

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **House Bill 2379**

**2015 Carryover**

(BY DELEGATES WALTERS AND FRICH)

(BY REQUEST OF THE COMMISSIONER OF FINANCIAL  
INSTITUTIONS)

[Introduced January 13, 2016; referred to the  
Committee on Banking and Insurance then the  
Judiciary.]

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

*Be it enacted by the Legislature of West Virginia:*

1 That §31A-4-40 of the Code of West Virginia, 1931, as amended, be amended and  
 2 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~~  
 2 ~~on any one fixed weekday or portion of a day in each calendar week, or on any one fixed weekday~~  
 3 ~~and 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.~~  
 6 ~~Prior to any such closing, the banking institution shall post a notice in a conspicuous place in its~~  
 7 ~~banking room stating that beginning on a day certain the banking institution will remain closed on~~  
 8 ~~a fixed weekday and/or portions thereof. Concurrently with the posting of the notice of closure,~~  
 9 ~~the banking institution shall cause a notice to be published as a Class II legal advertisement in~~  
 10 ~~compliance with the provisions of article three, chapter fifty-nine of this code, and the publication~~  
 11 ~~area for the publication shall be the county in which the principal office of the bank is located.~~

12 ~~The notice shall set forth the time or times on which the bank will remain closed and the date~~  
13 ~~when the closing becomes effective. A certified copy of the resolution certified by the cashier or~~  
14 ~~secretary of the banking institution, together with an affidavit of posting and proof of publication~~  
15 ~~of the notice herein required, shall be filed with the commissioner of banking. Any banking~~  
16 institution may elect to operate branches that are open for business on the days and for the hours  
17 as determined appropriate by that banking institution. Prior to changing the days or hours a branch  
18 or main office will be open for business, the banking institution shall provide notice of the change  
19 to its customers in the form of conspicuous signage in the lobby and any drive through lanes at  
20 that branch posted at least forty-five days prior to the change. The banking institution shall also  
21 provide the Commissioner of Financial Institutions with forty-five days advance written notice of  
22 the change.

23 (b) Any banking institution may close, without notice, during any period of actual or  
24 threatened enemy attack affecting the community in which the banking institution is located or  
25 during any period of other emergency including, but not limited to, fire, flood, hurricane, riot, snow  
26 or civil commotion: *Provided*, That the commissioner shall be notified of any closing made  
27 pursuant to this subsection as soon as practical thereafter.

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

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

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

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

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

15 (1) Satisfies such reasonable and appropriate requirements as to sound financial  
16 condition. For purposes of this subdivision, "sound financial condition" means that a state  
17 banking institution meets the required minimum level to be well capitalized for each capital  
18 measure as determined by its primary federal regulator and is not subject to supervisory action  
19 by either a state or federal financial regulatory agency;

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

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

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

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

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