

SB 280

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1996

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COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 280

(By Senator TOUBLIN, MR. PRESIDENT, ET AL)

PASSED MARCH 8, 1996

In Effect NINETY DAYS FROM Passage

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COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 280

(BY SENATORS TOMBLIN, MR. PRESIDENT, AND BOLEY,
BY REQUEST OF THE EXECUTIVE)

[Passed March 8, 1996; in effect ninety days from passage.]

AN ACT to repeal section four-a, article eighteen, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section two, article one, chapter thirty-one-a of said code; to amend and reenact sections five and eleven, article two of said chapter; to further amend said article by adding thereto a new section, designated section twelve-a; to amend and reenact sections fourteen, fourteen-a and forty-two, article four of said chapter; to amend and reenact section twelve, article eight of said chapter; to amend and reenact article eight-a of said chapter; to further amend said chapter by adding

thereto three new articles, designated articles eight-d, eight-e and eight-f; to amend and reenact section three, article five, chapter forty-four of said code; to amend and reenact section seven, article ten of said chapter; and to amend and reenact section eleven, article one, chapter forty-four-a of said code, all relating generally to the definition of "bank" and "banking institution"; licensing of financial institutions; trust authority of interstate banks; the acquisition, by in-state and out-of-state bank holding companies, of banks and bank holding companies in West Virginia and the application process, standards for approval, effect on competition, acquisition deposit limitations in lieu of antitrust depository caps, provision of reports, examinations, issuance of rules, business of banking, enforcement and penalties relating thereto; interstate bank branching by merger, and the authority, effect on competition, acquisition deposit limitations, notice and filing requirements, powers and additional branches, examinations, reports, cooperative regulatory agreements and fees, enforcement and rules relating thereto; interstate branch banking by *de novo* entry; authority for West Virginia state banks to branch interstate *de novo* or by branch acquisition; authority for out-of-state state banks to branch into West Virginia *de novo* or by branch acquisition; notice and approval requirements, additional powers for out-of-state branches of West Virginia banks, examinations, reports, cooperative regulatory agreements, fees, enforcement, rules and orders and notices relating to interstate branching; and the establishment and authority of agency and representative offices of foreign banks to conduct limited banking activities, and the examinations, reports, cooperative regulatory agreements, fees, enforcement, rules and orders and notices relating thereto.

Be it enacted by the Legislature of West Virginia:

That section four-a, article eighteen, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section two, article one,

chapter thirty-one-a of said code be amended and reenacted; that sections five and eleven, article two of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section twelve-a; that sections fourteen, fourteen-a and forty-two, article four of said chapter be amended and reenacted; that section twelve, article eight of said chapter be amended and reenacted; that article eight-a of said chapter be amended and reenacted; that said chapter be further amended by adding thereto three new articles, designated articles eight-d, eight-e and eight-f; that section three, article five, chapter forty-four of said code be amended and reenacted; that section seven, article ten of said chapter be amended and reenacted; and that section eleven, article one, chapter forty-four-a of said code be amended and reenacted, all to read as follows:

CHAPTER 31A. BANKS AND BANKING.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§31A-1-2. Definitions.

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

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

9 (b) The words "bank" and "banking institution" mean
10 a corporation or association heretofore or hereafter
11 chartered to conduct a banking business under the laws
12 of the United States or any state, territory, district or
13 possession thereof, which is authorized in West Virginia
14 to accept deposits that the depositor has a legal right to
15 withdraw on demand and is authorized to engage in the
16 business of commercial lending, and meets the criteria set
17 forth in Section 2(c) of the Bank Holding Company Act,
18 as amended, 12 U.S.C. §1841(c), and shall embrace and
19 include a savings bank, savings and loan association,

20 trust company or an institution combining banking and
21 trust company facilities, functions and services so
22 chartered or authorized to conduct such business in this
23 state;

24 (c) The words "bankers' bank" mean a banking institu-
25 tion, insured by the federal deposit insurance corpora-
26 tion, the stock of which is owned exclusively by banks
27 and other depository institutions, and such banking
28 institution and all subsidiaries thereof are engaged
29 exclusively in providing services for banks and other
30 depository institutions and their officers, directors and
31 employees;

32 (d) The term "banking business" means the functions,
33 services and activities contained, detailed and embraced
34 in sections thirteen and fourteen, article four of this
35 chapter, and as elsewhere defined by law;

36 (e) The word "board" means the West Virginia board of
37 banking and financial institutions;

38 (f) The words "branch bank" mean an office or other
39 place at which a bank performs any or all banking
40 business. For purposes of this chapter, a branch bank
41 does not include:

42 (1) A bank's principal place of business;

43 (2) Any customer bank communication terminals
44 installed and operated pursuant to section twelve-b,
45 article eight of this chapter; and

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

48 (g) The words "commissioner" or "commissioner of
49 banking" mean the commissioner of banking of West
50 Virginia;

51 (h) The word "community" means a city, town or other
52 incorporated area, or, where not so incorporated, a
53 trading area;

54 (i) The word "department" means the department of

55 banking of West Virginia;

56 (j) The words "deputy commissioner" or "deputy
57 commissioner of banking" mean the deputy commissioner
58 of banking of West Virginia;

59 (k) The word "fiduciary" means any trustee, agent,
60 executor, administrator, curator, committee, guardian or
61 conservator, special commissioner, receiver, trustee in
62 bankruptcy, assignee for creditors or any holder of a
63 similar position of trust or responsibility;

64 (l) The words "financial institutions" mean banks,
65 building and loan associations, industrial banks, indus-
66 trial loan companies, supervised lenders, credit unions
67 and all other similar institutions, whether persons, firms
68 or corporations, which are by law under the jurisdiction
69 and supervision of the commissioner of banking;

70 (m) The word "officer" when referring to any financial
71 institution, means any person designated as such in the
72 bylaws and includes, whether or not so designated, any
73 executive officer, the chairman of the board of directors,
74 the chairman of the executive committee, and any trust
75 officer, assistant vice president, assistant treasurer,
76 assistant secretary, assistant trust officer, assistant
77 cashier, assistant comptroller or any other person who
78 performs the duties appropriate to those offices, and the
79 term "executive officer" as herein used, when referring
80 to banking institutions, means an officer of a bank whose
81 duties involve regular, active and substantial participa-
82 tion in the daily operations of such institution and who,
83 by virtue of his position, has both a voice in the formula-
84 tion of the policy of the bank and responsibility for
85 implementation of the policy, such responsibility of and
86 functions performed by the individual, and not his title or
87 office, being determinative of whether he is an "executive
88 officer";

89 (n) The words "out-of-state bank" or "out-of-state
90 banking institution" mean a bank chartered under the
91 laws of a state or United States territory, possession or

92 district, other than West Virginia, or organized under
93 federal law and having its main office located in a state,
94 United States territory, possession or district, other than
95 West Virginia;

96 (o) The words "person" or "persons" mean any individ-
97 ual, partnership, society, association, firm, institution,
98 company, public or private corporation, state, govern-
99 mental agency, bureau, department, division or instru-
100 mentality, political subdivision, county commission,
101 municipality, trust, syndicate, estate or any other legal
102 entity whatsoever, formed, created or existing under the
103 laws of this state or any other jurisdiction;

104 (p) The words "safe-deposit box" mean a safe-deposit
105 box, vault or other safe-deposit receptacle maintained by
106 a lessor bank, and the rules relating thereto apply to
107 property or documents kept therein in the bank's vault
108 under the joint control of lessor and lessee;

109 (q) The words "state bank" or "state banking institu-
110 tion" mean, unless the context requires otherwise, a bank
111 chartered under the laws of West Virginia, as distin-
112 guished from either an out-of-state bank or a national
113 banking association and is also referred to as a "West
114 Virginia state bank" or "West Virginia state banking
115 institution"; and

116 (r) The words "trust business" mean the functions,
117 services and activities contained, detailed and embraced
118 in section fourteen, article four of this chapter, and as
119 elsewhere defined by law and as may be included within
120 the meaning of the term "banking business".

ARTICLE 2. DIVISION OF BANKING.

**§31A-2-5. Certificate or license to engage in business; filing of
amendments to charter, bylaws and foreign
statutes.**

1 (a) No person shall engage or continue in the business
2 of a financial institution in this state without a license or
3 certificate to do so issued in accordance with this section,
4 or other applicable law, which license or certificate

5 remains unsuspended, unexpired and unrevoked except
6 that a corporation which proposes to apply for such
7 license or certificate may secure its charter, adopt
8 bylaws, elect its directors and officers and perfect its
9 organization.

10 (b) Application for such license or certificate shall be
11 upon such forms and contain such information as the
12 commissioner may prescribe. In connection with such
13 applications every corporate financial institution shall
14 file a certified copy of its charter and bylaws, a statement
15 as to the amount of capital that has been subscribed and
16 paid in and a statement of its financial condition duly
17 verified under oath by its president or vice president and
18 its cashier or secretary as the case may be and every
19 financial institution other than a corporation shall file a
20 verified statement of its financial condition.

21 (c) If the application be that of a West Virginia state
22 banking institution, the commissioner of banking shall
23 examine the information, documents and statements
24 submitted and, if he finds that such banking institution
25 has adopted bylaws which provide practical, safe, just
26 and equitable rules and methods for the management of
27 its business and it has complied in all respects with the
28 provisions of this chapter and other applicable laws, he
29 shall issue to it a certificate or license permitting it to
30 engage in business. If the application be that of a finan-
31 cial institution other than a banking institution, the
32 commissioner of banking shall examine the information,
33 documents and statements submitted, and, if he finds
34 that such financial institution has adequate resources for
35 the proposed business and has provided practical, safe,
36 just and equitable rules and methods for the management
37 of its business, and it has complied in all respects with
38 the provisions of this chapter and other applicable laws
39 and that the public convenience and advantage will be
40 promoted by the issuance of a certificate or license
41 thereto, he shall issue to it a certificate or license permit-
42 ting it to engage in business: *Provided*, That any super-
43 vised lender which is operating in good standing in

44 accordance with the provisions of article four, chapter
45 forty-six-a of this code shall be presumed to have estab-
46 lished that the public convenience and advantage will be
47 promoted in regard to its application for a certificate of
48 authority to operate as an industrial loan company as
49 defined in article seven, chapter thirty-one of this code in
50 the same location for which it is licensed as a supervised
51 lender. Such certificate or license shall be preserved and
52 displayed in the place of business of such banking or
53 other financial institution.

54 (d) In addition to the requirements of subsection (b) of
55 this section, every foreign corporation applying for a
56 license or certificate to engage in the business of a
57 financial institution in this state, other than an out-of-
58 state banking institution, shall file with the commissioner
59 of banking a copy of the laws of the jurisdiction under
60 which it is organized which pertain to its organization
61 and powers and the conduct of its business. The commis-
62 sioner shall examine the information, documents and
63 statements submitted by such foreign corporation and if
64 he finds that they provide practical, safe, just and equita-
65 ble rules and methods for the management of the busi-
66 ness of the corporation, that it has adequate resources for
67 the proposed business and it has complied in all respects
68 with the provisions of this chapter and other applicable
69 laws and that the public convenience and advantage will
70 be promoted by the issuance of a license or certificate
71 thereto, he shall issue to such corporation a certificate or
72 license permitting it to engage in business in this state,
73 which certificate or license shall authorize such corpora-
74 tion to engage in the business of the type of financial
75 institution specified therein, until the thirtieth day of the
76 following June. Thereafter a new certificate or license
77 shall be secured annually by any such foreign corpora-
78 tion. The fee for the original and each additional license
79 or certificate issued to a foreign corporation shall be one
80 hundred dollars, unless otherwise provided by statute. A
81 verified statement of the financial condition of every such
82 foreign corporation shall be filed with the commissioner

83 before the issuance of each annual certificate or license.
84 Such certificate or license shall be preserved and dis-
85 played in the place of business of such corporation.

86 (e) No amendment of the charter or bylaws of any
87 domestic or foreign corporation, other than an out-of-
88 state banking institution, engaging in business in this
89 state as a financial institution shall become effective
90 until the proposed change shall have been submitted to
91 and approved by the commissioner of banking; but, if the
92 commissioner does not disapprove such proposed change
93 within twenty days after it is received by him, it shall be
94 deemed to have been approved.

95 (f) Nothing contained in this code shall authorize any
96 person to engage in the banking business in this state
97 except corporations chartered to conduct a banking
98 business under the laws of West Virginia and which hold
99 a license or certificate to do so issued under this section,
100 associations authorized to conduct a banking business in
101 West Virginia under the laws of the United States and
102 having their principal place of business in this state, out-
103 of-state banks authorized to conduct the business of
104 banking in this state pursuant to articles eight-a, eight-d
105 and eight-e of this chapter, or foreign banks authorized
106 to conduct limited banking activities through licensed
107 agency and representative offices in this state pursuant
108 to article eight-f of this chapter or through licensed
109 federal branches or agencies permitted under section
110 seven, article eight-f of this chapter.

