WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 2000

ENROLLED

SENATE BILL NO. 207

(By Senator Helmick, et al.)

PASSED March 10, 2000
In Effect ninety days from Passage
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, chapter thirty-one of this code and all banking institutions governed by the provisions of this chapter except banks that do not accept deposits and offer only trust or other nondepository services must qualify for and obtain federal 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 financial institutions and bank holding companies for assessments, examination fees, investigation fees or other necessary expenses incurred by the commissioner in administering such duties shall be paid to the commissioner and paid by the commissioner to the treasurer of the
state to the credit of a special revenue account to be
known as the “commissioner’s assessment and examina-
tion fund” which is hereby established. The assessments
and fees paid into this account shall be appropriated by
law and used to pay the costs and expenses of the division
of banking and all incidental costs and expenses necessary
for its operations. At the end of each fiscal year, if the
fund contains a sum of money in excess of twenty percent
of the appropriated budget of the division of banking, the
amount of the excess shall be transferred to the general
revenue fund of the state. The Legislature may appropri-
ate money to start the special revenue account.

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

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

<table>
<thead>
<tr>
<th>Total Assets</th>
<th>But Not Over</th>
<th>This Amount</th>
<th>Of Excess Over</th>
</tr>
</thead>
<tbody>
<tr>
<td>Million</td>
<td>Million</td>
<td>Million</td>
<td>Million</td>
</tr>
<tr>
<td>35</td>
<td>$0</td>
<td>$2</td>
<td>$0</td>
</tr>
<tr>
<td>36</td>
<td>2</td>
<td>20</td>
<td>3,290</td>
</tr>
<tr>
<td>37</td>
<td>20</td>
<td>100</td>
<td>6,991</td>
</tr>
<tr>
<td>38</td>
<td>100</td>
<td>200</td>
<td>20,151</td>
</tr>
<tr>
<td>39</td>
<td>200</td>
<td>1,000</td>
<td>30,844</td>
</tr>
<tr>
<td>40</td>
<td>1,000</td>
<td>2,000</td>
<td>103,225</td>
</tr>
<tr>
<td>41</td>
<td>2,000</td>
<td>6,000</td>
<td>177,251</td>
</tr>
<tr>
<td>42</td>
<td>6,000</td>
<td>20,000</td>
<td>440,454</td>
</tr>
<tr>
<td>43</td>
<td>20,000</td>
<td>40,000</td>
<td>1,224,292</td>
</tr>
</tbody>
</table>
(2) For each regulated consumer lender, an annual assessment payable on the first day of July, each year, computed upon the total outstanding gross loan balances and installment sales contract balances net of unearned interest of the regulated consumer lender shown on the report of condition of the regulated consumer lender as of the preceding thirty-first day of December, respectively, as follows:

### Total Outstanding Balances

<table>
<thead>
<tr>
<th>Total Outstanding Balances</th>
<th>But Not Over</th>
<th>This Amount</th>
<th>Plus</th>
<th>Of Excess Over</th>
</tr>
</thead>
<tbody>
<tr>
<td>$ 0</td>
<td>$1,000,000</td>
<td>800</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1,000,000</td>
<td>5,000,000</td>
<td>800</td>
<td>.000400</td>
<td>1,000,000</td>
</tr>
<tr>
<td>5,000,000</td>
<td>10,000,000</td>
<td>2,400</td>
<td>.000200</td>
<td>5,000,000</td>
</tr>
<tr>
<td>10,000,000</td>
<td></td>
<td>4,200</td>
<td>.000100</td>
<td>10,000,000</td>
</tr>
</tbody>
</table>

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

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

### Total Assets

<table>
<thead>
<tr>
<th>Total Assets</th>
<th>But Not Over</th>
<th>This Amount</th>
<th>Plus</th>
<th>Of Excess Over</th>
</tr>
</thead>
<tbody>
<tr>
<td>$ 0</td>
<td>$100,000</td>
<td>100</td>
<td></td>
<td></td>
</tr>
<tr>
<td>100,000</td>
<td>500,000</td>
<td>300</td>
<td></td>
<td></td>
</tr>
<tr>
<td>500,000</td>
<td>1,000,000</td>
<td>500</td>
<td>.000400</td>
<td>1,000,000</td>
</tr>
<tr>
<td>1,000,000</td>
<td>5,000,000</td>
<td>500</td>
<td>.000200</td>
<td>5,000,000</td>
</tr>
<tr>
<td>5,000,000</td>
<td>10,000,000</td>
<td>2,100</td>
<td>.000100</td>
<td>10,000,000</td>
</tr>
</tbody>
</table>

