WEST VIRGINIA LEGISLATURE
Regular Session, 2005

ENROLLED

SENATE BILL NO. 122

(By Senators Minard and McCabe)

PASSED April 5, 2005

In Effect ninety days from Passage
AN ACT to amend and reenact §31A-1-2 of the Code of West Virginia, 1931, as amended; to amend and reenact §31A-2-5 of said code; and to amend and reenact §31A-4-1 and §31A-4-5 of said code, all relating to the ability of a state-chartered bank to organize as a limited liability company.

Be it enacted by the Legislature of West Virginia:

That §31A-1-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §31A-2-5 of said code be amended and reenacted; and that §31A-4-1 and §31A-4-5 of said code be amended and reenacted, all to read as follows:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.


1. As used in this chapter, unless the context in which used plainly requires a different meaning:
(a) The word "action", in the sense of a judicial proceeding, means any proceeding in a court of competent jurisdiction in which rights are adjudicated and determined and shall embrace and include recoupment, counterclaim, setoff and other related, similar and summary proceedings;

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

(c) The words "bankers' bank" mean a banking institution, insured by the Federal Deposit Insurance Corporation, the stock of which is owned exclusively by banks and other depository institutions, and such banking institution and all subsidiaries thereof are engaged exclusively in providing services for banks and other depository institutions and their officers, directors and employees;

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

(e) The word "Board" means the West Virginia Board of Banking and Financial Institutions;

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

(1) A bank's principal place of business;

(2) Any customer bank communication terminals installed and operated pursuant to section twelve-b, article eight of this chapter; and

(3) Any loan origination office authorized by section twelve-c, article eight of this chapter;

(g) The words “Commissioner” or “Commissioner of Banking” mean the Commissioner of Banking of West Virginia;

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

(i) The word “department” or “division” means the Division of Banking of West Virginia;

(j) The words “Deputy Commissioner” or “Deputy Commissioner of Banking” mean the Deputy Commissioner of Banking of West Virginia;

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

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

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

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

(o) The words “person” or “persons” mean any individ-
ual, partnership, society, association, firm, institution,
company, public or private corporation, state, governmen-
tal agency, bureau, department, division or instrumental-
ity, political subdivision, county commission, municipality,
trust, syndicate, estate or any other legal entity whatso-
ever, formed, created or existing under the laws of this
state or any other jurisdiction;

(p) The words “safe-deposit box” mean a safe-deposit
box, vault or other safe-deposit receptacle maintained by
a lessor bank and the rules relating thereto apply to
property or documents kept therein in the bank’s vault
under the joint control of lessor and lessee;
(q) The words “state bank” or “state banking institu-
tion” mean, unless the context requires otherwise, a bank
chartered under the laws of West Virginia, as distin-
guished from either an out-of-state bank or a national
banking association and is also referred to as a “West
Virginia State Bank” or “West Virginia State Banking
Institution”; and

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

ARTICLE 2. DIVISION OF BANKING.

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

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

(b) No person shall operate an office in West Virginia
which regularly makes consumer loans in this state other
than first mortgage loans unless they are a financial
institution, licensed pawnbroker or a federally insured
depository institution authorized and qualified to do
business in this state. The purchase of consumer paper
does not constitute the making of consumer loans for the
purposes of this subsection, unless the purchase is made by
a business affiliated with the credit provider pursuant to
a standing arrangement.
(c) Application for such license or certificate shall be upon such forms and contain such information as the Commissioner may prescribe. In connection with such applications every corporate financial institution shall file a certified copy of its charter and bylaws, a statement as to the amount of capital that has been subscribed and paid in and a statement of its financial condition duly verified under oath by its president or vice president and its cashier or secretary as the case may be and every financial institution other than a corporation shall file a verified statement of its financial condition.

(d) If the application be that of a West Virginia state banking institution, the Commissioner of Banking shall examine the information, documents and statements submitted and, if he or she finds that such banking institution has adopted bylaws which provide practical, safe, just and equitable rules and methods for the management of its business and it has complied in all respects with the provisions of this chapter and other applicable laws, he or she shall issue to it a certificate or license permitting it to engage in business. If the application be that of a financial institution other than a banking institution, the Commissioner of Banking shall examine the information, documents and statements submitted and, if he or she finds that such financial institution has adequate resources for the proposed business and has provided practical, safe, just and equitable rules and methods for the management of its business, and it has complied in all respects with the provisions of this chapter and other applicable laws, and that the public convenience and advantage will be promoted by the issuance of a certificate or license thereto, he or she shall issue to it a certificate or license permitting it to engage in business. Such certificate or license shall be preserved and the original or copy thereof displayed in all the places of business of such banking or other financial institution located in this state.
(e) In addition to the requirements of subsections (b) and (c) of this section, every foreign corporation applying for a license or certificate to engage in the business of a financial institution in this state, other than an out-of-state banking institution, shall file with the Commissioner of Banking a copy of the bylaws under which it operates, together with a citation to the statutes of the jurisdiction where it is organized which pertain to its organization and powers and the conduct of its business. The Commissioner shall examine the information, documents and statements submitted by such foreign corporation and if he or she finds that they provide practical, safe, just and equitable rules and methods for the management of the business of the corporation, that it has adequate resources for the proposed business and it has complied in all respects with the provisions of this chapter and other applicable laws and that the public convenience and advantage will be promoted by the issuance of a license or certificate thereto, he or she shall issue to such corporation a certificate or license permitting it to engage in business in this state, which certificate or license shall authorize such corporation to engage in the business of the type of financial institution specified therein, until the thirtieth day of the following June. Thereafter a new certificate or license shall be secured annually by any such foreign corporation, except where annual renewal of the license or certificate is specifically not required for the type of institution involved. The fee for the original and each additional license or certificate issued to a foreign corporation shall be one hundred dollars, unless otherwise provided by statute. A verified statement of the financial condition of every such foreign corporation shall be filed with the Commissioner before the issuance of each annual certificate or license. Such certificate or license shall be preserved and the original or copy thereof displayed in the West Virginia place of business of such corporation.