**§31A-2-11. Annual deposit and loan reports by banking
institutions.**

1 In addition to other reports that may be required under
2 this chapter, every banking institution with a main office
3 or branch located in this state shall file with the commis-
4 sioner an annual report specifying for its main office and
5 each branch (excluding automated teller machines) in
6 this state:

7 (1) The location of each such office, including county

8 and, where applicable, municipality;

9 (2) The amount of deposits held by each such office as
10 of the end of the preceding calendar year; and

11 (3) The amount of loans outstanding by each such office
12 at the end of the preceding calendar year.

13 The foregoing report shall be based upon the bank's
14 allocation of its deposit base and loan portfolio among its
15 offices. The report shall be filed with the commissioner
16 on or before the fifteenth day of February of each year on
17 forms prescribed by the commissioner. This requirement
18 may be met by the filing of such report by the bank's
19 bank holding company pursuant to subsection (a), section
20 seven, article eight-a of this chapter.

§31A-2-12a. Establishment of deposit acquisition limitation.

1 After a review of the structure of depository institu-
2 tions in the state of West Virginia, the Legislature hereby
3 determines that:

4 (a) It is in the best interest of this state and its citizens
5 to foster and encourage healthy competition among its
6 domestic depository institutions;

7 (b) Obtaining excessive concentration or control of the
8 deposit resources of this state by merger or acquisition is
9 antithetical to fostering a competitive environment; and

10 (c) Therefore, an acquisition or merger shall not be
11 permitted under this chapter or otherwise if upon con-
12 summation of the transaction, the resulting depository
13 institution or its holding company, including any deposi-
14 tory institution(s) affiliated therewith, would assume
15 sufficient additional deposits to cause it to control
16 deposits in this state in excess of the following acquisi-
17 tion deposit limitation amount: Twenty percent of the
18 total amount of all deposits held by insured depository
19 institutions, which permissible amount shall increase to
20 twenty-five percent of such total deposits on the thirty-
21 first day of May, one thousand nine hundred ninety-
22 seven.

23 (d) The term "depository institutions", as used in this
 24 section, shall include, but is not limited to, state-char-
 25 tered banking institutions, national banking associations,
 26 federal savings and loan associations, bank holding
 27 companies, savings and loan holding companies, federal
 28 savings banks, state-chartered credit unions and
 29 federally-chartered credit unions.

30 (e) Any merger or acquisition contrary to this provision
 31 is unlawful: *Provided*, That the commissioner may by rule
 32 adopt a procedure whereby said acquisition deposit
 33 limitation as set forth herein may be waived for good
 34 cause shown.

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

§31A-4-14. Trust powers of banking institutions.

1 (a) Every state banking institution which files the
 2 reports required in the following section and which is not
 3 otherwise prohibited by the commissioner or federal
 4 bank regulators from doing so, shall have and exercise
 5 the following powers:

6 (1) All the powers, rights and privileges of any state
 7 banking institution;

8 (2) To act as trustee, assignee, special commissioner,
 9 general or special receiver, guardian, executor, adminis-
 10 trator, committee, agent, curator or in any other fiduciary
 11 capacity, and to take, assume, accept and execute trusts
 12 of every description not inconsistent with the constitu-
 13 tion and laws of the United States of America or of this
 14 state; and to receive, hold, manage and apply any sinking
 15 fund on the terms and for the purposes specified in the
 16 instrument creating such fund;

17 (3) To act as registrar, transfer agent or dividend or
 18 coupon paying agent for any corporation;

19 (4) To make, hold and dispose of investments and
 20 establish common trust funds, and account therefor,
 21 pursuant to the provisions of chapter forty-four of this
 22 code;

23 (5) To purchase and sell and take charge of and receive
24 the rents, issues and profits of any real estate for other
25 persons or corporations;

26 (6) To act as trustee or agent in any collateral trust and
27 in order to secure the payment of any obligations of any
28 person, firm, private corporation, public corporation,
29 public body or public agency to receive and hold in trust
30 any items of personal property (including without
31 limitation notes, bonds, debentures, obligations and
32 certificates for shares of stock) with the right in case of
33 default to sell and dispose of such personal property and
34 to collect, settle and adjust any obligations for the
35 payment of money, and at any sale of such personal
36 property held by it, to purchase the same for the benefit
37 of all or any of the holders of the obligations, to secure
38 the payment of which such items of personal property
39 were pledged and delivered to the trustee or agent. Any
40 such sale may be made without any proceedings in any
41 court, and at such times and upon such terms as may be
42 specified in the instrument or instruments creating the
43 trust, or, in the absence of any specification of terms, at
44 such time and upon such terms as the trustee shall deem
45 reasonable; and .

46 (7) To do and perform any act or thing requisite or
47 necessary in, or incidental to, the exercise of the general
48 powers herein set forth.

49 (b) All national banks having their main office in this
50 state which have been, or hereafter may be, authorized
51 under the laws of the United States to act as trustee and
52 in other fiduciary capacities in the state of West Virginia
53 shall have all the rights, powers, privileges and immuni-
54 ties conferred hereunder, provided they comply with the
55 requirements hereof.

56 (c) Banks having their main office in another state
57 which lawfully have a branch in this state pursuant to the
58 provisions of federal law or articles eight-d or eight-e of
59 this chapter which have been, or hereafter may be,
60 authorized under the laws of the United States or the

61 laws of the state in which such bank is chartered to act as
62 trustee and in other fiduciary capacities in the state in
63 which their main office is located shall have all the
64 rights, powers, privileges and immunities conferred
65 hereunder, provided they comply with the requirements
66 hereof.

**§31A-4-14a. Transfer of fiduciary accounts or relationships
between affiliated subsidiary banks of a bank
holding company.**

1 (a) Notwithstanding any other provision of this code,
2 and unless the will, deed or other instrument creating a
3 trust or fiduciary account or relationship specifically
4 provides otherwise, any affiliate subsidiary which is
5 empowered with and authorized to exercise trust powers,
6 or otherwise performs fiduciary services for a fee, may,
7 without any order or other action on the part of any court
8 or otherwise, transfer to any other affiliate subsidiary
9 exercising or authorized to exercise trust powers any or
10 all rights, franchises and interests in its fiduciary ac-
11 counts or relationships including, but not limited to, any
12 or all appointments, designations and nominations and
13 any other rights, franchises and interests, as trustee,
14 executor, administrator, guardian, committee, escrow
15 agent, transfer and paying agent of stocks and bonds and
16 every other fiduciary capacity; and the transferee or
17 receiving affiliate subsidiary shall hold and enjoy all
18 rights of property, franchises and interests in the same
19 manner and to the same extent as such rights, franchises
20 and interests were held or enjoyed by the transferor
21 affiliate subsidiary. As to transfers to an affiliate subsid-
22 iary pursuant to this section, the receiving affiliate
23 subsidiary shall take, receive, accept, hold, administer
24 and discharge any grants, gifts, bequests, devises, con-
25 veyances, trusts, powers and appointments made by deed,
26 deed of trust, will, agreement, order of court or otherwise
27 to, in favor of, or in the name of, the transferor affiliate
28 subsidiary, whether made, executed or entered before or
29 after such transfer and whether to vest or become effec-
30 tive before or after such transfer, as fully and to the same

31 effect as if the receiving affiliate subsidiary had been
32 named and in such deed, deed of trust, will, agreement,
33 order or other instrument instead of such transferor
34 affiliate subsidiary. All acts taken or performed in its
35 own name or in the name of or on behalf of the transferor
36 affiliate subsidiary by any receiving affiliate subsidiary
37 as trustee, agent, executor, administrator, guardian,
38 depository, registrar, transfer agent or other fiduciary
39 with respect to fiduciary accounts or relationships
40 transferred pursuant to this section are as good, valid and
41 effective as if made by the transferor affiliate subsidiary.

42 (b) For purposes of this section, the term "affiliate
43 subsidiary" means any two or more subsidiaries (as
44 defined in section two, article eight-a of this chapter)
45 which are "banks" or "banking institutions" (as those
46 terms are defined in section two, article one of this
47 chapter) and which have a common bank holding com-
48 pany as their parent company. For purposes of this
49 section, the term "bank holding company" shall have the
50 meaning set forth in section one, article eight-a of this
51 chapter.

52 (c) At least thirty days before any transfer authorized
53 by this section, the transferor affiliate subsidiary shall
54 send a statement of intent to transfer together with the
55 name and address of the transferee or receiving affiliated
56 subsidiary by regular United States mail to the most
57 recent known address of all persons who appear in the
58 records of the transferor affiliate subsidiary as having a
59 vested present interest in the trust, fiduciary account or
60 relationship to be transferred.

61 (d) This section shall be applicable to both domestic
62 and foreign bank holding company affiliate subsidiaries.

**§31A-4-42. Unlawful for persons other than banking institu-
tions to engage in the banking business; pen-
alties.**

1 No person, except banking institutions chartered under
2 the laws of this state, or authorized to conduct a banking

3 business in this state under the laws of the United States
4 of America or those chartered under the laws of another
5 state or the United States of America with branch offices
6 in this state under the provisions of articles eight-d and *AK W/N*
7 eight-e of this chapter, shall engage in the business of *is*
8 banking or the trust business ~~the state of West Virginia,~~
9 or shall receive or accept deposits of money, or borrow
10 money by receiving and giving credits for deposits, or by
11 issuing certificates of deposits or certificates of indebted-
12 ness, or by making and negotiating any writing purport-
13 ing to be a bond, contract or other obligation, the perfor-
14 mance of which requires the holder or other party to
15 make deposits of money with the issuer or receive or
16 accept deposits by means of any other plan, pretext,
17 scheme, shift or device.

18 Nothing contained in this section shall affect the rights,
19 privileges, objects or purposes delegated to other corpo-
20 rations by the general corporation law or other laws of
21 this state.

22 Any corporation or individual who violates any of the
23 provisions of this section shall be guilty of a misde-
24 meanor, and, upon conviction, shall be fined not more
25 than five thousand dollars, and, in addition to such
26 penalty, every corporation so offending shall forfeit its
27 corporate franchise, and every individual so offending
28 shall be subject to a further penalty by confinement in
29 jail for not more than one year.

**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.**

1 (a) Except as otherwise provided herein, no banking
2 institution shall engage in business at any place other
3 than at its principal office in this state, at a branch bank
4 in this state, at a customer bank communication terminal

5 permitted by section twelve-b of this article or at any
6 loan origination office permitted by section twelve-c of
7 this article.

8 (1) Acceptance of a deposit or allowing a withdrawal at
9 the banking offices of any subsidiary, as defined in
10 section two, article eight-a of this chapter, for credit or
11 debit to the customer's account at any other subsidiary of
12 the same bank holding company is permissible and does
13 not constitute branch banking. In addition, the conduct
14 of activity at branch offices as an agent for any bank
15 subsidiary of the same bank holding company shall be
16 permitted to the same extent allowed by federal law for
17 national banks pursuant to 12 U.S.C. §1828, and does not
18 constitute branch banking; nor shall such activity consti-
19 tute a violation of section forty-two, article four of this
20 chapter: *Provided*, That no banking institution may
21 utilize that agency relationship to evade state consumer
22 protection laws, including usury laws, or any other
23 applicable laws of this state, or to conduct any activity
24 that is not financially-related, as that term is defined by
25 section two, article eight-c of this chapter.

26 (2) A banking institution located in a county where
27 there is also a higher educational institution as defined in
28 section two, article one, chapter eighteen-b of this code,
29 may establish a temporary business office on the campus
30 of any such educational institution located in such county
31 for the limited purposes of opening accounts and accept-
32 ing deposits for a period not in excess of four business
33 days per semester, trimester or quarter: *Provided*, That
34 prior to opening any temporary office, a banking institu-
35 tion must first obtain written permission from the
36 institution of higher education. The term "business days",
37 for the purpose of this subsection, means days exclusive
38 of Saturdays, Sundays and legal holidays as defined in
39 section one, article two, chapter two of this code.

40 (3) Any banking institution which on the first day of
41 January, one thousand nine hundred eighty-four, was
42 authorized to operate an off-premises walk-in or drive-in

43 facility, pursuant to the law then in effect, may, as of the
44 seventh day of June, one thousand nine hundred eighty-
45 four, operate such facility as a branch bank and it shall
46 not be necessary, for the continued operation of such
47 branch bank, to obtain additional approvals, notwith-
48 standing the provisions of subsection (d) of this section
49 and subdivision (6), subsection (b), section two, article
50 three of this chapter.

51 (b) Except for a bank holding company, it shall be
52 unlawful for any individual, partnership, society, associa-
53 tion, firm, institution, trust, syndicate, public or private
54 corporation, or any other legal entity, or combination of
55 entities acting in concert, to directly or indirectly own,
56 control or hold with power to vote, twenty-five percent or
57 more of the voting shares of each of two or more banks,
58 or to control in any manner the election of a majority of
59 the directors of two or more banks.

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

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

64 (2) The purchase of the business and assets and assump-
65 tion of the liabilities of, or merger or consolidation with,
66 another banking institution.

