

FILED

2005 APR -4 P 3: 40

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
*Regular Session, 2005*

---

**ENROLLED**

**SENATE BILL NO.** 413

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

---

**PASSED** March 21, 2005

**In Effect** ninety days from **Passage**

FILED

2005 APR -4 P 3:40

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**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-

8C-2, §31A-8C-3 and §31A-8C-5 of said code be amended and reenacted, all to read as follows:

**ARTICLE 3. BOARD OF BANKING AND FINANCIAL INSTITUTIONS.**

**§31A-3-2. General powers and duties.**

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

3 (1) Regulate its own procedure and practice;

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

7 (3) Advise the Commissioner in all matters within his or  
8 her jurisdiction;

9 (4) Study the organization, programs and services of  
10 financial institutions and the laws relating thereto in this  
11 state and in other jurisdictions and to report and recom-  
12 mend to the Governor and the Legislature all such changes  
13 and amendments in laws, policies and procedures relating  
14 thereto as it considers proper;

15 (5) Grant permission and authority to a financial institu-  
16 tion:

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

23 (B) To pay interest on demand deposits of the United  
24 States or any agency thereof, if the payment of interest is  
25 permitted under any applicable federal law, rule or  
26 regulation; and

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

30 (b) The Board also has the power, by entering appropri-  
31 ate orders, to:

32 (1) Restrict the withdrawal of deposits from any finan-  
33 cial institution when, in the judgment of the Board,  
34 extraordinary circumstances make the restrictions neces-  
35 sary for the protection of creditors of and depositors in the  
36 affected institution;

37 (2) Compel the holder of shares in any corporate finan-  
38 cial institution to refrain from voting the shares on any  
39 matter when, in the judgment of the Board, the order is  
40 necessary to protect the institution against reckless,  
41 incompetent or careless management, to safeguard funds  
42 of depositors in the institution or to prevent willful  
43 violation of any applicable law or of any rule and regula-  
44 tion or order issued thereunder. In such a case the shares  
45 of the holder may not be counted in determining the  
46 existence of a quorum or a percentage of the outstanding  
47 shares necessary to take any corporate action;

48 (3) Approve or disapprove applications to incorporate  
49 and organize state banking institutions in accordance with  
50 the provisions of sections six and seven, article four of this  
51 chapter;

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

56 (5) Exempt a bankers' bank from any provision of this  
57 chapter if the Board finds that the provision is inconsistent  
58 with the purpose for which a bankers' bank is incorpo-  
59 rated and organized and that the welfare of the public or  
60 any banking institution or other financial institution  
61 would not be jeopardized thereby;

62 (6) Revoke the certificate of authority, permit, certificate  
63 or license of any state banking institution to engage in  
64 business in this state if that institution fails or refuses to

65 comply with any order of the Commissioner entered  
66 pursuant to the provisions of paragraph (A) or (B), subdivi-  
67 sion (15), subsection (c), section four, article two of this  
68 chapter, or at the Board's election to direct the Commis-  
69 sioner to apply to any court having jurisdiction for a  
70 prohibitory or mandatory injunction or other appropriate  
71 remedy to compel obedience to such order;

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

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

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

97 (10) Approve or disapprove the application of any state  
98 bank to purchase the business and assets and assume the  
99 liabilities of a national banking association, or merge or  
100 consolidate with a national banking association to form a

101 resulting state bank in accordance with the provisions of  
102 section seven, article seven of this chapter; and

103 (11) In addition to any authority granted pursuant to  
104 section twelve, article eight of this chapter, incident to the  
105 approval of an application pursuant to subdivisions (7) or  
106 (8) of this subsection, permit the bank the application of  
107 which is so approved to operate its banking business under  
108 its name from the premises of the bank the business and  
109 assets of which have been purchased and the liabilities of  
110 which have been assumed by such applicant bank or with  
111 which the applicant bank has merged or consolidated:  
112 *Provided*, That this permission may be granted only if the  
113 Board has made the findings required by subsection (f),  
114 section three of this article and such applicant bank has no  
115 common directors or officers nor common ownership of  
116 stock exceeding ten percent of total outstanding voting  
117 stock with the bank whose business and assets are being  
118 purchased and liabilities assumed, or with whom the  
119 applicant bank is being merged; and

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

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

132 (d) Any order entered by the West Virginia Board of  
133 Banking and Financial Institutions pursuant to this  
134 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.**

1 The term “financially related” includes:

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

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

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

13 (d) Financial consulting activities, products and services;  
14 and

15 (e) Any and all other activities, products and services  
16 engaged in or offered by other providers of financial  
17 products or services which may be deemed by the Commis-  
18 sioner of Banking pursuant to this article to be financially  
19 related, except those excluded by subsection (f) of this  
20 section.

21 (f) The term “financially related” excludes products,  
22 services or activities offered or engaged in by any real  
23 estate agent, agency or broker, which products, services or  
24 activities are regulated by the state Real Estate Commis-  
25 sion pursuant to chapter forty-seven of this code except  
26 for such activities, products and services permitted,  
27 engaged in or offered by a West Virginia state-chartered  
28 banking institution prior to the effective date of this  
29 section or permitted pursuant to subdivision (b) of this  
30 section.

**§31A-8C-2. Banks and bank holding companies permitted to offer financially related services.**

1 (a) Subject to the prior approval of the Commissioner of  
2 Banking, any West Virginia state-chartered banking  
3 institution or any bank holding company headquartered in  
4 this state may, either through equity investment in other  
5 entities or through a wholly owned subsidiary or subsid-  
6 iaries, or by contract or agreement with others to provide  
7 such products or services, engage in any activity, exercise  
8 any power or offer any product or service that is finan-  
9 cially related. A state-chartered banking institution may  
10 engage in a financially related activity directly and not  
11 through an operating subsidiary, financial subsidiary or  
12 affiliate if it is permissible for a national bank to engage  
13 in the financially related activity directly. The Commis-  
14 sioner shall grant or deny any request under this section  
15 within sixty days of receipt unless additional information  
16 is required.

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

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

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

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

28 (c) If a state-chartered banking institution or bank  
29 holding company must make prior application to a federal  
30 bank regulatory agency for approval to engage in a  
31 financially related activity, the banking institution or  
32 bank holding company shall file with the Commissioner a  
33 copy of the application submitted to the federal agency.



34 (d) The Commissioner shall include a list of every  
35 financially related activity authorized pursuant to this  
36 section during the previous twelve months in his or her  
37 annual report to the Legislature.

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

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

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

1 This article shall be construed liberally to permit banks  
2 and bank holding companies to offer financially related  
3 products and services and to enable West Virginia state-  
4 chartered banking institutions and bank holding compa-  
5 nies to compete fairly with other financial institutions and  
6 other entities providing financial services under the laws  
7 of the United States or any other state. No other provision  
8 of this code shall be deemed to prohibit such activity:  
9 *Provided*, That in the provision of such products and  
10 services, banks and bank holding companies are subject to  
11 the same state and federal regulation and licensing  
12 requirements as are other providers of such products and  
13 services.

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

*Candy White*  
.....  
Chairman Senate Committee

*W. Rick Beer*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*Darrell Holmes*  
.....  
Clerk of the Senate

*Bryan M. Burd*  
.....  
Clerk of the House of Delegates

*Carl Roy Tomblin*  
.....  
President of the Senate

*[Signature]*  
.....  
Speaker House of Delegates

The within *is approved* ..... this the *4th* .....  
Day of *April* ..... 2005.

*[Signature]*  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

Date 3/29/05

Time 2:58