, or by  
11 issuing certificates of deposits or certificates of indebted-  
12 ness, or by making and negotiating any writing purporting  
13 to be a bond, contract or other obligation, the performance  
14 of which requires the holder or other party to make  
15 deposits of money with the issuer or receive or accept  
16 deposits by means of any other plan, pretext, scheme, shift  
17 or device: *Provided*, That a nonbanking subsidiary of a  
18 bank holding company, a nonbanking subsidiary of a  
19 banking institution or an entity jointly owned by federally  
20 insured depository institutions may provide trust services  
21 pursuant to subsection (d), section fourteen of this article.

22 Nothing contained in this section may affect the rights,  
23 privileges, objects or purposes delegated to other corpora-

24 tions by the general corporation law or other laws of this  
25 state.

26 Any corporation or individual who violates any of the  
27 provisions of this section is guilty of a misdemeanor and,  
28 upon conviction thereof, shall be fined not more than five  
29 thousand dollars and, in addition to penalty, every corpo-  
30 ration so offending shall forfeit its corporate franchise and  
31 every individual so offending is subject to a further  
32 penalty by confinement in the county or regional jail for  
33 not more than one year.

**ARTICLE 6. NOMINEE REGISTRATION OF FIDUCIARY SECURITIES.**

**§31A-6-1. Procedures for nominee registration of securities.**

1 Any bank, nonbanking subsidiary of a bank holding  
2 company, nonbanking subsidiary of a banking institution,  
3 or entity jointly owned by federally insured depository  
4 institutions authorized to exercise trust powers under  
5 section fourteen, article four of this chapter, which holds  
6 in a fiduciary capacity any stock, bond, debenture, note,  
7 warrant, certificate or other security evidencing ownership  
8 or interest, either whole or fractional, in fully paid and  
9 nonassessable intangible personal property, may cause the  
10 security or evidence of ownership, to be registered and  
11 held in the name of a nominee or nominees of the trust  
12 institution, or in its own name, without disclosing the  
13 fiduciary relationship, but, where the trust institution is  
14 acting jointly with some other individual or individuals, it  
15 must first secure the written consent of the individual  
16 fiduciary or fiduciaries thereto, which consent the individ-  
17 ual fiduciary or fiduciaries are hereby authorized to give.

18 The placing of property in the name of a nominee,  
19 nominees or in the name of the trust institution, without  
20 disclosure of the fiduciary capacity, shall be deemed to be  
21 nominee registration under this article and every such

22 registration shall ipso facto constitute a declaration of  
23 trust upon the part of the registered owner so far as the  
24 fiduciary and the beneficiaries of the fiduciary status are  
25 concerned.

26 For purposes of this article, the term "trust institution"  
27 means a bank, nonbanking subsidiary of a bank holding  
28 company, nonbanking subsidiary of a banking institution  
29 or entity jointly owned by federally insured depository  
30 institutions authorized to exercise trust powers under  
31 section fourteen, article four of this chapter.

**§31A-6-2. Duties of trust institutions making use of nominee  
registration.**

1 Every trust institution making use of nominee registra-  
2 tion as provided in this article shall:

3 (a) At all times maintain such records as may be neces-  
4 sary to show the actual beneficial ownership of the  
5 property so held;

6 (b) At all times retain possession and control of securities  
7 or other evidences of ownership which must be kept  
8 separate and apart from the assets of such trust institution  
9 and assets held in other fiduciary capacities;

10 (c) Secure from the nominee or nominees the endorse-  
11 ments, assignments or other writings as may be necessary  
12 to effect retransfer of the securities or other evidences of  
13 ownership without notice and such endorsements, assign-  
14 ments or other writings shall be valid and effective as of  
15 the date of delivery thereof whether the nominee die  
16 before transfer is perfected, or not;

17 (d) Enter into such contracts or agreements with its  
18 nominee or nominees as may be necessary to afford full



19 protection to the ownership of its fiduciary account and  
20 the beneficiaries thereof;

21 (e) Clearly show in all of its reports and accounts the  
22 form of registration under which such securities or evi-  
23 dences of ownership are held.

**§31A-6-3. Civil liabilities and criminal penalties.**

1 Any trust institution which places property in nominee  
2 registration under this article is absolutely liable in civil  
3 actions or suits for any or all loss or damage to its fidu-  
4 ciary account or the beneficiaries thereof occasioned by  
5 the acts of any of its nominees, or any of its agents,  
6 employees, or other persons acting for it with respect to  
7 such property, including reasonable attorney fees.

8 Any trust institution or its officers, employees, nominees  
9 or agents placing property in nominee registration in  
10 violation of any of the provisions of this article is guilty of  
11 a misdemeanor and, in addition to civil liability for  
12 restitution, shall be punished by a fine of not less than fifty  
13 dollars nor more than one thousand dollars.