67 (d) Notwithstanding any other provision of this chapter
68 to the contrary, subject to and in furtherance of the
69 board's authority under the provisions of subdivision (6),
70 subsection (b), section two, article three of this chapter,
71 and subsection (g) of this section, the board may approve
72 or disapprove the application of any state banking
73 institution to establish a branch bank.

74 (e) The main office or a branch of a West Virginia state
75 banking institution may not be relocated without the
76 approval by order of the commissioner.

77 (f) Any banking institution which is authorized to
78 establish branch banks pursuant to this section may

79 provide the same banking services and exercise the same
80 powers at each such branch bank as may be provided and
81 exercised at its principal banking house.

82 (g) The board shall, upon receipt of any application to
83 establish a branch bank, provide notice of such applica-
84 tion to all banking institutions. A banking institution
85 may, within ten days after receipt of such notice, file a
86 petition to intervene and shall, if it so files such petition,
87 thereupon become a party to any hearing relating thereto
88 before the board.

89 (h) The commissioner shall prescribe the form of the
90 application for a branch bank and shall collect an
91 examination and investigation fee of one thousand
92 dollars for each filed application for a branch bank that
93 is to be established by the construction, lease or acquisi-
94 tion of a branch bank facility, and two thousand five
95 hundred dollars for a branch bank that is to be estab-
96 lished by the purchase of the business and assets and
97 assumption of the liabilities of, or merger or consolida-
98 tion with another banking institution. Notwithstanding
99 the above, if the merger or consolidation is between an
100 existing banking institution and a bank newly incorpo-
101 rated solely for the purpose of facilitating the acquisition
102 of the existing banking institution, the commissioner
103 shall collect an examination and investigation fee of five
104 hundred dollars. The board shall complete the examina-
105 tion and investigation within ninety days from the date
106 on which such application and fee are received, unless
107 the board requests in writing additional information and
108 disclosures concerning the proposed branch bank from
109 the applicant banking institution, in which event such
110 ninety-day period shall be extended for an additional
111 period of thirty days plus the number of days between the
112 date of such request and the date such additional infor-
113 mation and disclosures are received.

114 (i) Upon completion of the examination and investiga-
115 tion with respect to such application, the board shall, if
116 a hearing be required pursuant to subsection (j) of this

117 section, forthwith give notice and hold a hearing pursu-
118 ant to the following provisions:

119 (1) Notice of such hearing shall be given to the banking
120 institution with respect to which the hearing is to be
121 conducted in accordance with the provisions of section
122 two, article seven, chapter twenty-nine-a of this code,
123 and such hearing and the administrative procedures in
124 connection therewith shall be governed by all of the
125 provisions of article five, chapter twenty-nine-a of this
126 code, and shall be held at a time and place set by the
127 board but shall not be less than ten nor more than thirty
128 days after such notice is given.

129 (2) At any such hearing a party may represent himself
130 or be represented by an attorney at law admitted to
131 practice before any circuit court of this state.

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

141 (j) No state banking institution may establish a branch
142 bank until the board, following an examination, investi-
143 gation, notice and hearing, enters an order approving an
144 application for that branch bank: *Provided*, That no such
145 hearing shall be required with respect to any application
146 to establish a branch bank which is approved by the
147 board unless a banking institution has timely filed a
148 petition to intervene pursuant to subsection (g) of this
149 section. The order shall be accompanied by findings of
150 fact that:

151 (1) Public convenience and advantage will be promoted
152 by the establishment of the proposed branch bank;

153 (2) Local conditions assure reasonable promise of

154 successful operation of the proposed branch bank and of
155 those banks and branches thereof already established in
156 the community;

157 (3) Suitable physical facilities will be provided for the
158 branch bank;

159 (4) The applicant state-chartered banking institution
160 satisfies such reasonable and appropriate requirements
161 as to sound financial condition as the commissioner or
162 board may from time to time establish by regulation;

163 (5) The establishment of the proposed branch bank
164 would not result in a monopoly, nor be in furtherance of
165 any combination or conspiracy to monopolize the busi-
166 ness of banking in any section of this state; and

167 (6) The establishment of the proposed branch bank
168 would not have the effect in any section of the state of
169 substantially lessening competition, nor tend to create a
170 monopoly or in any other manner be in restraint of trade,
171 unless the anticompetitive effects of the establishment of
172 that proposed branch bank are clearly outweighed in the
173 public interest by the probable effect of the establish-
174 ment of the proposed branch bank in meeting the conve-
175 nience and needs of the community to be served by that
176 proposed branch bank.

177 If the branch results from the merger or acquisition of
178 banking institutions, the findings of fact required in
179 subdivisions (1) through (3) of this subsection may be
180 based on the performance and suitability of the previous
181 banking offices.

182 (k) Any party who is adversely affected by the order of
183 the board shall be entitled to judicial review thereof in
184 the manner provided in section four, article five, chapter
185 twenty-nine-a of this code. Any such party adversely
186 affected by a final judgment of a circuit court following
187 judicial review as provided in the foregoing sentence may
188 seek review thereof by appeal to the supreme court of
189 appeals in the manner provided in article six, chapter
190 twenty-nine-a of this code.

191 (l) Pursuant to the resolution of its board of directors
192 and with the prior written approval of the commissioner,
193 a state banking institution may discontinue the operation
194 of a branch bank upon at least thirty days' prior public
195 notice given in such form and manner as the commis-
196 sioner prescribes.

197 (m) Any violation of any provision of this section shall
198 constitute a misdemeanor offense punishable by applica-
199 ble penalties as provided in section fifteen of this article.

ARTICLE 8A. ACQUISITIONS OF BANKS BY BANK HOLDING COMPANIES.

§31A-8A-1. Definitions.

1 For purposes of this article:

2 (a) "Acquire" means:

3 (1) For a company to merge or consolidate with a bank
4 holding company;

5 (2) For a company to assume direct or indirect owner-
6 ship or control of:

7 (i) More than twenty-five percent of any class of voting
8 shares of a bank holding company or a bank, if the
9 acquiring company was not a bank holding company
10 prior to such acquisition;

11 (ii) More than five percent of any class of voting shares
12 of a bank holding company or a bank, if the acquiring
13 company was a bank holding company prior to such
14 acquisition; or

15 (iii) All or substantially all of the assets of a bank
16 holding company or a bank; or

17 (3) For a company to take any other action that results
18 in the direct or indirect acquisition of control by such
19 company of a bank holding company or a bank.

20 (b) "Affiliate" means any company that controls, is
21 controlled by, or is under common control with a bank or
22 another company or otherwise meets the criteria set forth
23 in Section 2(k) of the Bank Holding Company Act, 12

24 U.S.C. §1841(k).

25 (c) "Bank" means a corporation or association hereto-
26 fore or hereafter chartered to conduct a banking business
27 under the laws of the United States or any state, terri-
28 tory, district or possession thereof, which is authorized to
29 accept deposits that the depositor has a legal right to
30 withdraw on demand and is authorized to engage in the
31 business of commercial lending and meets the criteria set
32 forth in Section 2(c) of the Bank Holding Company Act,
33 12 U.S.C. §1841(c).

34 (d) "Bank holding company" means any company which
35 has control over any bank or over any company that is or
36 becomes a bank holding company as that term is set forth
37 in Section 2(a) of the Bank Holding Company Act, 12
38 U.S.C. §1841(a), and unless the context requires other-
39 wise, includes a West Virginia bank holding company, an
40 out-of-state bank holding company and a foreign bank
41 holding company.

42 (e) "Bank Holding Company Act" means the federal
43 Bank Holding Company Act of 1956, as amended, 12
44 U.S.C. §§1841 et. seq.

45 (f) "Bank supervisory agency" means any of the follow-
46 ing:

47 (1) Any agency of another state with primary responsi-
48 bility for chartering and supervising banks; and

49 (2) The office of the comptroller of the currency, the
50 federal deposit insurance corporation, the board of
51 governors of the federal reserve system and any successor
52 to these agencies.

53 (g) "Board of Banking and Financial Institutions"
54 means the board created pursuant to article three of this
55 chapter and is referred to herein as "board".

56 (h) "Branch" or "branch bank" has the meaning set
57 forth in subsection (f), section two, article one of this
58 chapter.

59 (i) "Commissioner" means the West Virginia commis-
60 sioner of banking then in office and, where appropriate,
61 all of his or her successors and predecessors in office.

62 (j) "Company" has the meaning set forth in Section 2(b)
63 of the Bank Holding Company Act, 12 U.S.C. §1841(b),
64 and includes a bank holding company.

65 (k) "Control" shall be construed consistently with
66 Section 2(a) of the Bank Holding Company Act, 12 U.S.C.
67 §1841(a).

68 (l) "Deposit" has the meaning set forth in 12 U.S.C.
69 §1813(l) plus all deposits held by credit unions within this
70 state.

71 (m) "Depository institution" means any institution
72 included for any purpose within the definitions of
73 "insured depository institution" as set forth in 12 U.S.C.
74 §§1813(c)(2) and (3).

75 (n) "Foreign bank holding company" means a bank
76 holding company that is organized under the laws of a
77 country other than the United States (including any
78 territory or possession thereof).

79 (o) "Home state regulator" means, with respect to an
80 out-of-state bank holding company, the bank supervisory
81 agency of the state in which such company maintains its
82 principal place of business.

83 (p) "Out-of-state bank holding company" means:

84 (1) A bank holding company that is not a West Virginia
85 bank holding company; and

86 (2) Unless the context requires otherwise, includes a
87 foreign bank holding company.

88 (q) "Principal place of business" of a bank holding
89 company means the state in which the total deposits of its
90 bank subsidiaries were the greatest on the later of the
91 first day of July, one thousand nine hundred sixty-six, or
92 the date on which such company became a bank holding
93 company.

94 (r) "State" means any state, territory or other posses-
95 sion of the United States, including the District of
96 Columbia.

97 (s) "Subsidiary" has the meaning set forth in Section
98 2(d) of the Bank Holding Company Act, 12 U.S.C.
99 §1841(d).

100 (t) "West Virginia bank" means a bank that is:

101 (1) Organized under the laws of the state of West
102 Virginia; or

103 (2) Organized under federal law and has its main office
104 in this state.

105 (u) "West Virginia bank holding company" means a
106 bank holding company that:

107 (1) Had its principal place of business in this state on
108 the first day of July, one thousand nine hundred sixty-six
109 or the date on which it became a bank holding company,
110 whichever is later; and

111 (2) Is not controlled by a bank holding company other
112 than a West Virginia bank holding company.

113 (v) "West Virginia state bank" means a bank organized
114 under the laws of the state of West Virginia.

§31A-8A-2. Scope and statement of legislative intent.

1 This article sets forth the conditions under which a
2 company may acquire a West Virginia state bank or may
3 form or acquire a West Virginia bank holding company.
4 This article is intended not to discriminate against out-
5 of-state bank holding companies or against foreign bank
6 holding companies in any manner that would violate
7 Section 3(d) of the Bank Holding Company Act, 12 U.S.C.
8 §1842(d), as amended effective September 29, 1995, by
9 Section 101 of the Riegle-Neal Interstate Banking and
10 Branching Efficiency Act of 1994, Public Law No. 103-
11 328.

§31A-8A-3. Permitted acquisitions.

1 (a) Except as otherwise expressly permitted by federal
2 law, no company may form a West Virginia bank holding
3 company or acquire a West Virginia state bank or a bank
4 holding company controlling a West Virginia state bank
5 without the prior application and approval upon order of
6 the board.

7 (b) The prohibition in subsection (a) of this section shall
8 not apply where the acquisition is made:

9 (1) Solely for the purpose of facilitating an acquisition
10 otherwise permitted under this article;

11 (2) In a transaction arranged by the commissioner with
12 the consent of the West Virginia board of banking and
13 financial institutions with another state or federal bank
14 supervisory agency to prevent the insolvency or closing of
15 the acquired bank; or

16 (3) In a transaction in which a national bank or out-of-
17 state state bank forms its own bank holding company, if
18 the ownership rights of the former bank shareholders are
19 substantially similar to those of the shareholders of the
20 new bank holding company.

21 (c) In any transaction involving the acquisition or
22 change in control of a West Virginia bank, West Virginia
23 bank holding company, bank branch located in West
24 Virginia by a bank holding company, the formation of a
25 West Virginia bank holding company or the acquisition
26 of a thrift institution in West Virginia by a bank holding
27 company for which an application to the board for
28 approval is not initially required under subsection (a) or
29 (b) of this section, the party seeking the action shall give
30 written notice to the commissioner at the time the
31 application or notice is filed with the responsible federal
32 bank supervisory agency and at least forty-five days
33 before the effective date of the acquisition, unless a
34 shorter period of notice is required under applicable
35 federal law. In addition, the parties shall give the com-
36 missioner copies of all final federal and state applications
37 filed in connection with the transaction together with a

38 two hundred fifty dollar filing fee. Unless preempted by
39 federal law, the commissioner shall have thirty days from
40 receipt of the written notice to object to any proposed
41 transaction, require an application and request a hearing
42 before the board on the basis that the transaction is
43 contrary to applicable West Virginia law. The failure to
44 object within thirty days shall be construed as consent by
45 the commissioner, or, in his or her discretion, the com-
46 missioner may, at any time, consent in writing.