(f) Unless the institution is a federally insured depository institution or it is otherwise provided for by statute, a new
certificate or license shall be secured annually by all
domestic state financial institutions and the fee for the
original and each additional license or certificate shall be
one hundred dollars.

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

(h) Unless specifically provided for by this chapter,
nothing contained in this code shall authorize any person
to engage in the banking business in this state except
corporations chartered to conduct a banking business
under the laws of West Virginia and which hold a license
or certificate to do so issued under this section, limited
liability companies organized to conduct a banking
business under the laws of West Virginia and which hold
a license or certificate to do so under this section or
associations authorized to conduct a banking business in
West Virginia under the laws of the United States and
having their principal place of business in this state.

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

§31A-4-1. General corporation laws applicable; charter appli-
cations to be approved by West Virginia Board of
Banking and Financial Institutions.

(a) The general corporation laws of the state, including
the provisions of chapter thirty-one-d of this code, shall
govern banking institutions and the chartering thereof,
except as otherwise provided in or where inconsistent with
the provisions of this chapter, when the banking institu-
tions are chartered as business corporations.
(b) The provisions of the Uniform Limited Liability Company Act, chapter thirty-one-b of this code shall govern banking institutions and the organizing thereof, except as otherwise provided in or where inconsistent with the provisions of this chapter when the banking institutions are chartered as limited liability companies. Any reference in this chapter to "directors" of a bank, in the case of limited liability company banks, refers to the bank's members if the bank is a member-managed company or to the bank's managers if it is a manager-managed company.

(c) No charter shall issue in this state for any banking institution unless the application therefor shall have been submitted to and approved by the West Virginia Board of Banking and Financial Institutions: Provided, That the Board may not approve the application to charter any banking institution unless the proposed banking institution does business within this state and is subject to the supervision of the Commissioner of Banking.

§31A-4-5. Requirements and procedure for incorporation of state banks.

(a) A state bank may be organized by five or more incorporators, a majority of whom shall be residents of the State of West Virginia. Such banking institution shall have as a part of its corporate name or title one or more of the following words indicative of the business which it is authorized to conduct, namely, "bank", "banking company", "banking association", "trust company", "banking and trust company" or "bank and trust company".

The incorporators shall file with the board an agreement of incorporation, in duplicate, following generally the form prescribed by the Secretary of State for chartering corporations under the provisions of article one, chapter thirty-one of this code. The information set forth in the agreement shall include the following:
(1) The name of the proposed bank;

(2) The community and county in which the bank is to be located, together with the post office address of the place of business of the bank;

(3) Whether such bank proposes also to engage in the trust business;

(4) The name, residence and occupation of each incorporator, and the amount of capital stock subscribed and paid for by each;

(5) The names of the persons who are to serve as officers and directors of the banking institution and the official position proposed to be held by each; and

(6) The total authorized capital stock of the institution.

The agreement of incorporation shall be signed and acknowledged by each of the incorporators and, when filed with the Board, shall be accompanied by the statutory corporation charter fees and an examination and investigation fee of five thousand dollars payable to the Board. However, if the agreement is for the incorporation of a bank to be organized solely for the purpose of facilitating the acquisition of another bank, the examination and investigation fee is five hundred dollars payable to the Board. When transmitting the agreement to the Board, the incorporators shall designate by name and give the address of the attorney, agent or other responsible party with whom the Board may communicate, on whom the Board may call for further information and to whom the Board may officially report as to action on the agreement so filed with him or her. The agreement shall constitute and may be considered and treated by the Board as an application for the Board's approval to incorporate and organize a banking institution in this state.

(b) Notwithstanding the provisions of subsection (a) of this section, a person may apply to the Commissioner to
obtain a certificate of authority to organize and operate as a bank under this chapter as a limited liability company, if that limited liability company is formed to have perpetual existence, centralized management, limited liability, free transferability of interests and the Federal Deposit Insurance Corporation has ruled that a bank so organized will be eligible for federal deposit insurance.

(c) An existing bank structured as a corporation may apply to the Commissioner to reorganize and operate as a limited liability company.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved, this the 19th Day of April, 2005.

Governor
PRESENTED TO THE GOVERNOR

Date \textbf{4/13/65}

Time \textbf{10:48 a.m.}