

HB 3073

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WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION OF 2007
OFFICE WEST VIRGINIA
SECRETARY OF STATE



ENROLLED

House Bill No. 3073

(By Delegates Moore, White, Kominar and Amores)



Passed March 7, 2007

In Effect Ninety Days from Passage

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OFFICE WEST VIRGINIA
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(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.

§31A-1-2. Definitions.

1 As used in this chapter, unless the context in which used
2 plainly requires a different meaning:

3 (a) The word “action”, in the sense of a judicial
4 proceeding, means any proceeding in a court of competent
5 jurisdiction in which rights are adjudicated and determined
6 and shall embrace and include recoupment, counterclaim,
7 setoff and other related, similar and summary proceedings;

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

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

27 (d) The words “bankers’ bank” mean a banking
28 institution, insured by the federal deposit insurance
29 corporation, the stock of which is owned exclusively by
30 banks and other depository institutions, and such banking
31 institution and all subsidiaries thereof are engaged
32 exclusively in providing services for banks and other
33 depository institutions and their officers, directors and
34 employees;

35 (e) The term “banking business” means the functions,
36 services and activities contained, detailed and embraced in
37 sections thirteen and fourteen, article four of this chapter and
38 as elsewhere defined by law;

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

41 (g) The words “branch bank” mean an office or other
42 place at which a bank performs any or all banking business.
43 For purposes of this chapter, a branch bank does not include:

44 (1) A bank’s principal place of business;

45 (2) Any customer bank communication terminals

46 installed and operated pursuant to section twelve-b, article
47 eight of this chapter; and

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

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

54

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

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

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

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

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

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

77 (o) The word “officer”, when referring to any financial
78 institution, means any person designated as such in the
79 bylaws and includes, whether or not so designated, any
80 executive officer, the chairman of the board of directors, the
81 chairman of the executive committee and any trust officer,
82 assistant vice president, assistant treasurer, assistant
83 secretary, assistant trust officer, assistant cashier, assistant
84 comptroller or any other person who performs the duties

85 appropriate to those offices and the term “executive officer”
86 as herein used, when referring to banking institutions, means
87 an officer of a bank whose duties involve regular, active and
88 substantial participation in the daily operations of such
89 institution and who, by virtue of his or her position, has both
90 a voice in the formulation of the policy of the bank and
91 responsibility for implementation of the policy, such
92 responsibility of and functions performed by the individual,
93 and not his or her title or office, being determinative of
94 whether he or she is an “executive officer”;

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

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

109 (r) The words “safe-deposit box” mean a safe-deposit
110 box, vault or other safe-deposit receptacle maintained by a
111 lessor bank and the rules relating thereto apply to property or
112 documents kept therein in the bank’s vault under the joint
113 control of lessor and lessee;

114
115 (s) The words “state bank” or “state banking institution”
116 mean, unless the context requires otherwise, a bank chartered
117 under the laws of West Virginia, as distinguished from either
118 an out-of-state bank or a national banking association and is
119 also referred to as a “West Virginia State Bank” or “West
120 Virginia State Banking Institution”; and

121 (t) The words “trust business” mean the functions,
122 services and activities contained, detailed and embraced in
123 section fourteen, article four of this chapter and as elsewhere
124 defined by law and as may be included within the meaning of
125 the term “banking business”.

**ARTICLE 4. BANKING INSTITUTIONS AND SERVICES
GENERALLY.**

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

1 (a) Any state-chartered banking institution has and may
2 exercise all of the powers necessary for, or incidental to, the
3 business of banking and, without limiting or restricting such
4 general powers, it shall have the right to buy or discount
5 promissory notes and bonds; negotiate drafts, bills of
6 exchange and other evidences of indebtedness; borrow
7 money; receive deposits on such terms and conditions as its
8 officers may prescribe; buy, sell or exchange bank notes,
9 bullion or coin; loan money on personal or other security;
10 rent safe-deposit boxes and receive on deposit for
11 safekeeping jewelry, plate, stocks, bonds and personal
12 property of whatsoever description; and provide customer
13 services incidental to the business of banking, including, but
14 not limited to, the issuance and servicing of and lending
15 money by means of credit cards as letters of credit or
16 otherwise. Any state-chartered banking institution may
17 accept, for payment at a future date not to exceed one year,
18 drafts drawn upon it by its customers. Any state-chartered
19 banking institution may issue letters of credit, with a
20 specified expiration date or for a definite term, authorizing
21 the holders thereof to draw drafts upon it or its
22 correspondents, at sight or on time. Any such banking
23 institution may organize, acquire, own, operate, dispose of
24 and otherwise manage wholly owned subsidiary corporations
25 or entities that are jointly owned with other insured
26 depository institutions for purposes incident to the banking
27 powers and services authorized by this chapter provided any
28 wholly owned or jointly owned entities are subject to federal
29 and state examination and supervision as if the activities are
30 conducted by the bank.

31 (b) Any state-chartered banking institution may acquire,
32 own, hold, use and dispose of real estate which may not be
33 carried on its books at a value greater than the actual cost:
34 *Provided*, That the property must be necessary for the
35 convenient transaction of its business, including any
36 buildings, office space or other facilities to rent as a source of
37 income: *Provided, however*, That the investment hereafter
38 made may not exceed sixty-five percent of the amount of its
39 capital stock and surplus, unless the consent in writing of the
40 Commissioner of Banking is first secured.