47 (d) To the extent that any acquisition under this section
48 involves the merger of a bank with and into a West
49 Virginia state bank, the merger transaction remains
50 subject to the jurisdiction and approval of the board
51 pursuant to section seven, article seven of this chapter.

52 (e) An acquisition shall not be permitted under this
53 article or otherwise if upon consummation of the transac-
54 tion, the resulting bank or bank holding company,
55 including any depository institution(s) affiliated with the
56 applicant, would assume sufficient additional deposits to
57 cause it to control deposits in this state in excess of that
58 allowed by section twelve-a, article two of this chapter:
59 *Provided*, That the commissioner may by rule adopt a
60 procedure whereby said acquisition deposit limitation as
61 set forth in this code may be waived for good cause
62 shown. The commissioner shall calculate the acquisition
63 deposit limitation based upon the most recently available
64 reports containing such deposit information filed with
65 state or federal authorities.

§31A-8A-4. Required application.

1 (a) A company that proposes to make an acquisition
2 under this article shall:

3 (1) File with the commissioner a copy of the application
4 that such company has filed with the responsible federal
5 bank supervisory agency, together with such additional
6 information as the commissioner may prescribe; and

7 (2) Pay to the commissioner a four thousand five
8 hundred dollar application fee.

9 (b) To the extent consistent with the effective discharge
10 of the commissioner's responsibilities, the forms estab-
11 lished under this article for application and reporting
12 shall conform to those established by the board of
13 governors of the federal reserve system under the Bank
14 Holding Company Act.

15 (c) In connection with an application received under
16 this article, the commissioner shall:

17 (1) Require that prior notice of the application be
18 published once in a daily newspaper of general circula-
19 tion and provide an opportunity for public comment; and

20 (2) Make the application available for public inspection
21 to the extent required or permitted under applicable state
22 law.

23 (d) If the applicant is an out-of-state bank holding
24 company that is not incorporated under the laws of this
25 state, it shall submit with the application proof that the
26 applicant has complied with applicable requirements of
27 West Virginia law requiring foreign corporations to
28 qualify to do business in the state of West Virginia.

§31A-8A-5. Standards for approval.

1 (a) In deciding whether to approve an application for a
2 proposed acquisition under this article, the board shall
3 consider whether the acquisition may:

4 (1) Be detrimental to the safety and soundness of the
5 West Virginia state bank or the West Virginia bank
6 holding company to be acquired which controls a West
7 Virginia state bank, or be contrary to the best interests of
8 the customers or shareholders of the bank whose shares
9 are affected by the action, taking into consideration the
10 financial and managerial resources and further prospects
11 of the company or companies and the banks concerned;

12 (2) Result in a substantial reduction of competition in
13 any section of this state, or result in a monopoly, or
14 would be in furtherance of any combination or conspir-
15 acy to monopolize or to attempt to monopolize the

16 business of banking in any section of this state;

17 (3) Have a significantly adverse effect on the conve-
18 nience and needs of the community or communities in
19 this state that are served by the West Virginia state bank
20 or the West Virginia bank holding company to be ac-
21 quired; or

22 (4) Violate the acquisition deposit limitation set forth in
23 section three of this article.

24 (b) The board shall not approve an application for, nor
25 shall the commissioner consent to, an acquisition under
26 this article unless the West Virginia bank to be acquired,
27 or all West Virginia bank subsidiaries of the bank holding
28 company to be acquired, have as of the proposed date of
29 acquisition been in existence and in continuous operation
30 for more than two years: *Provided*, That this limitation
31 shall not apply to acquisitions made on or after the
32 thirty-first day of May, one thousand nine hundred
33 ninety-seven.

34 (c) The board may approve an application which may
35 lessen competition if the anticompetitive effects of the
36 proposed action are clearly outweighed in the public
37 interest by the probable effect of the action in meeting
38 the convenience and needs of the community to be served.

39 (d) In deciding whether to approve an application for an
40 acquisition under this article, the board shall consider
41 the applicant's record of compliance with all applicable
42 state(s) and federal community reinvestment laws.

§31A-8A-6. Procedures relating to applications.

1 (a) The board shall decide whether to approve an
2 acquisition under this article within one hundred twenty
3 days after receipt of a completed application: *Provided*,
4 That if the board or commissioner requests additional
5 information from the applicant following receipt of a
6 completed application, the time limit for decision by the
7 board shall be the later of:

8 (i) The date set forth above in this subsection; or

9 (ii) Thirty days after the board's or commissioner's
10 receipt, whichever is applicable, of the requested addi-
11 tional information.

12 (b) The board shall, in accordance with its rules, hold a
13 public hearing in connection with an application and
14 determine any significant issue of law or fact raised with
15 respect to the proposed acquisition relevant and neces-
16 sary for proper disposition of the application.

17 (c) If the board holds a full public hearing under the
18 provisions set forth in article five, chapter twenty-nine-a
19 of this code in connection with an application, the time
20 limit specified in subsection (a) of this section shall be
21 extended to the later of thirty days after the conclusion
22 of the public hearing or thirty days after submission of all
23 documents and materials necessary for proper adjudica-
24 tion of the matter, including transcripts.

25 (d) An application shall be deemed approved if the
26 board takes no action on the application within the time
27 limits specified in this section.

§31A-8A-7. Reports; examinations.

1 (a) To the extent specified by the commissioner by rule,
2 order or written request, each bank holding company that
3 directly or indirectly controls a West Virginia bank, bank
4 branch in West Virginia or a West Virginia bank holding
5 company shall submit to the commissioner an annual
6 report specifying for each bank and branch (excluding
7 automated teller machines) in this state controlled by the
8 bank holding company:

9 (i) The location of each such office, including county
10 and, where applicable, municipality;

11 (ii) The amount of deposits held by each such office as
12 of the end of the preceding calendar year; and

13 (iii) The amount of loans outstanding by each such
14 office at the end of the preceding calendar year.

15 The foregoing report shall be based upon each bank's

16 allocation of its deposit base and loan portfolio among its
17 main office and branches. The report shall be filed with
18 the commissioner on or before the fifteenth day of
19 February of each year on forms prescribed by the com-
20 missioner.

21 (b) A parent bank holding company controlling a bank
22 or bank holding company having, or through a subsidiary
23 having, a place of business in this state shall, on or before
24 the thirty-first day of March of each year, register with
25 the commissioner on forms provided or prescribed by
26 said office, which shall include such information with
27 respect to the financial condition, operation, management
28 and intercompany relationships of the parent bank
29 holding company and its subsidiaries and related matters
30 as the commissioner may deem necessary or appropriate
31 to carry out the purposes of this article. The information
32 required herein may be supplied by submission of copies
33 of other similar federal or state regulatory filings or
34 forms containing the information, unless otherwise
35 required by order or rule.

36 (c) The commissioner may enter into cooperative
37 agreements with any other bank supervisory agencies to
38 facilitate the examination of any bank holding company
39 that: (i) Has acquired or has an application pending to
40 acquire a West Virginia bank or West Virginia bank
41 holding company pursuant to this article; or (ii) operates
42 a subsidiary doing business in this state which is subject
43 to the jurisdiction or supervision of the commissioner.
44 The commissioner may accept reports of examinations
45 and other records from such other authorities in lieu of
46 conducting his or her own examination of such bank
47 holding companies or their subsidiaries. The commis-
48 sioner may take any action jointly with other regulatory
49 agencies having concurrent jurisdiction over such bank
50 holding companies or subsidiaries, or may take action
51 independently in order to carry out his or her responsibil-
52 ities under this chapter.

53 (d) When the commissioner considers it necessary, he or

54 she may require any bank holding company that has
 55 acquired a West Virginia bank, bank branch in West
 56 Virginia or West Virginia bank holding company to
 57 submit such reports to the commissioner as he or she
 58 determines to be necessary or appropriate for the purpose
 59 of carrying out his or her responsibilities.

60 (e) When the commissioner of banking considers it
 61 necessary or appropriate, he or she may examine any
 62 bank holding company that has acquired or has an
 63 application pending to acquire a West Virginia bank,
 64 bank branch in West Virginia or West Virginia bank
 65 holding company. The cost of an examination in connec-
 66 tion with an application, if in excess of the initial fee,
 67 shall be assessed against and paid by the bank holding
 68 company examined. The commissioner may request the
 69 bank holding company to be examined pursuant to this
 70 subsection to advance the estimated cost of such exami-
 71 nation. The cost of an examination for a bank holding
 72 company controlling a West Virginia bank or West
 73 Virginia bank holding company regarding compliance
 74 with the law of this state or safe and sound banking
 75 practices shall be assessed against and paid by the bank
 76 holding company examined.

**§31A-8A-8. Authority to issue rules; cooperative agreements;
 fees.**

1 In order to carry out the purposes of this article, the
 2 commissioner may:

3 (a) Adopt rules and issue orders;

4 (b) Enter into cooperative, coordinating or information-
 5 sharing agreements with any other bank supervisory
 6 agency or any organization affiliated with or representing
 7 one or more bank supervisory agencies;

8 (c) Accept any report of examination or investigation by
 9 another bank supervisory agency having concurrent
 10 jurisdiction over a West Virginia state bank or a bank
 11 holding company that controls a West Virginia state bank
 12 in lieu of conducting the commissioner's own examina-

13 tion or investigation of such bank holding company or
14 bank;

15 (d) Enter into contracts with any bank supervisory
16 agency having concurrent jurisdiction over a West
17 Virginia state bank or a bank holding company that
18 controls a West Virginia state bank to engage the services
19 of such agency's examiners at a reasonable rate of
20 compensation, or to provide the services of the commis-
21 sioner's examiners to such agency at a reasonable rate of
22 compensation: *Provided*, That any such contract shall be
23 deemed excluded from the requirements of article three,
24 chapter five-a of this code;

25 (e) Enter into joint examinations or joint enforcement
26 actions with any other bank supervisory agency having
27 concurrent jurisdiction over any West Virginia state bank
28 or any bank holding company that controls a West
29 Virginia state bank: *Provided*, That the commissioner
30 may take any such action independently if the commis-
31 sioner determines that such action is necessary to carry
32 out his or her responsibilities under this article or to
33 enforce compliance with the laws of this state: *Provided*,
34 *however*, That in the case of an out-of-state bank holding
35 company, the commissioner shall recognize the authority
36 of the home state regulator over corporate governance
37 matters and the primary responsibility of the home state
38 regulator with respect to safety and soundness matters;
39 and

40 (f) Assess supervisory and examination fees that shall
41 be payable by any bank holding company operating a
42 bank or bank branch in West Virginia in connection with
43 the commissioner's performance of his or her duties
44 under this article. The commissioner shall charge and
45 collect from each bank holding company and pay into a
46 special revenue account in the state treasury for the
47 department of banking an annual assessment payable on
48 the fifteenth day of February computed upon the total
49 deposits in this state of the bank holding company as of
50 the last business day in December of the previous year as

51 is set out in section eight, article two of this chapter. The
52 payment of such registration fee shall be accompanied by
53 the report prescribed by the commissioner under subsec-
54 tion (a), section seven of this article. Examination fees
55 may be shared with other bank supervisory agencies or
56 any organizations affiliated with or representing one or
57 more bank supervisory agencies in accordance with
58 agreements between them and the commissioner.

**§31A-8A-9. Authority to conduct banking business; credit
card processing.**

1 (a) Except as authorized in this article or articles eight-
2 d, eight-e or eight-f of this chapter, no banking institu-
3 tion incorporated under the laws of any other state or
4 having its principal place of business in any other state
5 may receive deposits or transact any banking business of
6 any kind in this state other than the lending of money.

7 (b) A bank holding company with its principal place of
8 business in another state or foreign country may establish
9 electronic data processing facilities and credit card
10 processing facilities in West Virginia. Such facilities are
11 those established solely for the purpose of processing
12 accounts and/or processing transactions relating to the
13 issuance of credit cards.

§31A-8A-10. Penalties.

1 (a) The commissioner or board may enforce the provi-
2 sions of this article by any appropriate action in the
3 circuit court of Kanawha county or other court having
4 proper jurisdiction, including an action for civil money
5 penalties or injunctive relief: *Provided*, That the commis-
6 sioner shall promptly give notice to the home state
7 regulator of any enforcement action initiated against an
8 out-of-state bank holding company and, to the extent
9 practicable, shall consult and cooperate with the home
10 state regulator in pursuing and resolving said enforce-
11 ment action.

12 (b) Any violation of any provision of this article shall
13 constitute a misdemeanor offense, which, upon conviction

14 thereof, shall be punishable by applicable penalties as
15 provided in section fifteen, article eight of this chapter.

ARTICLE 8D. INTERSTATE BRANCHING BY BANK MERGERS.

§31A-8D-1. Legislative purpose.