(4) For each bank holding company, an annual assessment as provided for in section eight, article eight-a of this chapter. The annual assessment may not exceed ten dollars.
per million dollars in deposits rounded off to the nearest million dollars.

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

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

(d) For making an examination within the state of any other financial institution for which assessments are not provided by this code, the commissioner of banking shall charge and collect from such other financial institution and pay into the special revenue account for the division of banking the actual and necessary costs and expenses incurred in connection therewith, as fixed and determined by the commissioner. Banks that provide only trust or other nondepository services, nonbanking subsidiaries of bank holding companies that provide trust services, nonbanking subsidiaries of banks that provide trust services and any trust entity that is jointly owned by
federally insured depository institutions may be assessed for necessary costs and expenses associated with an examination pursuant to this subsection.

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

(f) The commissioner of banking may maintain an action for the recovery of all assessments, costs and expenses in 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.

(a) No person doing business in this state, except a banking institution or a person authorized by the commissioner under the terms of this section, may use or advertise in connection with such business, or as a designation or title thereof, the term “bank”, “banker”, “banking”, “banking company”, “industrial bank”, “savings bank”, or “trust company”, or engage in the banking or trust business in this state. A nonbanking subsidiary of a bank holding company or a nonbanking subsidiary of a banking institution having a bank branch or bank main office in this state that provides trust services pursuant to section fourteen of this article may use the term “trust company” in its title and advertising. A trust entity owned jointly by federally insured depository institutions located within this state and authorized by the commissioner to operate
in this state may use the term “trust company” in its title and advertising.

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

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

(d) Any violation of the provisions of this section constitutes a misdemeanor offense, punishable as provided in section fifteen, article eight of this chapter.

(e) The commissioner of banking or any one or more banking institutions, acting individually or jointly, may petition the circuit court of the county in which any
violation of the provisions of this section occur or are
threatened to occur for injunction or other appropriate
judicial remedies for enforcement of the provisions hereof
and the prevention of further or continued violations
thereof.

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

(a) Any state-chartered banking institution has and may
eexercise 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 condi-
tions as its officers may prescribe; buy, sell or 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 institu-
tion 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 or entities that are jointly owned with other
insured depository institutions for purposes incident to the
banking powers and services authorized by this chapter
provided any wholly owned or jointly owned entities are
subject to federal and state examination and supervision as if the activities are conducted by the bank.

(b) Any state-chartered banking institution may acquire, own, hold, use and dispose of real estate which may not be carried on its books at a value greater than the actual cost: Provided, That the property must 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 the investment hereafter made may 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 may be mortgaged to it in good faith as security for debts in its favor;

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

and

(3) Such as it may purchase at sales under judgments, decrees, trust deeds or mortgages in its favor, or may 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 may 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), 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 institu-
tion, unless an extension of time is given in writing by the
commissioner of banking.

(f) The sale of insurance by state-chartered banking
institutions is 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 premi-
ums 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 insur-
ance company for which it may act as agent: **Provided,
That no bank may in any case assume or guarantee the
payment on insurance policies issued through its agency by
its principal: **Provided, however, That the bank may 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, notwith-
standing 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) of this section. 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) of this section 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 these 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 may 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 the banking institution, or in quarters leased by it, unless the consent in writing of the commissioner of banking is first secured.

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

(a) Every state banking institution which files the reports required in section fifteen of this article and which is not otherwise prohibited by the commissioner or federal bank regulators from doing so, has and may 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 the 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 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 the 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 the time and upon the terms as the trustee considers 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 laws of the state in which the bank is chartered to act as trustee and in other fiduciary capacities in the state in which their main office is located have all the rights, powers, privileges and immunities conferred hereunder, provided they comply with the requirements hereof.

