ENROLLED

SENATE BILL NO. 443

(By Senators Tomblin, Mr. President, and Sprouse,)

PASSED March 21, 2005

In Effect ninety days from Passage
ENROLLED

Senate Bill No. 413

(By Senators Tomblin, Mr. President, and Sprouse,
By Request of the Executive)

[Passed March 21, 2005; in effect ninety days from passage.]

AN ACT to amend and reenact §31A-3-2 of the Code of West Virginia, 1931, as amended; and to amend and reenact §31A-8C-1, §31A-8C-2, §31A-8C-3 and §31A-8C-5 of said code, all relating generally to financially related activities of state-chartered banking institutions; reorganizing the approval process for engaging in financially related activities; clarifying the definition of financially related activities; creating a notice and approval process to engage in financially related activities; requiring annual reporting to the Legislature; allowing banks to make equity investments in entities providing financially related activities on the same terms as national banks; and restating the purpose and interpretation of the article.

Be it enacted by the Legislature of West Virginia:

That §31A-3-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §31A-8C-1, §31A-
§31A-3-2. General powers and duties.

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

1. Regulate its own procedure and practice;
2. Promulgate reasonable rules to implement any provision of this article in accordance with the provisions of article three, chapter twenty-nine-a of this code;
3. Advise the Commissioner in all matters within his or her jurisdiction;
4. Study the organization, programs and services of financial institutions and the laws relating thereto in this state and in other jurisdictions and to report and recommend to the Governor and the Legislature all such changes and amendments in laws, policies and procedures relating thereto as it considers proper;
5. Grant permission and authority to a financial institution:
   (A) To participate in a public agency hereafter created under the laws of this state or of the United States, the purpose of which is to afford advantages or safeguards to financial institutions or to depositors therein and to comply with all lawful requirements and conditions imposed upon those participants; and
   (B) To pay interest on demand deposits of the United States or any agency thereof, if the payment of interest is permitted under any applicable federal law, rule or regulation; and
6. Seek judicial enforcement to compel compliance with any of its orders and to seek and obtain civil penalties as set forth under this chapter.
(b) The Board also has the power, by entering appropriate orders, to:

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

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

3. Approve or disapprove applications to incorporate and organize state banking institutions in accordance with the provisions of sections six and seven, article four of this chapter;

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

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

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

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

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

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

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

(11) In addition to any authority granted pursuant to section twelve, article eight of this chapter, incident to the approval of an application pursuant to subdivisions (7) or (8) of this subsection, permit the bank the application of which is so approved to operate its banking business under its name from the premises of the bank the business and assets of which have been purchased and the liabilities of which have been assumed by such applicant bank or with which the applicant bank has merged or consolidated:

Provided, That this permission may be granted only if the Board has made the findings required by subsection (f), section three of this article and such applicant bank has no common directors or officers nor common ownership of stock exceeding ten percent of total outstanding voting stock with the bank whose business and assets are being purchased and liabilities assumed, or with whom the applicant bank is being merged; and

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

(c) A provision of this section may not be construed to alter, reduce or modify the rights of shareholders, or obligations of a banking institution in regard to its shareholders, as set forth in section one hundred seventeen, article one, chapter thirty-one of this code and section seven, article seven of this chapter, and other applicable provisions of this code.

(d) Any order entered by the West Virginia Board of Banking and Financial Institutions pursuant to this section is a matter of public record.
ARTICLE 8C. PROVISION OF FINANCIALLY RELATED SERVICES BY BANKS AND BANK HOLDING COMPANIES.

§31A-8C-1. Financially related defined.

The term "financially related" includes:

(a) All products, services and activities offered or engaged in by national banks or by any federally chartered thrift institution or West Virginia state or federally chartered credit union or a bank chartered by any other state; except those excluded by subsection (f) of this section;

(b) Equity investments in real estate development activities, products and services;

(c) Securities underwriting and brokerage activities, products and services, except those excluded by subsection (f) of this section;

(d) Financial consulting activities, products and services;

and

(e) Any and all other activities, products and services engaged in or offered by other providers of financial products or services which may be deemed by the Commissioner of Banking pursuant to this article to be financially related, except those excluded by subsection (f) of this section.

(f) The term "financially related" excludes products, services or activities offered or engaged in by any real estate agent, agency or broker, which products, services or activities are regulated by the state Real Estate Commission pursuant to chapter forty-seven of this code except for such activities, products and services permitted, engaged in or offered by a West Virginia state-chartered banking institution prior to the effective date of this section or permitted pursuant to subdivision (b) of this section.
§31A-8C-2. Banks and bank holding companies permitted to offer financially related services.

(a) Subject to the prior approval of the Commissioner of Banking, any West Virginia state-chartered banking institution or any bank holding company headquartered in this state may, either through equity investment in other entities or through a wholly owned subsidiary or subsidiaries, or by contract or agreement with others to provide such products or services, engage in any activity, exercise any power or offer any product or service that is financially related. A state-chartered banking institution may engage in a financially related activity directly and not through an operating subsidiary, financial subsidiary or affiliate if it is permissible for a national bank to engage in the financially related activity directly. The Commissioner shall grant or deny any request under this section within sixty days of receipt unless additional information is required.

(b) In determining whether an activity is financially related, the Commissioner shall consider:

(1) The ability of financial institutions to exercise any additional powers in a safe and sound manner;

(2) The authority of national banks, federal thrifts, federal credit unions and other financial service providers operating pursuant to federal law or regulation and the laws of other states to provide the financially related service; and

(3) Any specific limitations on financial institution operations or powers contained in this chapter.

(c) If a state-chartered banking institution or bank holding company must make prior application to a federal bank regulatory agency for approval to engage in a financially related activity, the banking institution or bank holding company shall file with the Commissioner a copy of the application submitted to the federal agency.
(d) The Commissioner shall include a list of every financially related activity authorized pursuant to this section during the previous twelve months in his or her annual report to the Legislature.

§31A-8C-3. Limitation on permitted investment in entities offering financially related services.

No West Virginia state-chartered banking institution or bank holding company may invest or otherwise expend more, in the aggregate of the amount of its capital and surplus, on a consolidated basis, in the conduct of financially related activities than would be allowed to a national bank.

§31A-8C-5. Construction, conflicting provisions.

This article shall be construed liberally to permit banks and bank holding companies to offer financially related products and services and to enable West Virginia state-chartered banking institutions and bank holding companies to compete fairly with other financial institutions and other entities providing financial services under the laws of the United States or any other state. No other provision of this code shall be deemed to prohibit such activity: Provided, That in the provision of such products and services, banks and bank holding companies are subject to the same state and federal regulation and licensing requirements as are other providers of such products and services.
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 4th Day of April 2005.

Governor
PRESENTED TO THE GOVERNOR
Date 3/29/05
Time 2:58