1 It is the express intent of this article to permit inter-
2 state branching by merger under Section 102 of the
3 Riegle-Neal Interstate Banking and Branching Efficiency
4 Act of 1994, Public Law No. 103-328, in accordance with
5 the provisions set forth in this article.

§31A-8D-2. Definitions.

1 As used in this article, unless a different meaning is
2 required by the context, the following words and phrases
3 shall have the following meanings:

4 (a) "Bank" has the meaning set forth in 12 U.S.C.
5 §1813(h): *Provided*, That the term "bank" shall not
6 include any "foreign bank" as defined in 12 U.S.C.
7 §3101(7), except that such term shall include any foreign
8 bank organized under the laws of a territory of the
9 United States, Puerto Rico, Guam, American Samoa or
10 the Virgin Islands, the deposits of which are insured by
11 the federal deposit insurance corporation.

12 (b) "Bank holding company" has the meaning set forth
13 in 12 U.S.C. §1841(a)(1).

14 (c) "Bank supervisory agency" means:

15 (1) Any agency of another state with primary responsi-
16 bility for chartering and supervising banks; and

17 (2) The office of the comptroller of the currency, the
18 federal deposit insurance corporation, the board of
19 governors of the federal reserve system and any successor
20 to these agencies.

21 (d) "Board of Banking and Financial Institutions"
22 means the board created pursuant to the provisions of
23 article three of this chapter and referred to herein as
24 "board".

25 (e) "Branch" or "branch bank" has the meaning set
26 forth in subsection (f), section two, article one of this
27 chapter.

28 (f) "Commissioner" means the West Virginia commis-
29 sioner of banking then in office and, where appropriate,
30 all of his or her successors and predecessors in office.

31 (g) "Control" shall be construed consistently with the
32 provisions of 12 U.S.C. §1841(a)(2).

33 (h) "Home state" means:

34 (1) With respect to a state bank, the state by which the
35 bank is chartered;

36 (2) With respect to a national bank, the state in which
37 the main office of the bank is located;

38 (3) With respect to a foreign bank, the state determined
39 to be the home state of such foreign bank under 12 U.S.C.
40 §3103(c).

41 (i) "Home state regulator" means, with respect to an
42 out-of-state state bank, the bank supervisory agency of
43 the state in which such bank is chartered.

44 (j) "Host state" means a state, other than the home state
45 of a bank, in which the bank maintains, or seeks to
46 establish and maintain a branch.

47 (k) "Insured depository institution" has the meaning set
48 forth in 12 U.S.C. §1813(c)(2) and (3).

49 (l) "Interstate merger transaction" means:

50 (1) The merger or consolidation of banks with different
51 home states, and the conversion of branches of any bank
52 involved in the merger or consolidation into branches of
53 the resulting bank; or

54 (2) The purchase of all or substantially all of the assets
55 (including all or substantially all of the branches) of a
56 bank whose home state is different from the home state
57 of the acquiring bank.

58 (m) "Out-of-state bank" means a bank whose home
59 state is a state other than West Virginia.

60 (n) "Out-of-state state bank" means a bank chartered
61 under the laws of any state other than West Virginia.

62 (o) "Resulting bank" means a bank that has resulted
63 from an interstate merger transaction under this article.

64 (p) "State" means any state of the United States, the
65 District of Columbia, any territory of the United States,
66 Puerto Rico, Guam, the Virgin Islands and American
67 Samoa.

68 (q) "West Virginia bank" means a bank whose home
69 state is West Virginia.

70 (r) "West Virginia state bank" means a bank chartered
71 under the laws of West Virginia.

**§31A-8D-3. Authority of West Virginia state banks to estab-
lish interstate branches by merger.**

1 Beginning on the thirty-first day of May, one thousand
2 nine hundred ninety-seven, and with prior approval upon
3 order of the board, a West Virginia state bank may
4 establish, maintain and operate one or more branches in
5 a state other than West Virginia pursuant to an interstate
6 merger transaction in which the West Virginia state bank
7 is the resulting bank. Not later than the date on which
8 the required application for the interstate merger trans-
9 action is filed with the responsible federal bank supervi-
10 sory agency, the applicant West Virginia state bank shall
11 file an application on a form prescribed by the commis-
12 sioner together with a three thousand dollar application
13 fee. The applicant shall also comply with the applicable
14 provisions of section twelve, article eight of this chapter.
15 If the board finds that: (i) The proposed transaction will
16 not be detrimental to the safety and soundness of the
17 applicant or the resulting bank, including that local
18 conditions assure reasonable promise of successful
19 operation of the proposed bank branch; (ii) any new
20 officers and directors of the resulting bank are qualified

21 by character, experience and financial responsibility to
22 direct and manage the resulting bank; (iii) the acquired
23 branch offices of which will provide suitable physical
24 facilities for their intended business; (iv) establishment of
25 the proposed branch bank would not result in a substan-
26 tial reduction of competition in any section of this state
27 unless the anticompetitive effects of the proposed action
28 are clearly outweighed in the public interest by the
29 probable effect of the action in meeting the convenience
30 and needs of the community to be served, or result in a
31 monopoly, or be in furtherance of any combination or
32 conspiracy to monopolize, or any attempt to monopolize
33 the business of banking in any section of this state; (v) the
34 proposed merger is consistent with the convenience and
35 needs of the communities to be served by the resulting
36 bank in this state and is otherwise in the public interest;
37 and (vi) the new branch is in conformity with, and would
38 be permitted under the laws of the state where the
39 branch is to be located, it shall approve the interstate
40 merger transaction and the operation of branches outside
41 of West Virginia by the West Virginia state bank. The
42 findings required herein shall supplant any other findings
43 of fact otherwise required by subdivisions (1) through (6),
44 subsection (j), section twelve, article eight of this chapter.
45 Such an interstate merger transaction may be consum-
46 mated only after the applicant has received the board's
47 written approval by entry of an order granting the
48 application.

**§31A-8D-4. Interstate merger transactions and branching
involving out-of-state banks permitted.**

1 (a) Beginning on the thirty-first day of May, one
2 thousand nine hundred ninety-seven, one or more West
3 Virginia banks may enter into an interstate merger
4 transaction with one or more out-of-state banks under
5 this article, and an out-of-state bank resulting from such
6 transaction may maintain and operate the branches and
7 offices in West Virginia of a West Virginia bank that
8 participated in such transaction: *Provided*, That the
9 conditions and filing requirements of this article are met.

10 (b) A merger transaction shall not be permitted under
11 this article if, upon consummation of such transaction,
12 the resulting bank (including all insured depository
13 institution affiliates of the resulting bank) would assume
14 sufficient additional deposits to cause it to control
15 deposits in this state in excess of that allowed by section
16 twelve-a, article two of this chapter: *Provided*, That the
17 commissioner may by rule adopt a procedure whereby
18 said acquisition deposit limitation as set forth in this
19 code may be waived for good cause shown. The commis-
20 sioner shall calculate the acquisition deposit limitation
21 based upon the most recently available reports containing
22 such deposit information filed with state or federal
23 authorities.

24 (c) A merger transaction resulting in the acquisition by
25 an out-of-state bank of a West Virginia state bank, or all
26 or substantially all of the branches of a West Virginia
27 state bank, or resulting in the acquisition by an out-of-
28 state state bank of a West Virginia bank or the change of
29 control over a branch operating in West Virginia, shall
30 not be permitted under this article unless: (i) The
31 out-of-state bank confirms in writing to the commis-
32 sioner that as long as it maintains a branch in West
33 Virginia, it will comply with all applicable laws of this
34 state, including consumer protection laws; (ii) deposits of
35 the resulting bank in this state are insured in conformity
36 with the provisions of section six, article one of this
37 chapter; and (iii) the resulting bank, if state chartered,
38 meets the capital requirements set forth in section three,
39 article four of this chapter.

§31A-8D-5. Notice and filing requirements.

1 (a) Any out-of-state state bank that will be the result-
2 ing bank pursuant to a merger transaction involving a
3 West Virginia bank, or will be the resulting bank pursu-
4 ant to a merger transaction affecting the change of
5 control over a branch operating in West Virginia shall
6 notify the commissioner of the proposed merger not later
7 than the date on which it files an application for the

8 merger transaction with the responsible federal bank
9 supervisory agency, and shall submit a copy of that
10 application to the commissioner and pay a filing fee of
11 two hundred fifty dollars.

12 (b) Any West Virginia state bank which is a party to an
13 interstate merger transaction shall comply with state law
14 governing shareholder rights and director and officer
15 duties with respect to affecting the merger and with other
16 applicable state and federal laws. In addition, the West
17 Virginia state bank shall give written notice to the
18 commissioner at least forty-five days before the effective
19 date of a merger where the resulting bank will be an out-
20 of-state bank, unless a shorter period of notice is re-
21 quired under applicable federal law.

22 (c) Unless preempted by federal law, the commissioner
23 shall have thirty days from receipt of the written notice
24 under subsection (a) of this section to object to the
25 proposed transaction and request a hearing before the
26 board on the basis that the transaction is contrary to
27 applicable West Virginia law. The failure to object within
28 thirty days shall be construed as consent by the commis-
29 sioner, or, in his or her discretion, the commissioner may,
30 at any time, consent in writing. The commissioner may
31 also request a hearing on the basis that the bank supervi-
32 sory agency of the home state of the resulting out-of-state
33 bank is without authority or procedures under its state's
34 law to review the transaction, or is not under its state's
35 law viewed as the primary regulator of its chartered
36 banks' out-of-state branches, in which event the criteria,
37 fees and procedures set forth in section three of this
38 article shall apply.

39 (d) Any out-of-state state bank which shall be the
40 resulting bank in such an interstate or other merger
41 transaction shall provide satisfactory evidence to the
42 commissioner of compliance with applicable require-
43 ments of West Virginia law requiring foreign corpora-
44 tions to qualify to do business in West Virginia.

§31A-8D-6. Powers; additional branches.

1 (a) An out-of-state state bank which establishes and
2 maintains one or more branches in West Virginia under
3 this article may conduct any activities at such branch or
4 branches that are authorized under the laws of this state
5 for West Virginia state banks.

6 (b) A West Virginia state bank may conduct any activi-
7 ties at any branch outside West Virginia that are ex-
8 pressly permissible for a bank chartered by the host state
9 where the branch is located. Prior to commencing any
10 such activities, the West Virginia state bank shall give the
11 commissioner forty-five days advance notice of the
12 intention to exercise any such powers which are not
13 permitted to West Virginia state banks in their operations
14 in this state under state law. This notice shall be made
15 together with a filing providing a written summary with
16 details of the proposed action or program, along with
17 legal analysis for the authority to conduct the activities
18 and how the exercise of the authority will not impair the
19 safety and soundness of the bank and will be kept
20 separate from its operations within West Virginia.
21 Unless, within thirty days after receipt of the notice and
22 filing, the commissioner objects or requests a hearing on
23 the matter before the board, the exercise of the powers
24 shall be deemed authorized. In the discretion of the
25 commissioner or the board, authorization of such powers
26 may be given in writing at any time.

27 (c) An out-of-state bank that has established or ac-
28 quired a branch in West Virginia under this article may
29 establish or acquire additional branches in West Virginia
30 to the same extent that any West Virginia bank may
31 establish or acquire a branch in West Virginia under
32 applicable federal and state law. To the extent that an
33 out-of-state bank has already established or acquired a
34 branch in West Virginia and proposes to create additional
35 branches by merger with a West Virginia bank, the
36 provisions of this article govern the transaction.

**§31A-8D-7. Examinations; periodic reports; cooperative
agreements; assessment of fees.**

1 (a) To the extent consistent with subsection (c) of this
2 section, the commissioner may make such examinations
3 of any branch established and maintained in this state
4 pursuant to this article by an out-of-state state bank as
5 the commissioner may deem necessary to determine
6 whether the branch is being operated in compliance with
7 the laws of this state and in accordance with safe and
8 sound banking practices. The provisions of article two of
9 this chapter shall apply to such examinations.

10 (b) The commissioner may prescribe requirements for
11 periodic reports regarding any out-of-state bank that
12 operates a branch in West Virginia pursuant to this
13 article. The required reports shall be provided by such
14 bank, or upon request of the commissioner by the bank
15 supervisory agency having primary responsibility for
16 such bank. Any reporting requirements prescribed by the
17 commissioner under this subsection shall be: (i) Consis-
18 tent with the reporting requirements applicable to West
19 Virginia state banks; and (ii) appropriate for the purpose
20 of enabling the commissioner to carry out his or her
21 responsibilities under this article. Unless the information
22 is filed by its bank holding company pursuant to subsec-
23 tion (a), section seven, article eight-a of this chapter, an
24 out-of-state bank with a branch in West Virginia shall
25 also file the information required by said section within
26 the time stated in said section.

