

H. B. 2379

(By Delegates Walters and Frich)

(By Request of the Commissioner of Financial Institutions)

[Introduced January 26, 2015; referred to the

Committee on Banking and Insurance then the Judiciary.]

A BILL to amend and reenact §31A-4-40 of the Code of West Virginia, 1931, as amended; and to amend and reenact §31A-8-12d, all relating to replacing the requirement of a board resolution and legal advertisement for any change in the days or hours a bank office is open for business with a requirement that the banking institution provide forty-five days advance written notice in the form of signage at the office and written notice to the Commissioner of Financial Institutions; and reducing the time for consideration of expedited branch applications from thirty-five days to twenty-one days.

Be it enacted by the Legislature of West Virginia:

That §31A-4-40 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §31A-8-12d of said code be amended and reenacted, all to read as follows:

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

§31A-4-40. Permissive closing on fixed weekday or portions of weekdays; notice of closings; emergency closings; procedures.

1 (a) ~~In addition to Sundays and legal holidays any banking institution may remain closed on~~
2 ~~any one fixed weekday or portion of a day in each calendar week, or on any one fixed weekday and~~
3 ~~a portion of another weekday in each calendar week, or on portions of two weekdays in each~~
4 ~~calendar week, which day and/or portion or portions of the day or days when the institution is to~~
5 ~~remain closed shall be designated by a resolution adopted by the board of directors thereof. Prior~~
6 ~~to any such closing, the banking institution shall post a notice in a conspicuous place in its banking~~
7 ~~room stating that beginning on a day certain the banking institution will remain closed on a fixed~~
8 ~~weekday and/or portions thereof. Concurrently with the posting of the notice of closure, the banking~~
9 ~~institution shall cause a notice to be published as a Class II legal advertisement in compliance with~~
10 ~~the provisions of article three, chapter fifty-nine of this code, and the publication area for the~~
11 ~~publication shall be the county in which the principal office of the bank is located. The notice shall~~
12 ~~set forth the time or times on which the bank will remain closed and the date when the closing~~
13 ~~becomes effective. A certified copy of the resolution certified by the cashier or secretary of the~~
14 ~~banking institution, together with an affidavit of posting and proof of publication of the notice herein~~
15 ~~required, shall be filed with the commissioner of banking. Any banking institution may elect to~~
16 ~~operate branches that are open for business on the days and for the hours as determined appropriate~~
17 ~~by that banking institution. Prior to changing the days or hours a branch or main office will be open~~
18 ~~for business, the banking institution shall provide notice of the change to its customers in the form~~
19 ~~of conspicuous signage in the lobby and any drive through lanes at that branch posted at least~~
20 ~~forty-five days prior to the change. The banking institution shall also provide the Commissioner of~~
21 ~~Financial Institutions with forty-five days advance written notice of the change.~~

22 (b) Any banking institution may close, without notice, during any period of actual or

1 threatened enemy attack affecting the community in which the banking institution is located or
 2 during any period of other emergency including, but not limited to, fire, flood, hurricane, riot, snow
 3 or civil commotion: *Provided*, That the commissioner shall be notified of any closing made pursuant
 4 to this subsection as soon as practical thereafter.

5 (c) Any fixed weekday and/or portion of one or more weekdays on which any banking
 6 institution ~~shall elect~~ elects to close and any period during which the commissioner may permit it
 7 to close pursuant to the authority of this section ~~shall constitute~~ is a legal holiday with respect to the
 8 banking institution and not a business day or banking day for the purposes of the law relating to
 9 negotiable instruments, and any act or contract authorized, required or permitted to be carried out
 10 or performed at, by or with respect to the banking institution may be performed on the next business
 11 or banking day, and no liability or loss of rights on the part of any person or banking institution shall
 12 result therefrom.

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

15 **§31A-8-12d. Expedited procedure for authorization of de novo branch banks.**

16 (a) As an alternative to using the procedures established in subdivisions (g) through (j),
 17 section twelve of this article, a banking institution desiring to establish a branch bank by de novo
 18 construction or lease may file a notice, containing information as prescribed by the commissioner,
 19 of its intent which must be received by the commissioner at least ~~thirty-five~~ twenty-one days prior
 20 to the date on which the proposed branch will be established accompanied by a fee of \$250. The
 21 commissioner ~~must~~ shall provide written notice of his or her acceptance or rejection of the branch
 22 notice prior to the expiration of the ~~35-day~~ twenty-one-day period. However, if the commissioner

1 requests additional information from the branching institution, the period for the commissioner's
2 consideration of the notice ~~shall be~~ is extended an additional fifteen days from the time the
3 information requested is received by the commissioner.

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

8 (1) Satisfies such reasonable and appropriate requirements as to sound financial condition.

9 For purposes of this subdivision, "sound financial condition" means that a state banking institution
10 meets the required minimum level to be well capitalized for each capital measure as determined by
11 its primary federal regulator and is not subject to supervisory action by either a state or federal
12 financial regulatory agency;

13 (2) Meets a satisfactory standard of compliance with federal and state community
14 reinvestment act requirements as evidenced by its most recent state or federal examination;

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

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

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

21 (c) Any party who is adversely affected by an action of the commissioner taken pursuant to
22 the criteria established by subsection (b) of this section may appeal within ten business days of the

1 commissioner's decision to the Board of Banking and Financial Institutions which must, after
2 holding a hearing pursuant to the provisions of subdivision (12), subsection (b), section two, article
3 three of this chapter, affirm, reverse or modify the order of the commissioner. Any party who is
4 adversely affected by an order of the Board of Banking and Financial Institutions issued pursuant
5 to the provisions of this subsection is entitled to judicial review in the same manner as provided by
6 the provisions of subsection (k), section twelve of this article.

NOTE: The purpose of this bill is to simplify the process by which a bank may adjust the hours of operation for branch offices and reduce the time the Division of Financial Institutions has to act on an expedited branch application.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.