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

1. Maintains a fidelity bond in the same form and amount as would be required of a banking institution providing trust services;

2. Maintains unimpaired tangible capital and surplus of at least two million dollars, or more if determined necessary by the commissioner;

3. Is subject to examination and supervision by the bank’s federal or state chartering authority, the federal deposit insurance corporation or by the board of governors of the federal reserve system or both the federal deposit insurance corporation and the board of governors of the federal reserve system to the same extent and in the same
manner as if the trust services were offered directly by the bank or banks;

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

(5) Registers with the commissioner of banking, on a form prescribed by him or her, at least sixty days prior to 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.

(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 affiliated banking institution, nonbanking subsidiary of a bank, nonbanking subsidiary of a bank holding company, or entity jointly owned by federally insured depository institutions which is empowered with and authorized to exercise trust powers within this state, 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 banking institution or nonbanking subsidiary of a bank or affiliate or entity jointly owned by federally insured depository institutions exercising or authorized to exercise trust powers within this state pursuant to the provisions of section fourteen of this article 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 or jointly owned entity 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. As to transfers to an affiliate or jointly owned entity pursuant to this section, the receiving affiliate or jointly owned entity 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 or jointly owned entity, 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 or jointly owned entity had been named in such deed, deed of trust, will, agreement, order or other instrument instead of such transferor affiliate or jointly owned entity. All acts taken or performed in its own name or in the name of or on behalf of the transferor affiliate or jointly owned entity by any receiving affiliate or jointly owned entity 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 entity.

(b) For purposes of this section, the term “affiliate” means: (1) Any two or more subsidiaries (as the term “subsidiary” is defined in section one, 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) or nonbanking institutions providing trust services pursuant to subsection (d), section fourteen of this article and which have a common bank holding company; (2) “any bank” or “banking institution” (as those terms are
defined in section two, article one of this chapter) and its nonbanking subsidiary providing trust services pursuant to the provisions of subsection (d), section fourteen of this article; or (3) any entity created to offer trust services that is jointly owned by federally insured depository institutions authorized to do banking business in this state. 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 shall send a statement of intent to transfer together with the name and address of the transferee or receiving entity by regular United States mail to the most recent known address of all persons who appear in the records of the transferor 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 affiliates.

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

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

(1) Selecting the delegate, taking into account the delegate’s financial standing and reputation;
11 (2) Establishing the scope and other terms of any delegation; and

12 (3) Reviewing periodically the delegate's actions in order
13 to monitor overall performance and compliance with the
14 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
misdemeanor and, upon conviction thereof, shall be fined
not more than five hundred dollars; and in every such case,
whether or not there has been a prosecution or conviction
of the company so offending, the commissioner of banking,
being satisfied of the facts, may publish a notice of the fact
that it has failed to comply with the requirements of this
section and is therefore not entitled to exercise the trust
powers and rights mentioned in the preceding section. In
the event a notice is published as aforesaid, it shall be
published as a Class II legal advertisement in compliance
with the provisions of article three, chapter fifty-nine of
this code, and the publication area for such publication
shall be the county or counties in which such entity is
offering such trust services. The cost of publication shall
be paid by the person failing to comply with this section.

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

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

§31A-4-17. Oath as fiduciary.
Whenever any court, or the clerk thereof, shall appoint any banking institution, nonbanking subsidiary of a bank holding company, nonbanking subsidiary of a bank or entity jointly owned by federally insured depository institutions exercising trust powers under section fourteen of this article, as trustee, receiver, assignee, guardian, executor, administrator, special commissioner, curator, committee, or in any other fiduciary capacity to perform any duty or execute any trust, the chairman of the board, the president, vice president, secretary, treasurer, trust officer or assistant trust officer of such appointee shall take the oath and make the affirmation required by law of any such fiduciary, before the court or the clerk thereof, or before any other officer authorized to administer oaths.