27 (c) The commissioner may enter into cooperative,
28 coordinating and information-sharing agreements with
29 any other bank supervisory agencies or any organization
30 affiliated with or representing one or more bank supervi-
31 sory agencies with respect to the periodic examination or
32 other supervision of any branch in West Virginia of an
33 out-of-state state bank, or any branch of a West Virginia
34 state bank in any host state, and the commissioner may
35 accept such parties' reports of examination and reports
36 of investigation in lieu of conducting his or her own
37 examinations or investigations.

38 (d) The commissioner may enter into contracts with any

39 bank supervisory agency that has concurrent jurisdiction
40 over a West Virginia state bank or an out-of-state state
41 bank operating a branch in this state pursuant to this
42 article to engage the services of such agency's examiners
43 at a reasonable rate of compensation, or to provide the
44 services of the commissioner's examiners to such agency
45 at a reasonable rate of compensation: *Provided*, That any
46 such contract shall be deemed excluded from the require-
47 ments of article three, chapter five-a of this code.

48 (e) The commissioner may enter into joint examinations
49 or joint enforcement actions with other bank supervisory
50 agencies having concurrent jurisdiction over any branch
51 in West Virginia of an out-of-state state bank or any
52 branch of a West Virginia state bank in any host state:
53 *Provided*, That the commissioner may at any time take
54 such actions independently if the commissioner deems
55 such actions to be necessary or appropriate to carry out
56 his or her responsibilities under this article or to ensure
57 compliance with the laws of this state: *Provided, how-*
58 *ever*, That, in the case of an out-of-state state bank, the
59 commissioner shall recognize the authority of the home
60 state regulator over corporate governance matters and
61 the primary responsibility of the home state regulator
62 with respect to safety and soundness matters.

63 (f) Each out-of-state state bank that maintains one or
64 more branches in this state may be assessed and, if
65 assessed, shall pay supervisory and examination fees in
66 accordance with the laws of this state and rules of the
67 commissioner. Such fees may be shared with other bank
68 supervisory agencies or any organization affiliated with
69 or representing one or more bank supervisory agencies in
70 accordance with agreements between such parties and
71 the commissioner.

§31A-8D-8. Enforcement.

1 If the commissioner determines that a branch main-
2 tained by an out-of-state state bank in this state is being
3 operated in violation of any provision of the laws of this

4 state, or that such branch is being operated in an unsafe
5 and unsound manner, the commissioner shall have the
6 authority to take all such enforcement actions as he or
7 she would be empowered to take if the branch were a
8 West Virginia state bank: *Provided*, That the commis-
9 sioner shall promptly give notice to the home state
10 regulator of each enforcement action taken against an
11 out-of-state state bank and, to the extent practicable,
12 shall consult and cooperate with the home state regulator
13 in pursuing and resolving said enforcement action.

§31A-8D-9. Rules and orders.

1 The commissioner and board may promulgate such
2 rules and issue such orders as they determine to be
3 necessary or appropriate to implement the provisions of
4 this article.

§31A-8D-10. Notice of subsequent merger.

1 An out-of-state state bank that has established and
2 maintains a branch in this state pursuant to this article,
3 shall give at least forty-five days' prior written notice (or,
4 in the case of an emergency transaction, such shorter
5 notice as is consistent with applicable state or federal
6 law) to the commissioner of any merger, consolidation or
7 other transaction that would cause a change of control
8 with respect to such bank or any bank holding company
9 that controls such bank, with the result that an applica-
10 tion would be required to be filed pursuant to the federal
11 Change in Bank Control Act of 1978, as amended, 12
12 U.S.C. §1817(j), or the federal Bank Holding Company
13 Act of 1956, as amended, 12 U.S.C. §§1841 et seq., or any
14 successor statutes thereto. Notice under this section shall
15 not obviate the need the acquiring entity may have to file
16 with the commissioner or board pursuant to section five
17 of this article, or section three, article eight-a of this
18 chapter.

§31A-8D-11. Applicability to thrift institutions.

1 This article shall apply to interstate mergers involving
2 banks with any savings bank, savings and loan associa-

3 tion or other thrift institution maintaining federal deposit
4 insurance where the nonthrift bank survives the merger
5 transaction.

**ARTICLE 8E. INTERSTATE BRANCHING BY DE NOVO ENTRY AND ACQUI-
SITION OF BRANCHES.**

§31A-8E-1. Legislative purpose.

1 It is the express intent of this article to permit inter-
2 state branching under Sections 102 and 103 of the
3 Riegle-Neal Interstate Banking and Branching Efficiency
4 Act of 1994, Public Law No. 103-328, in accordance with
5 the provisions set forth in this article and thereby permit
6 interstate branch banking through de novo entry or by
7 acquisition of branches in transactions not involving a
8 whole bank merger or acquisition.

§31A-8E-2. Definitions.

1 As used in this article, unless a different meaning is
2 required by the context, the following words and phrases
3 shall have the following meanings:

4 (a) "Acquisition of a branch" means the acquisition of
5 a branch located in a host state, without either engaging
6 in an "interstate merger transaction" as defined in article
7 eight-d of this chapter or acquiring all or substantially all
8 of the assets of another bank by merger or purchase.

9 (b) "Bank" has the meaning set forth in 12 U.S.C.
10 §1813(h): *Provided*, That the term "bank" shall not
11 include any "foreign bank" as defined in 12 U.S.C.
12 §3101(7), except that such term shall include any foreign
13 bank organized under the laws of a territory of the
14 United States, Puerto Rico, Guam, American Samoa or
15 the Virgin Islands, the deposits of which are insured by
16 the federal deposit insurance corporation.

17 (c) "Bank holding company" has the meaning set forth
18 in 12 U.S.C. §1841(a)(1).

19 (d) "Bank supervisory agency" means:

20 (1) Any agency of another state with primary responsi-

21 bility for chartering and supervising banks; and

22 (2) The office of the comptroller of the currency, the
23 federal deposit insurance corporation, the board of
24 governors of the federal reserve system and any successor
25 to these agencies.

26 (e) "Board of banking and financial institutions" means
27 the board created pursuant to the provisions of article
28 three of this chapter and referred to herein as "board".

29 (f) "Branch" has the meaning set forth in subsection (f),
30 section two, article one of this chapter.

31 (g) "Commissioner" means the West Virginia commis-
32 sioner of banking then in office and, where appropriate,
33 all of his or her successors and predecessors in office.

34 (h) "Control" shall be construed consistently with the
35 provisions of 12 U.S.C. §1841(a)(2).

36 (i) "De novo branch" means a branch of a bank located
37 in a host state which: (i) Is originally established by the
38 bank as a branch; and (ii) does not become a branch of
39 the bank as a result of: (A) The acquisition of another
40 bank or a branch of another bank; or (B) the merger,
41 consolidation or conversion involving any such bank or
42 branch.

43 (j) "Home state" means:

44 (1) With respect to a state bank, the state by which the
45 bank is chartered;

46 (2) With respect to a national bank, the state in which
47 the main office of the bank is located; or

48 (3) With respect to a foreign bank, the state determined
49 to be the home state of such foreign bank under 12 U.S.C.
50 §3103(c).

51 (k) "Home state regulator" means, with respect to an
52 out-of-state state bank, the bank supervisory agency of
53 the state in which such bank is chartered.

54 (l) "Host state" means a state, other than the home state

55 of a bank, in which the bank maintains, or seeks to
56 establish and maintain, a branch.

57 (m) "Out-of-state bank" means a bank whose home
58 state is a state other than West Virginia.

59 (n) "Out-of-state state bank" means a bank chartered
60 under the laws of any state other than West Virginia.

61 (o) "State" means any state of the United States, the
62 District of Columbia, any territory of the United States,
63 Puerto Rico, Guam, the Virgin Islands and American
64 Samoa.

65 (p) "West Virginia state bank" means a bank chartered
66 under the laws of West Virginia.

**§31A-8E-3. Interstate branching by West Virginia state banks
through de novo establishment or acquisition
of branches in other states.**

1 (a) Beginning on the thirty-first day of May, one
2 thousand nine hundred ninety-seven, and with the prior
3 approval upon order of the board, any West Virginia state
4 bank may establish and maintain a de novo branch or
5 acquire a branch in a state other than West Virginia.

6 (b) A West Virginia state bank desiring to establish and
7 maintain a branch in another state under this section
8 shall file an application on a form prescribed by the
9 commissioner and pay the branch application fee set
10 forth in subsection (h), section twelve, article eight of this
11 chapter. If the board finds that: (i) The applicant has the
12 financial and managerial resources sufficient to under-
13 take the proposed expansion without adversely affecting
14 its safety or soundness, including that local conditions
15 assure reasonable promise of successful operation of the
16 proposed bank branch; (ii) any new officers and directors
17 resulting from the creation of the branch bank are
18 qualified by character, experience and financial responsi-
19 bility to direct and manage the expanded bank; (iii) the
20 proposed branch offices will provide suitable physical
21 facilities for their intended business; (iv) establishment of

22 the proposed branch bank would not result in a substan-
 23 tial reduction of competition in any section of this state
 24 unless the anticompetitive effects of the proposed action
 25 are clearly outweighed in the public interest by the
 26 probable effect of the action in meeting the convenience
 27 and needs of the community to be served, or result in a
 28 monopoly, or would be in furtherance of any combination
 29 or conspiracy to monopolize or to attempt to monopolize
 30 the business of banking in any section of this state; (v) the
 31 establishment of the proposed branch is consistent with
 32 the convenience and needs of the communities to be
 33 served by the branch and is otherwise in the public
 34 interest; and (vi) the new branch is in conformity with,
 35 and would be permitted under the laws of the state where
 36 the branch is to be located, it may approve the applica-
 37 tion. In acting on the application, the board shall con-
 38 sider the views of the appropriate bank supervisory
 39 agencies. The applicant bank may establish the branch
 40 when it has received the board's written approval by
 41 entry of an order granting the application. The findings
 42 required herein shall supplant any other findings of fact
 43 otherwise required by subdivisions (1) through (6),
 44 subsection (j), section twelve, article eight of this chapter.

**§31A-8E-4. Interstate branching by out-of-state banks
 through de novo entry or acquisition of
 branches in West Virginia.**

1 Beginning on the thirty-first day of May, one thousand
 2 nine hundred ninety-seven, an out-of-state bank that
 3 does not operate a branch in this state and that meets the
 4 requirements of this article may establish and maintain
 5 a de novo branch in this state, and may also establish and
 6 maintain a branch in this state through the acquisition of
 7 a branch: *Provided*, That branches may be so established
 8 in West Virginia by out-of-state banks only if the laws of
 9 the home state of the out-of-state bank permit West
 10 Virginia state banks to establish and maintain de novo
 11 branches or to acquire and maintain branches, as appli-
 12 cable, under substantially the same terms and conditions
 13 as set forth in this article. If the law of the other state

14 restricts such entry by a West Virginia state bank to that
15 other state, then the board may similarly limit the
16 authority granted by this article for banks having their
17 main office located in that state.

§31A-8E-5. Requirement of notice.

1 An out-of-state bank desiring to establish and maintain
2 a de novo branch or to acquire a branch in this state
3 pursuant to this article shall provide written notice of the
4 proposed transaction to the commissioner not later than
5 the date on which the bank applies to the responsible
6 federal or state bank supervisory agency for approval to
7 establish the branch. The filing of such notice shall be
8 accompanied by the filing fee of two hundred fifty
9 dollars.

§31A-8E-6. Conditions for approval.

1 No branch of an out-of-state bank may be established
2 in this state under this article, unless:

3 (a) The out-of-state bank confirms in writing to the
4 commissioner that as long as it maintains a branch in
5 West Virginia, it will comply with all applicable laws of
6 this state, including consumer protection laws and any
7 acquisition deposit limitations, as well as maintenance of
8 deposit insurance and capital requirements in the same
9 manner as required for West Virginia state banks.

10 (b) The applicant provides satisfactory evidence to the
11 commissioner of compliance with the applicable require-
12 ments of West Virginia law requiring foreign corpora-
13 tions to qualify to do business in West Virginia.

14 (c) The commissioner, acting within thirty days after
15 receiving notice of an application under section five of
16 this article, or within seven days after a decision if a
17 hearing is held, certifies to the responsible federal bank
18 supervisory agency that the requirements of this article
19 have been met. Unless preempted by federal law, the
20 commissioner shall have thirty days from receipt of the
21 written notice by the out-of-state bank to object to the

22 proposed transaction and request a hearing before the
23 board on the basis that the transaction is contrary to
24 applicable West Virginia law. The failure to object within
25 thirty days shall be construed as consent by the commis-
26 sioner, or, in his or her discretion, the commissioner may,
27 at any time, consent in writing. The commissioner may
28 also request a hearing on the basis that the bank supervi-
29 sory agency of the home state of the out-of-state bank is
30 without authority or procedures under its state's law to
31 review the transaction, or is not under its state's law
32 viewed as the primary regulator of its chartered banks'
33 out-of-state branches, in which event the criteria, fees
34 and procedures set forth in section three of this article
35 shall apply.

§31A-8E-7. Powers; additional branches.

1 (a) An out-of-state state bank which establishes and
2 maintains one or more branches in West Virginia under
3 this article may conduct any activities at such branch or
4 branches that are authorized under the laws of this state
5 for West Virginia state banks.

