ENROLLED

Senate Bill No. 503

(By Senators Minard, Jenkins and McCabe)

[Passed April 8, 2009; in effect ninety days from passage.]
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AN ACT to amend and reenact §31A-8-12 and §31A-8-12d of the Code of West Virginia, 1931, as amended, all relating to branching procedures; and creating a definition for “sound financial condition”.

Be it enacted by the Legislature of West Virginia:

That §31A-8-12 and §31A-8-12d of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 8. HEARINGS; ADMINISTRATIVE PROCEDURES; JUDICIAL REVIEW; UNLAWFUL ACTS; PENALTIES.

§31A-8-12. Procedure for authorization of branch banks; temporary offices at colleges and universities; limitations and restrictions; examinations and hearings; standards of review; penalties for violation of section.
(a) A banking institution may not engage in business in
this state at any place other than at its principal office in
this state, at a branch bank in this state, at a customer
bank communication terminal permitted by section
twelve-b of this article or at any loan origination office
permitted by section twelve-c of this article:

(1) Acceptance of a deposit or allowing a withdrawal at
the banking offices of any subsidiary affiliate, as defined
in section one, article eight-a of this chapter, for credit or
debit to the customer's account at any other subsidiary of
the same bank holding company is permissible and does
not constitute branch banking. In addition, the conduct of
activity at branch offices as an agent for any bank subsid-
iary of the same bank holding company shall be permitted
to the same extent allowed by federal law for national
banks pursuant to 12 U.S.C.§1828 and does not constitute
branch banking; nor does this activity constitute a viola-
tion of section forty-two, article four of this chapter.
However, a banking institution may not utilize that
agency relationship to evade state consumer protection
laws, including usury laws, or any other applicable laws of
this state or to conduct any activity that is not financially
related as that term is defined by section two, article
eight-c of this chapter;

(2) A banking institution located in a county where there
is also a higher educational institution as defined in
section two, article one, chapter eighteen-b of this code
may establish a temporary business office on the campus
of any educational institution located in the county for the
limited purposes of opening accounts and accepting
deposits for a period not in excess of four business days
per semester, trimester or quarter. However, prior to
opening any temporary office, a banking institution must
first obtain written permission from the institution of
higher education. The term "business days", for the
purpose of this subsection, means days exclusive of
Saturdays, Sundays and legal holidays as defined in section one, article two, chapter two of this code;

(3) Any banking institution which on January 1, 1984, was authorized to operate an off-premises walk-in or drive-in facility, pursuant to the law then in effect, may, as of June 7, 1984, operate such facility as a branch bank and it is not necessary, for the continued operation of the branch bank, to obtain additional approvals, notwithstanding the provisions of subsection (d) of this section and subdivision (6), subsection (b), section two, article three of this chapter.

(b) Except for a bank holding company, it is unlawful for any individual, partnership, society, association, firm, institution, trust, syndicate, public or private corporation, or any other legal entity, or combination of entities acting in concert, to directly or indirectly own, control or hold with power to vote, twenty-five percent or more of the voting shares of each of two or more banks, or to control in any manner the election of a majority of the directors of two or more banks.

c) A banking institution may establish branch banks either by:

(1) The construction, lease or acquisition of branch bank facilities within any county of this state; or

(2) The purchase of the business and assets and assumption of the liabilities of, or merger or consolidation with, another banking institution.

d) Subject to and in furtherance of the board's authority under the provisions of subdivision (6), subsection (b), section two, article three of this chapter and subsection (g) of this section, the board, by order, may approve or disapprove the application of any state banking institution to establish a branch bank.
(e) The main office or a branch of a West Virginia state banking institution may not be relocated without the approval by order of the commissioner.

(f) Any banking institution which is authorized to establish branch banks pursuant to this section may provide the same banking services and exercise the same powers at each such branch bank as may be provided and exercised at its principal banking house.

(g) The board shall, upon receipt of any application to establish a branch bank under the provisions of this section, provide notice of the application to all banking institutions. A banking institution may, within ten days after receipt of the notice, file a petition to intervene and shall, if it files a petition, thereupon become a party to any hearing relating thereto before the board.

(h) The commissioner shall prescribe the form of the application for a branch bank under the provisions of this section and shall collect an examination and investigation fee of $500 for each filed application for a branch bank that is to be established by the construction, lease or acquisition of a branch bank facility and $500 for a branch bank that is to be established by the purchase of the business and assets and assumption of the liabilities of or merger or consolidation with another banking institution. Notwithstanding the above, if the merger or consolidation is between an existing banking institution and a bank newly incorporated solely for the purpose of facilitating the acquisition of the existing banking institution, the commissioner shall collect an examination and investigation fee of $100. The commissioner may require an examination of a financial institution or an office of a financial institution that is being merged into a state-chartered bank. If an examination is required, the applicant is responsible for paying the examination costs at a rate of $50 per examiner hour. The board shall complete
the examination and investigation within ninety days from the date on which the application and fee are received, unless the board requests in writing additional information and disclosures concerning the proposed branch bank from the applicant banking institution. If the board makes that request, the ninety-day period shall be extended for an additional period of thirty days plus the number of days between the date of the request and the date the additional information and disclosures are received.