**§31A-6-4. Limitations on liability in transfers and changes of  
registration.**

1 No liability for any loss caused by the acts of the nomi-  
2 nee of a trust institution may attach to any transfer agent,  
3 registrar, corporation, officer or agent of a corporation, or  
4 other person, who, in compliance with the directions of  
5 any trust institution acting under the provisions of this  
6 article, transfers or changes the registration of any prop-  
7 erty. The certification of the trust institution that it has  
8 complied with the provisions of this article is prima facie  
9 evidence of its compliance so far as any transfer agent,  
10 registrar, corporation, officer or agent of a corporation, or  
11 other person, is concerned.

**§31A-6-5. Registration of property to evade taxes prohibited.**

1 No trust institution acting under the provisions of this  
2 article may cause or permit the use of its name or the name  
3 of its nominee or nominees for the purpose of registering  
4 property to evade, avoid or relieve itself or any other  
5 person, firm or corporation, or the property, from taxation.

**ARTICLE 8E. INTERSTATE BRANCHING BY DE NOVO ENTRY AND  
ACQUISITION OF BRANCHES.****§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 a  
5 branch located in a host state, without either engaging in  
6 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" does not include  
11 any "foreign bank" as defined in 12 U.S.C. §3101(7),  
12 except that the term includes any foreign bank organized  
13 under the laws of a territory of the United States, Puerto  
14 Rico, Guam, American Samoa or the Virgin Islands, the  
15 deposits of which are insured by the federal deposit  
16 insurance corporation.

17 (c) "Bank holding company" has the meaning set forth in  
18 12 U.S.C. §1841(a)(1).

19 (d) "Bank supervisory agency" means:

20 (1) Any agency of another state with primary responsi-  
21 bility for chartering and supervising banks; and

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

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

29     (f) “Branch” has the meaning set forth in subsection (f),  
30     section two, article one of this chapter. It includes an  
31     office of a bank that exercises only trust powers as de-  
32     scribed by subsection (a), section fourteen, article four of  
33     this chapter and a nonbanking subsidiary of a bank  
34     holding company or a bank that provides trust services  
35     pursuant to the provisions of subsection (d), section  
36     fourteen, article four of this chapter.

37     (g) “Commissioner” means the West Virginia commis-  
38     sioner of banking then in office and, where appropriate, all  
39     of his or her successors and predecessors in office.

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

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

48     (j) “Home state” means:

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

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

53     (3) With respect to a foreign bank, the state determined  
54     to be the home state of such foreign bank under 12 U.S.C.  
55     §3103(c).

56     (k) “Home state regulator” means, with respect to an  
57     out-of-state state bank, the bank supervisory agency of the  
58     state in which the bank is chartered.

59     (l) “Host state” means a state, other than the home state  
60     of a bank, in which the bank maintains, or seeks to estab-  
61     lish and maintain, a branch.

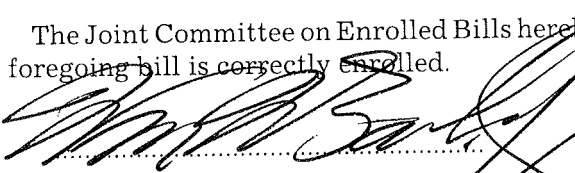
62     (m) “Out-of-state bank” means a bank whose home state  
63     is a state other than West Virginia.

64     (n) “Out-of-state state bank” means a bank chartered  
65     under the laws of any state other than West Virginia.

66     (o) “State” means any state of the United States, the  
67     District of Columbia, any territory of the United States,  
68     Puerto Rico, Guam, the Virgin Islands and American  
69     Samoa.

70     (p) “West Virginia state bank” means a bank chartered  
71     under the laws of West Virginia.

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



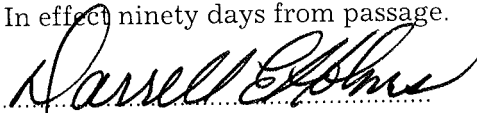
Chairman Senate Committee



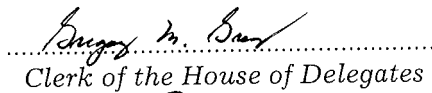
Chairman House Committee

Originating in the Senate.

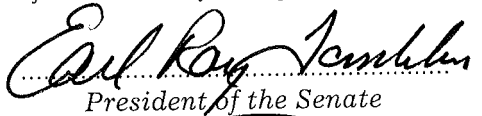
In effect ninety days from passage.



Clerk of the Senate



Clerk of the House of Delegates



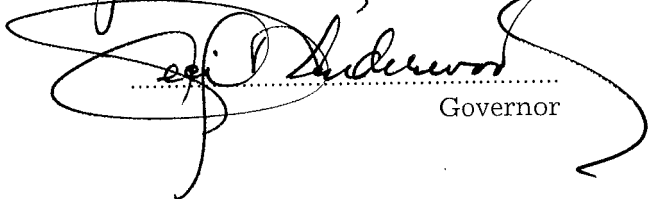
President of the Senate



Speaker House of Delegates

The within.....*approved*.....this the *3rd*

Day of.....*April*....., 2000



Governor

PRESENTED TO THE

GOVERNOR

Date 3/31/00

Time 3:55 pm