6 (b) A West Virginia state bank may conduct any activity
7 at a branch outside West Virginia that is expressly
8 permissible for a bank chartered by the host state where
9 the branch is located. Prior to commencing any such
10 activity, the West Virginia state bank shall give the
11 commissioner forty-five days advance notice of the
12 intention to exercise any such powers which are not
13 permitted to West Virginia state banks in their operations
14 in this state under state law. This notice shall be made
15 together with a filing providing a written summary with
16 details of the proposed action or program, along with
17 legal analysis for the authority to conduct the activities
18 and how the exercise of the authority will not impair the
19 safety and soundness of the bank and will be kept
20 separate from its operations within West Virginia.
21 Unless, within thirty days after receipt of the notice and
22 filing, the commissioner objects or requests a hearing on
23 the matter before the board, the exercise of the powers

24 shall be deemed authorized. In the discretion of the
25 commissioner or the board, authorization of such powers
26 may be given in writing at any time.

27 (c) An out-of-state bank that has established or ac-
28 quired a branch in West Virginia under this article may
29 establish or acquire additional branches in West Virginia
30 to the same extent that any West Virginia bank may
31 establish or acquire a branch in West Virginia under
32 applicable federal and state law. To the extent that an
33 out-of-state bank has already established or acquired a
34 branch in West Virginia and proposes to create additional
35 branches by establishing another de novo branch, or by
36 acquisition of another bank's branch in West Virginia,
37 the provisions of this article govern the transaction.

**§31A-8E-8. Examinations; periodic reports; cooperative
agreements; assessment of fees.**

1 (a) To the extent consistent with subsection (c) of this
2 section, the commissioner may make such examinations
3 of any branch established and maintained in this state
4 pursuant to this article by an out-of-state state bank as
5 the commissioner may deem necessary to determine
6 whether the branch is being operated in compliance with
7 the laws of this state and in accordance with safe and
8 sound banking practices. The provisions of article two of
9 this chapter shall apply to such examinations.

10 (b) The commissioner may require periodic reports
11 regarding any out-of-state bank that has established and
12 maintained a branch in this state pursuant to this article.
13 The required reports shall be provided by the bank, or
14 upon request of the commissioner by the bank supervi-
15 sory agency having primary responsibility for such bank.
16 Any reporting requirements prescribed by the commis-
17 sioner under this subsection shall be: (i) Consistent with
18 the reporting requirements applicable to West Virginia
19 state banks; and (ii) appropriate for the purpose of
20 enabling the commissioner to carry out his or her respon-
21 sibilities under this article. Unless the information is
22 filed by its bank holding company pursuant to subsection

23 (a), section seven, article eight-a of this chapter, an out-
24 of-state bank with a branch in West Virginia shall also
25 file the information required by said section within the
26 time stated in said section.

27 (c) The commissioner may enter into cooperative,
28 coordinating and information-sharing agreements with
29 any other bank supervisory agencies or any organization
30 affiliated with or representing one or more bank supervi-
31 sory agencies with respect to the periodic examination or
32 other supervision of any branch in West Virginia of an
33 out-of-state state bank, or any branch of a West Virginia
34 state bank in any host state, and the commissioner may
35 accept such parties' reports of examination and reports
36 of investigation in lieu of conducting his or her own
37 examinations or investigations.

38 (d) The commissioner may enter into contracts with any
39 bank supervisory agency that has concurrent jurisdiction
40 over a West Virginia state bank or an out-of-state state
41 bank maintaining a branch in this state to engage the
42 services of such agency's examiners at a reasonable rate
43 of compensation, or to provide the services of the commis-
44 sioner's examiners to such agency at a reasonable rate of
45 compensation: *Provided*, That any such contract shall be
46 deemed excluded from the requirements of article three,
47 chapter five-a of this code.

48 (e) The commissioner may enter into joint examinations
49 or joint enforcement actions with other bank supervisory
50 agencies having concurrent jurisdiction over any branch
51 established and maintained in West Virginia by an
52 out-of-state state bank or any branch established and
53 maintained by a West Virginia state bank in any host
54 state: *Provided*, That the commissioner may at any time
55 take such actions independently if the commissioner
56 deems such actions to be necessary or appropriate to
57 carry out his or her responsibilities under this article or
58 to ensure compliance with the laws of this state: *Pro-*
59 *vided, however*, That, in the case of an out-of-state state
60 bank, the commissioner shall recognize the authority of

61 the home state regulator over corporate governance
62 matters and the primary responsibility of the home state
63 regulator with respect to safety and soundness matters.

64 (f) Each out-of-state state bank that maintains one or
65 more branches in this state may be assessed and, if
66 assessed, shall pay supervisory and examination fees in
67 accordance with the laws of this state and rules of the
68 commissioner. Such fees may be shared with other bank
69 supervisory agencies or any organization affiliated with
70 or representing one or more bank supervisory agencies in
71 accordance with agreements between such parties and
72 the commissioner.

§31A-8E-9. Enforcement.

1 If the commissioner determines that a branch main-
2 tained by an out-of-state state bank in this state is being
3 operated in violation of any provision of the laws of this
4 state, or that such branch is being operated in an unsafe
5 and unsound manner, the commissioner shall have the
6 authority to take all such enforcement actions as he or
7 she would be empowered to take if the branch were a
8 West Virginia state bank: *Provided*, That the commis-
9 sioner shall promptly give notice to the home state
10 regulator of each enforcement action taken against an
11 out-of-state state bank and, to the extent practicable,
12 shall consult and cooperate with the home state regulator
13 in pursuing and resolving said enforcement action.

§31A-8E-10. Rules and orders.

1 The commissioner and board may promulgate such
2 rules and issue such orders as they determine to be
3 necessary or appropriate in order to implement the
4 provisions of this article.

§31A-8E-11. Notice of subsequent merger.

1 An out-of-state state bank that has established and
2 maintains a branch in this state pursuant to this article,
3 shall give at least forty-five days' prior written notice (or,
4 in the case of an emergency transaction, such shorter

5 notice as is consistent with applicable state or federal
6 law) to the commissioner of any merger, consolidation or
7 other transaction that would cause a change of control
8 with respect to such out-of-state bank or any bank
9 holding company that controls such bank, with the result
10 that an application would be required to be filed pursu-
11 ant to the federal Change in Bank Control Act of 1978, as
12 amended, 12 U.S.C. §1817(j), or the federal Bank Holding
13 Company Act of 1956, as amended, 12 U.S.C. §§1841 et
14 seq., or any successor statutes thereto.

§31A-8E-12. Applicability to thrift institutions.

1 This article shall apply to interstate acquisition of
2 branches of any savings bank, savings and loan associa-
3 tion or other thrift institution maintaining federal deposit
4 insurance by a bank where the nonthrift bank survives
5 the transaction and maintains the branches.

ARTICLE 8F. THE WEST VIRGINIA INTERNATIONAL BANKING ACT.

§31A-8F-1. Legislative purpose.

1 (a) This article shall be known and may be cited as the
2 "West Virginia International Banking Act".

3 (b) This article is intended generally to provide for state
4 regulation of the participation by foreign banks in certain
5 financial markets of this state.

6 (c) This article is intended:

7 (1) To authorize banking activities and operations in
8 West Virginia by foreign banks having separately capital-
9 ized and domestically chartered banks in the United
10 States through branches of such domestic banks in this
11 state;

12 (2) To authorize agency and representative offices in
13 this state of foreign banks; and

14 (3) To ensure that the banking laws and rules of this
15 state otherwise apply to foreign banks, and to West
16 Virginia and out-of-state banks and bank holding
17 companies that are owned or controlled by foreign banks,

18 in a manner consistent with the laws and policies of the
19 United States governing the operations in this country of
20 foreign banks.

§31A-8F-2. Definitions.

1 For purposes of this article:

2 (a) The term "agency office" or "direct agency office"
3 means an office of a foreign bank that is exercising the
4 powers set forth and authorized by sections seven and
5 eleven of this article.

6 (b) The term "bank supervisory agency" means:

7 (1) The office of the comptroller of the currency, the
8 federal deposit insurance corporation, the board of
9 governors of the federal reserve system and any successor
10 to these agencies;

11 (2) Any agency of another state with primary responsi-
12 bility for chartering and supervising banks; and

13 (3) Any agency of a country (including any colonies,
14 dependencies, possessions or political subdivisions
15 thereof) other than the United States with primary
16 responsibility for supervising banks.

17 (c) The term "federal agency" means an agency of a
18 foreign bank that is licensed by the comptroller of the
19 currency pursuant to the provisions of Section 4 of the
20 federal International Banking Act, 12 U.S.C. §3102.

21 (d) The term "foreign bank" means any company
22 organized under the laws of a foreign country that
23 engages directly in the business of banking. The term
24 includes foreign commercial banks, foreign merchant
25 banks and other foreign institutions that engage in
26 banking activities usually in connection with the business
27 of banking in the countries where such foreign institu-
28 tions are organized or operating.

29 (e) The term "federal branch" means a branch of a
30 foreign bank that is licensed by the comptroller of the
31 currency pursuant to the provisions of Section 4 of the

32 federal International Banking Act, 12 U.S.C. §3102.

33 (f) The term "federal International Banking Act" means
34 the federal International Banking Act of 1978, as amend-
35 ed, 12 U.S.C. §§3101 et seq.

36 (g) The term "foreign person" means a natural or
37 juridical person who is a citizen or national of one or
38 more countries (including any colonies, dependencies or
39 possessions of such countries) other than the United
40 States.

41 (h) The term "Interstate Banking and Branching
42 Efficiency Act" means the federal Riegle-Neal Interstate
43 Banking and Branching Efficiency Act of 1994, Public
44 Law No. 103-328, 108 Stat. 2338-2381 (September 29,
45 1994)(codified at various sections of Title 12, U. S. C.).

46 (i) The term "interstate branch" means a branch of a
47 bank or a branch of a foreign bank, as the context may
48 require, which is established after the twenty-ninth day
49 of September, one thousand nine hundred ninety-four,
50 pursuant to the authority contained in the Interstate
51 Banking and Branching Efficiency Act, outside the home
52 state of the bank or foreign bank. In the case of a foreign
53 bank, the term shall not include a limited branch.

54 (j) The term "limited branch" means a branch of a
55 foreign bank that accepts only such deposits as would be
56 permissible for a corporation organized under Section
57 25a of the federal Reserve Act in accordance with the
58 provisions of Section 5 (a)(7) of the federal International
59 Banking Act, 12 U.S.C. §3103(a)(7).

60 (k) The term "out-of-state bank" means a bank orga-
61 nized under the laws of the United States having its main
62 office in a state other than West Virginia or organized
63 under the laws of a state other than West Virginia, which
64 is authorized to engage in the business of banking
65 including the taking of insured retail deposits. For
66 purposes of this definition "state" shall include the
67 District of Columbia and any territory of the United
68 States, Puerto Rico, Guam, the Virgin Islands and Amer-

69 ica Samoa.

70 (l) The term "representative office" shall have the same
71 meaning as is set forth in Section 1(b)(15) of the federal
72 International Banking Act, 12 U.S.C. §3101(15), and the
73 term "West Virginia representative office" shall mean
74 any such office that is located in this state.

**§31A-8F-3. General regulation authority; language; U.S.
general accounting principles.**

1 (a) The commissioner is authorized and empowered to
2 issue such rules and orders to perform his or her duties
3 and functions under this article and to administer and
4 carry out the provisions and purposes of this article and
5 to prevent evasions thereof.

6 (b) It shall be required that all banks, including foreign
7 banks, operating offices in this state use or make avail-
8 able on request the English language version of any
9 customer contract or agreement when the customer is a
10 United States corporation, citizen or resident. Upon
11 demand of the commissioner of banking any bank or
12 financial affiliate in West Virginia under the jurisdiction
13 of the commissioner of banking shall provide at their own
14 expense the translation of any document or record it
15 holds into the English language. Unless otherwise pro-
16 vided for West Virginia licensed domestic banking
17 institutions, all foreign banking offices licensed under the
18 provisions of this article shall abide by U.S. general
19 accounting principles in the maintenance of their finan-
20 cial records.

**§31A-8F-4. Operations in this state of banks owned or con-
trolled by foreign banks and other foreign
persons.**

1 (a) The laws and rules of this state governing the
2 acquisition or ownership of controlling or other interests
3 in West Virginia banks or in out-of-state banks seeking
4 to establish and maintain one or more interstate branches
5 in this state shall not generally prohibit ownership of
6 such institutions by, or otherwise discriminate against,

7 foreign banks or other foreign persons.

