ENROLLED

House Bill No. 3073

(By Delegates Moore, White, Kominar and Amores)

Passed March 7, 2007

In Effect Ninety Days from Passage
AN ACT to amend and reenact §31A-1-2 of the Code of West Virginia, 1931, as amended; and to amend and reenact §31A-4-13 of said code, all relating to prohibiting financial institutions, state banks and out-of-state banks from establishing or maintaining a branch in West Virginia on, or within one and one-half miles of, the premises or property of an affiliate, if that affiliate engages in commercial activity; and defining the terms “affiliate” and “commercial activities.”

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; and that §31A-4-13 of said code be amended and reenacted, all to read as follows:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.


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 word “affiliate” means any company that controls, is controlled by, or is under common control with another company. For purposes of this definition, the word “control” shall be construed consistently with the Bank Holding Company Act, 12 U.S.C. § 1841;

(c) The words “bank” and “banking institution” mean a corporation, limited liability company or association heretofore or hereafter charted 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;

(d) 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;

(e) 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;

(f) The word “Board” means the West Virginia Board of Banking and Financial Institutions;

(g) The words “branch bank” mean an office or other place at which a bank performs any or all banking business. 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;

(h) The words “commercial activities” mean activities in which a bank holding company, a financial holding company, a national bank, or a national bank financial subsidiary may not engage under federal law.

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

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

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

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

(m) 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;

(n) 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;

(o) 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”;

(p) 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;

(q) The words “person” or “persons” mean any individual, partnership, society, association, firm, institution, company, public or private corporation, state, governmental agency, bureau, department, division or instrumentality, political subdivision, county commission, municipality, trust, syndicate, estate or any other legal entity whatsoever, formed, created or existing under the laws of this state or any other jurisdiction;

(r) 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;

(s) The words “state bank” or “state banking institution” mean, unless the context requires otherwise, a bank chartered under the laws of West Virginia, as distinguished 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

(t) The words “trust business” mean the functions, services and activities contained, detailed and embraced in section fourteen, article four of this chapter and as elsewhere defined by law and as may be included within the meaning of the term “banking business”.
ARTICLE 4. BANKING INSTITUTIONS AND SERVICES
GENERALLY.
§31A-4-13. Powers of state banking institutions generally.

(a) Any state-chartered banking institution has and may
exercise 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 conditions 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 institution 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 institution, 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 premiums 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 insurance 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, notwithstanding 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 more 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 than would be allowed for a national bank providing the same 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.

(l) No financial institution, banking institution, state bank or out-of-state bank may establish or maintain a branch in this state on, or within one and one-half miles of, the premises or property of an affiliate at which the affiliate engages in commercial activities.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originating in the House.

In effect ninety days from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker of the House of Delegates

The within is approved this the 20th day of March, 2007.

[Signature]
Governor