(i) Upon completion of the examination and investigation with respect to the application, the board shall, if a hearing be required pursuant to subsection (j) of this section, forthwith give notice and hold a hearing pursuant to the following provisions:

(1) Notice of hearing must be given to the banking institution with respect to which the hearing is to be conducted in accordance with the provisions of section two, article seven, chapter twenty-nine-a of this code and the hearing and the administrative procedures in connection therewith are governed by all of the provisions of article five, chapter twenty-nine-a of this code and must be held at a time and place set by the board but may not be less than ten nor more than thirty days after the notice is given;

(2) At the hearing a party may represent himself or herself or be represented by an attorney at law admitted to practice before any circuit court of this state;

(3) After the hearing and consideration of all the testimony and evidence, the board shall make and enter an order approving or disapproving the application, which orders shall be accompanied by findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this code and a copy of the order and accompanying findings and conclusions shall be
served upon all parties to the hearing and their attorneys of record, if any.

(j) A state banking institution may not establish a branch bank until the board, following an examination, investigation, notice and hearing, enters an order approving an application for that branch bank. However, a hearing is not required with respect to any application to establish a branch bank which is approved by the board unless a banking institution has timely filed a petition to intervene pursuant to subsection (g) of this section. The order shall be accompanied by findings of fact that:

(1) The applicant state-chartered banking institution satisfies such reasonable and appropriate requirements as to sound financial condition. For purposes of this subdivision, “sound financial condition” means that a state banking institution meets the required minimum level to be adequately capitalized for each capital measure as determined by its primary federal regulator and is not subject to supervisory action by either a state or federal financial regulatory agency;

(2) The establishment of the proposed branch bank would not result in a monopoly, nor be in furtherance of any combination or conspiracy to monopolize the business of banking in any section of this state;

(3) The establishment of the proposed branch bank would not have the effect in any section of the state of substantially lessening competition, nor tend to create a monopoly or in any other manner be in restraint of trade, unless the anticompetitive effects of the establishment of that proposed branch bank are clearly outweighed in the public interest by the probable effect of the establishment of the proposed branch bank in meeting the convenience and needs of the community to be served by that proposed branch bank;
(4) The applicant state-chartered banking institution meets a satisfactory standard of compliance with federal and state community reinvestment act requirements as evidenced by its most recent state or federal examination;

(5) The applicant state-chartered banking institution meets a satisfactory standard of compliance with federal and state consumer compliance law and regulations as evidenced by its most recent state or federal regulatory examination;

(6) The applicant state-chartered banking institution meets acceptable standards for investment in premises and fixed assets as permitted by section thirteen, article four of this chapter; and

(7) The applicant state-chartered banking institution does not present a significant supervisory concern or raise a significant legal or policy issue by filing the application.

(k) Any party who is adversely affected by the order of the board is entitled to judicial review thereof in the manner provided in section four, article five, chapter twenty-nine-a of this code. Any such party adversely affected by a final judgment of a circuit court following judicial review as provided in the foregoing sentence may seek review thereof by appeal to the Supreme Court of Appeals in the manner provided in article six, chapter twenty-nine-a of this code.

(l) Pursuant to the resolution of its board of directors and with the prior written approval of the commissioner, a state banking institution may discontinue the operation of a branch bank upon at least thirty days' prior public notice given in such form and manner as the commissioner prescribes.
Any violation of any provision of this section is a misdemeanor offense punishable by applicable penalties as provided in section fifteen of this article.

§31A-8-12d. Expedited procedure for authorization of de novo branch banks.

(a) As an alternative to using the procedures established in subdivisions (g) through (j), section twelve of this article, a banking institution desiring to establish a branch bank by de novo construction or lease may file a notice, containing information as prescribed by the commissioner, of its intent which must be received by the commissioner at least thirty-five days prior to the date on which the proposed branch will be established accompanied by a fee of $250. The commissioner must provide written notice of his or her acceptance or rejection of the branch notice prior to the expiration of the 35-day period. However, if the commissioner requests additional information from the branching institution, the period for the commissioner's consideration of the notice shall be extended an additional fifteen days from the time the information requested is received by the commissioner.

(b) A state banking institution may not establish a branch bank under this section until the commissioner provides written approval of the notice for that branch bank. The commissioner's approval or rejection of the notice must be accompanied by findings of fact on whether the applicant bank:

(1) Satisfies such reasonable and appropriate requirements as to sound financial condition. For purposes of this subdivision, "sound financial condition" means that a state banking institution meets the required minimum level to be well capitalized for each capital measure as determined by its primary federal regulator and is not subject to supervisory action by either a state or federal financial regulatory agency;
(2) Meets a satisfactory standard of compliance with federal and state community reinvestment act requirements as evidenced by its most recent state or federal examination;

(3) Meets a satisfactory standard of compliance with federal and state consumer compliance law and regulations as evidenced by its most recent state or federal regulatory examination;

(4) Meets the acceptable standards for investment in premises and fixed assets as permitted by section thirteen, article four of this chapter; and

(5) Does not present a significant supervisory concern or raise a significant legal or policy issue by filing the application.

(c) Any party who is adversely affected by an action of the commissioner taken pursuant to the criteria established by subsection (b) of this section may appeal within ten business days of the commissioner's decision to the Board of Banking and Financial Institutions which must, after holding a hearing pursuant to the provisions of subdivision (12), subsection (b), section two, article three of this chapter, affirm, reverse or modify the order of the commissioner. Any party who is adversely affected by an order of the Board of Banking and Financial Institutions issued pursuant to the provisions of this subsection is entitled to judicial review in the same manner as provided by the provisions of subsection (k), section twelve of this article.
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........ approved this the........

Day of........... ................. 2009.

Governor
PRESENTED TO THE GOVERNOR

APR 27 2009

Time [Signature]