41 (c) Any state-chartered banking institution may acquire,
42 own, hold, use and dispose of real estate which shall be
43 carried on its books at the lower of fair value or cost as
44 defined in rules promulgated by the Commissioner of
45 Banking, subject to the following limitations:

46 (1) Such as may be mortgaged to it in good faith as
47 security for debts in its favor;

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

51 (3) Such as it may purchase at sales under judgments,
52 decrees, trust deeds or mortgages in its favor, or may
53 purchase at private sale, to secure and effectuate the payment
54 of debts due to it.

55 (d) The value at which any real estate is held may not be
56 increased by the addition thereto of taxes, insurance, interest,
57 ordinary repairs or other charges which do not materially
58 enhance the value of the property.

59 (e) Any real estate acquired by any such banking
60 institution under subdivisions (2) and (3), subsection (c) of
61 this section shall be disposed of by the banking institution at
62 the earliest practicable date, but the officers thereof shall
63 have a reasonable discretion in the matter of the time to
64 dispose of such property in order to save the banking
65 institution from unnecessary losses: Provided, That in every
66 case such property shall be disposed of within ten years from
67 the time it is acquired by the banking institution, unless an
68 extension of time is given in writing by the Commissioner of
69 Banking.

70 (f) The sale of insurance by state-chartered banking
71 institutions is subject to the following:

72 Any state-chartered banking institution having its main or
73 a branch office in any place the population of which does not
74 exceed five thousand inhabitants, as shown by the last
75 preceding decennial census, through its employees or agents,
76 may, from that place or office, directly or through a
77 controlled subsidiary, act as agent for any fire, life, casualty,

78 liability or other insurance company authorized by the
79 authorities of the state to do business in this state, by
80 soliciting and selling insurance and collecting premiums on
81 policies issued by such company; and may receive for
82 services so rendered all permissible fees or commissions as
83 may be agreed upon between the bank and the insurance
84 company for which it may act as agent: *Provided*, That no
85 bank may in any case assume or guarantee the payment on
86 insurance policies issued through its agency by its principal:
87 *Provided, however*, That the bank may not guarantee the
88 truth of any statement made by an insured in filing his, her or
89 its application for insurance. For purposes of this section, a
90 “controlled subsidiary” is one in which the state-chartered
91 banking institution owns at least eighty percent of all classes
92 of stock. This provision is intended to give state-chartered
93 banking institutions parity with national banks operating in
94 this state with regard to the marketing and sale of insurance,
95 notwithstanding the prohibitions and limitations contained in
96 article eight-c or elsewhere in this chapter and shall be
97 construed consistently with interpretations of 12 U. S. C. §
98 92, the regulations promulgated thereunder and any successor
99 legislation or regulations.

100 (g) Any state-chartered banking institution may, through
101 its employees or agents, market and sell, as agent, annuities
102 either at its main office or at any of its branches. The
103 marketing and sale of annuities may be made by the bank,
104 through its employees or agents, directly, or through a
105 controlled subsidiary as defined in subsection (f) of this
106 section. This provision is intended to give state-chartered
107 banks parity with national banks operating in this state with
108 regard to the sale of annuities, notwithstanding the
109 prohibitions and limitations contained in article eight-c or
110 elsewhere in this chapter.

111 (h) Unless waived in writing by the commissioner, a
112 state-chartered bank may not invest or otherwise expend
113 more of its capital and surplus calculated at the end of the
114 previous calendar year on the activities permitted by
115 subsections (f) and (g) of this section on an aggregate basis
116 together with any of its approved financially related products
117 and services than would be allowed for a national bank
118 providing the same services. For purposes of this section,
119 “approved financially related products and services” means
120 those products and services offered by a state-chartered bank

121 pursuant to an approved application submitted under article
122 eight-c of this chapter.

123 (i) The commissioner shall promulgate rules in
124 accordance with chapter twenty-nine-a of this code relating
125 to the sale of insurance or annuities, including, but not
126 limited to, rules requiring notice of the intention to engage in
127 such activities and relating to the policies and procedures
128 state-chartered banking institutions should adopt in
129 connection with these activities.

130 (j) Any state-chartered banking institution and its
131 employees or agents engaged in the sale of insurance or
132 annuities permitted hereby must also comply with all
133 applicable requirements for the sale of such products imposed
134 by the West Virginia Commissioner of Insurance and by any
135 state or federal securities regulator.

136 (k) No state-chartered banking institution may hereafter
137 invest more than twenty percent of the amount of its capital
138 and surplus in furniture and fixtures, whether the same be
139 installed in a building owned by the banking institution, or in
140 quarters leased by it, unless the consent in writing of the
141 Commissioner of Banking is first secured.

142 (l) No financial institution, banking institution, state bank
143 or out-of-state bank may establish or maintain a branch in
144 this state on, or within one and one-half miles of, the
145 premises or property of an affiliate at which the affiliate
146 engages in commercial activities.

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



Chairman Senate Committee



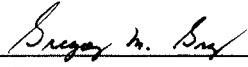
Chairman House Committee

Originating in the House.

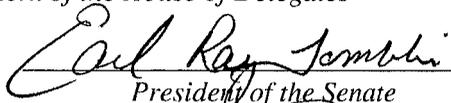
In effect ninety days from passage.



Clerk of the Senate



Clerk of the House of Delegates

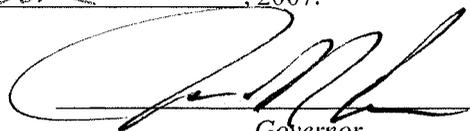


President of the Senate



Speaker of the House of Delegates

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



Governor

PRESENTED TO THE
GOVERNOR

MAR 15 2007

Time 4:05 pm