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

Whenever any banking institution, nonbanking subsidiary of a bank holding company, nonbanking subsidiary of a bank or entity jointly owned by federally insured depository institutions authorized to exercise trust powers pursuant to the provisions of section fourteen of this article, and having complied with the requirements of this article, shall be appointed trustee, assignee, receiver, guardian, executor, administrator, special commissioner, curator, committee, or in any other fiduciary capacity, or shall be directed by the order or decree of any court to execute any trust whatsoever, the capital and other assets of the fiduciary corporation shall constitute the security required by law for the faithful performance of its duties and shall be absolutely liable in case of any default whatsoever but, where the liability under any such appointment as trustee, assignee, receiver, guardian, executor, administrator, special commissioner, curator or committee, or, in the execution of any trust by order or decree of any court, shall be equal to, or shall exceed the
capital and surplus of such fiduciary corporation, the court making such appointment or entering such order or decree may require, and the fiduciary shall give, additional security. No bond shall be required of any banking institution, nonbanking subsidiary of a bank holding company, nonbanking subsidiary of a bank or entity jointly owned by federally insured depository institutions unless such additional security is required.

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

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, may 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 indebtedness, or by making and negotiating any writing purporting to be a bond, contract or other obligation, the performance 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: Provided, That a nonbanking subsidiary of a bank holding company, a nonbanking subsidiary of a banking institution or an entity jointly owned by federally insured depository institutions may provide trust services pursuant to subsection (d), section fourteen of this article.

Nothing contained in this section may affect the rights, privileges, objects or purposes delegated to other corpora-
Any corporation or individual who violates any of the
provisions of this section is guilty of a misdemeanor and,
upon conviction thereof, shall be fined not more than five
thousand dollars and, in addition to penalty, every corpo-
ration so offending shall forfeit its corporate franchise and
every individual so offending is subject to a further
penalty by confinement in the county or regional jail for
not more than one year.

ARTICLE 6. NOMINEE REGISTRATION OF FIDUCIARY SECURITIES.

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

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

The placing of property in the name of a nominee,
ominees or in the name of the trust institution, without
disclosure of the fiduciary capacity, shall be deemed to be
nominee registration under this article and every such
registration shall ipso facto constitute a declaration of
trust upon the part of the registered owner so far as the
fiduciary and the beneficiaries of the fiduciary status are
concerned.

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

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

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

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

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

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

(d) Enter into such contracts or agreements with its
nominee or nominees as may be necessary to afford full
§31A-6-3. Civil liabilities and criminal penalties.

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

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

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

No liability for any loss caused by the acts of the nominee of a trust institution may attach to any transfer agent, registrar, corporation, officer or agent of a corporation, or other person, who, in compliance with the directions of any trust institution acting under the provisions of this article, transfers or changes the registration of any property. The certification of the trust institution that it has complied with the provisions of this article is prima facie evidence of its compliance so far as any transfer agent, registrar, corporation, officer or agent of a corporation, or other person, is concerned.
§31A-6-5. Registration of property to evade taxes prohibited.

1 No trust institution acting under the provisions of this article may cause or permit the use of its name or the name of its nominee or nominees for the purpose of registering property to evade, avoid or relieve itself or any other 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 required by the context, the following words and phrases shall have the following meanings:

(a) “Acquisition of a branch” means the acquisition of a branch located in a host state, without either engaging in an “interstate merger transaction” as defined in article eight-d of this chapter or acquiring all or substantially all of the assets of another bank by merger or purchase.

(b) “Bank” has the meaning set forth in 12 U.S.C. §1813(h): Provided, That the term “bank” does not include any “foreign bank” as defined in 12 U.S.C. §3101(7), except that the term includes 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.

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

(d) “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.

(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. It includes an
office of a bank that exercises only trust powers as de-
scribed by subsection (a), section fourteen, article four of
this chapter and a nonbanking subsidiary of a bank
holding company or a bank that provides trust services
pursuant to the provisions of subsection (d), section
fourteen, article four of this chapter.

(g) "Commissioner" means the West Virginia commis-
sioner 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

(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
§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 the bank is chartered.

(l) “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.

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

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

(o) “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.

(p) “West Virginia state bank” means a bank chartered 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...this the 3rd Day of...2000

Governor
PRESENTED TO THE
GOVERNOR
Date: 3/31/02
Time: 3:45 pm