8 (b) Notwithstanding the provisions of subsection (a) of
9 this section, the commissioner is authorized to apply any
10 standards or requirements of the laws and rules of this
11 state governing the ownership, control or operations of
12 West Virginia banks, including residency requirements
13 for directors of West Virginia state-chartered banks, even
14 if applicable specifically or exclusively to foreign banks
15 or other foreign persons, to the extent such standards or
16 requirements are determined by the commissioner to be
17 either:

18 (1) Substantially equivalent to, or consistent with, the
19 standards or requirements governing the ownership,
20 control or operations of state or national banks in West
21 Virginia by foreign banks or other foreign persons under
22 applicable United States federal laws or regulations; or

23 (2) Otherwise consistent with the laws and policies of
24 the United States, including its international agreements
25 governing financial services.

**§31A-8F-5. Branches by domestic subsidiary banks owned by
a foreign bank.**

1 An out-of-state bank which is a domestic subsidiary of,
2 or controlled by a foreign bank, may establish branches
3 in this state through merger, de novo entry or the acquisi-
4 tion of branches on the same terms as any other bank
5 sharing that same home state pursuant to articles eight-d
6 and eight-e of this chapter.

**§31A-8F-6. Authority of affiliated bank or branch to act as
agent for a foreign bank.**

1 (a) A West Virginia bank or branch of any out-of-state
2 bank owned or controlled by a foreign bank may at its
3 main or branch offices in West Virginia receive deposits,
4 renew time deposits, close loans, service loans and receive
5 payments on loans and other obligations as an agent for
6 any depository institution affiliate of such foreign bank,
7 including branch, agency and other offices of that same

8 foreign bank located in other states, generally in accor-
9 dance with the same terms, conditions, procedures and
10 requirements that are applicable under the laws and
11 rules of this state to such agency activities that may be
12 conducted by West Virginia state banks.

13 (b) Notwithstanding any other provision of the laws or
14 rules of this state no foreign controlled bank, branch or
15 agency office shall be authorized by this article to accept
16 retail deposits on behalf of a foreign bank or branch
17 which is not authorized to take federally insured depos-
18 its, nor to act as agent on behalf of any affiliated foreign
19 bank other than its controlling foreign bank or one which
20 has been licensed to transact business in this state
21 pursuant to this article.

22 (c) A bank or branch of any bank owned or controlled
23 by a foreign bank may not at its main or branch offices in
24 West Virginia:

25 (1) Conduct any activity as an agent under this section
26 which such office is prohibited from conducting as a
27 principal under any applicable federal or state law,
28 including, but not limited to, the acceptance of impermis-
29 sible deposits; or

30 (2) As a principal, have an agent conduct any activity
31 under this section which such office is prohibited from
32 conducting under any applicable federal or state law,
33 including, but not limited to, the acceptance of impermis-
34 sible deposits.

35 (d) Any agency relationship permitted under this
36 section involving a depository institution affiliate or
37 other affiliate of such foreign bank shall in any event be
38 on terms that are consistent with safe and sound banking
39 practices and all applicable rules and orders of the
40 commissioner.

**§31A-8F-7. Direct agency offices of foreign banks; necessity
of licensure.**

1 (a) A foreign bank may directly transact certain bank-

2 ing business in this state as permitted under this article
3 upon obtaining a license to establish and maintain a West
4 Virginia state agency office.

5 (b) Subsection (a) of this section does not prohibit:

6 (1) Any foreign bank which establishes and maintains
7 a federal agency or federal branch in this state from
8 transacting at such federal agency or federal branch such
9 banking business as it may be authorized to transact
10 under applicable federal laws and rules; or

11 (2) Any foreign bank which does not maintain a branch
12 or agency office in West Virginia from making or enforc-
13 ing loans in this state including loans secured by liens on
14 real or personal property located in this state, as long as
15 such lending is not conducted from an office in this state,
16 and the loan, if a consumer loan, is governed by West
17 Virginia law.

**§31A-8F-8. Application to establish and maintain an agency
office; contents.**

1 A foreign bank seeking to establish and maintain a
2 West Virginia state agency office shall submit an applica-
3 tion to the West Virginia board of banking and financial
4 institutions. Such application shall contain:

5 (a) The same information as required by the board of
6 governors of the federal reserve system for an application
7 to establish an agency in the United States;

8 (b) An instrument irrevocably appointing the West
9 Virginia secretary of state or his or her successors in
10 office to be such foreign bank's agent, representative and
11 attorney to receive service of any lawful judicial and
12 administrative process; and

13 (c) Such additional information as the board or com-
14 missioner may require.

**§31A-8F-9. Application to establish and maintain an agency
office; manner of filing and determination.**

1 (a) A foreign bank making an application under this

2 article for a license to establish and maintain a West
3 Virginia state agency shall deliver to the West Virginia
4 board of banking and financial institutions:

5 (1) At least two duplicate originals of the foreign bank's
6 application on the form prescribed by the board;

7 (2) At least two copies of its charter or articles of
8 incorporation and all amendments thereto, duly authenti-
9 cated by the proper officer of the country of such foreign
10 bank's organization together with translation of such
11 documents if they are in a language other than English,
12 which translation is attested to for accuracy before a
13 notary public or other verifying official;

14 (3) A letter or resolution from its governing body or
15 chief executive officer guaranteeing that the foreign
16 bank's entire capital and surplus is and shall be available
17 for all liabilities and obligations of its agency office doing
18 business in this state;

19 (4) An application fee of one thousand dollars payable
20 by check or money order to the West Virginia board of
21 banking and financial institutions;

22 (5) A document granting power of attorney in favor of
23 the person designated to be in charge of the business and
24 affairs of the proposed office; and

25 (6) Proof of fidelity bond coverage for active officers
26 and employees, and the oath of the managing officer of
27 the West Virginia office(s) to obey state banking laws as
28 would be required were the institution a bank incorpo-
29 rated in this state.

30 (b) The board may approve issuance of a license to a
31 foreign bank to establish and maintain a West Virginia
32 state agency office if it finds:

33 (1) That the foreign bank is of sound financial standing;

34 (2) That the management of the foreign bank and the
35 proposed management of the West Virginia state agency
36 office are adequate and are of good reputation and

37 character;

38 (3) That the convenience and needs of persons to be
39 served by the proposed West Virginia state agency office
40 will be promoted;

41 (4) That the foreign bank has committed to allocate and
42 assign to its agency office within this state a capital
43 equivalency deposit of not less than the greater of five
44 hundred thousand dollars or five percent of the total
45 liabilities of the agency, excluding accrued expenses,
46 intercompany liabilities and any amounts due the foreign
47 bank: *Provided*, That the board may in its discretion
48 require a higher deposit amount or rate to ensure the
49 agency office's financial safety or soundness;

50 (5) That the proposed office is not being formed for
51 other than legitimate motives and purposes;

52 (6) That the bank supervisory agency of the foreign
53 bank's country of organization does not object to the
54 application;

55 (7) That the applicant has submitted a legal opinion
56 indicating that the proposed agency office will be permis-
57 sible under both the laws of the foreign bank's country of
58 organization and the United States; and

59 (8) That the foreign bank has complied with this section
60 and satisfies such other standards as the board may
61 establish by rule.

62 (c) If the board after investigation, notice and hearing
63 determines to issue a license to a foreign bank to estab-
64 lish and maintain a West Virginia state agency office, it
65 shall issue a written order granting the application and
66 authorize the commissioner of banking on its behalf upon
67 payment of all fees required under this article to:

68 (1) Endorse on each document filed as part of the
69 application the word "Filed", and the date of the filing
70 thereof and return to the foreign bank a copy of each
71 document so endorsed;

72 (2) File in the office of the commissioner of banking one
73 of the duplicate originals of the application and copies of
74 the charter or articles of incorporation and amendments
75 thereto; and

76 (3) Issue a license to establish and maintain a West
77 Virginia state agency office to such foreign bank.

78 (d) Each license issued to a foreign bank to establish
79 and maintain a West Virginia state agency shall state
80 fully the name of the foreign bank to which such license
81 is issued, the place of business for the licensee's office
82 and all such other information as the commissioner may
83 require.

84 (e) The board may, by rule or order, prescribe abbrevi-
85 ated application procedures and standards applicable to
86 applications by foreign banks that have already estab-
87 lished an initial West Virginia state agency office,
88 subsequently to establish additional intrastate West
89 Virginia state agency offices, as the case may be.

90 (f) Each licensee must register with the West Virginia
91 secretary of state as a foreign corporation qualified to do
92 business in this state and provide proof of such registra-
93 tion to the commissioner of banking prior to conducting
94 business under its license.

**§31A-8F-10. No concurrent maintenance of federal branches
or agencies.**

1 (a) No foreign bank which is licensed under this article
2 to establish and maintain a West Virginia state agency
3 shall concurrently maintain a federal branch or federal
4 agency office in this state.

5 (b) No foreign bank which maintains a federal branch
6 or federal agency office in this state shall concurrently be
7 licensed under this article to maintain a West Virginia
8 state agency office.

§31A-8F-11. Powers of a foreign bank agency office.

1 (a) A West Virginia state agency office of a foreign bank

2 established under this article may engage in the business
3 of making loans and guaranteeing obligations for the
4 financing of the international movement of goods and
5 services and for all operational needs including working
6 capital and short-term operating needs and for the
7 acquisition of fixed assets. In addition, such agency may
8 also:

9 (1) Borrow funds from banks and other financial
10 institutions;

11 (2) Buy and sell foreign exchange;

12 (3) Receive checks, bills, drafts, acceptances, notes,
13 bonds, coupons and other securities for collection abroad
14 and collect such instruments in the United States for
15 customers abroad;

16 (4) Hold securities for safekeeping for, or buy and sell
17 securities upon the order and for the risk of, customers
18 abroad;

19 (5) Act as paying agent for securities issued by foreign
20 governments or other organizations organized under
21 foreign law and not qualified under the laws of the
22 United States, or any state or the District of Columbia to
23 do business in the United States;

24 (6) In order to prevent the loss on debts previously
25 contracted, an agency may acquire shares in a corpora-
26 tion: *Provided*, That the shares are disposed of as soon as
27 practicable, but in no event later than two years from the
28 date of acquisition;

29 (7) Issue letters of credit and create acceptances; and

30 (8) Conduct activities which are necessary and inciden-
31 tal to the above-enumerated power: *Provided*, That the
32 commissioner maintains the authority to determine
33 whether the power or activity sought or undertaken is
34 necessary and incidental.

35 (b) No West Virginia state agency office may take
36 deposits on behalf of any affiliated bank or other deposi-

37 tory institution.

38 (c) Any loan limitation or restriction based on the
39 capital stock and surplus of a bank shall be deemed to
40 refer, as applied to a West Virginia state agency, to the
41 United States dollar equivalent of the capital and stock
42 surplus of the parent foreign bank, and not to the capital
43 equivalency deposit in section twenty-eight of this
44 article.

§31A-8F-12. Representative office of foreign banks; necessity of licensure.

1 (a) No foreign bank shall establish or maintain a West
2 Virginia state representative office unless the foreign
3 bank is licensed by the commissioner to maintain a West
4 Virginia representative office.

5 (b) Nothing in subsection (a) of this section shall be
6 deemed to prohibit a foreign bank which maintains a
7 federal agency or federal branch in this state from
8 establishing or maintaining one or more West Virginia
9 representative offices.

§31A-8F-13. Representative office; application.

1 (a) The application for a license to establish and
2 maintain a West Virginia representative office shall be in
3 writing under oath and shall be in such form and contain
4 such information as the commissioner may require by
5 regulation or order. The application shall be accompanied
6 by a fee of two hundred fifty dollars.

7 (b) Each application to establish and maintain a West
8 Virginia representative office shall include an instrument
9 irrevocably appointing the West Virginia secretary of
10 state or his or her successors in office to be such foreign
11 bank's agent, representative and attorney to receive
12 service of any lawful judicial and administrative process.

§31A-8F-14. Representative office; factors for approval of application.

1 (a) A foreign bank making an application for a license

2 to establish and maintain a West Virginia representative
3 office shall deliver to the commissioner two (or more as
4 the commissioner may require in writing) duplicate
5 originals of the foreign bank's application.

6 (b) The commissioner may issue a license to a foreign
7 bank to establish and maintain a West Virginia represen-
8 tative office if he or she finds:

9 (1) That the foreign bank is of sound financial standing;

10 (2) That the management of the foreign bank and the
11 proposed management of the West Virginia representa-
12 tive office are adequate and are of good reputation and
13 character;

14 (3) That the proposed office is not being formed for
15 other than legitimate motives and purposes; and

16 (4) That the convenience and needs of persons to be
17 served by the proposed West Virginia representative
18 office will be promoted.

19 (c) If the commissioner determines to issue a license to
20 a foreign bank to establish and maintain a West Virginia
21 representative office, he or she shall, when all fees have
22 been paid as required under this article:

23 (1) Endorse on each duplicate original of the applica-
24 tion the word "Filed", and the date of the filing thereof
25 and return to the foreign bank one such duplicate origi-
26 nal so endorsed;

27 (2) File in his or her office one of such duplicate origi-
28 nals of the application; and

29 (3) Issue a license to establish and maintain a West
30 Virginia representative office to such foreign bank.

31 (d) Each license issued to a foreign bank to establish
32 and maintain a West Virginia representative office shall
33 state fully the name of the foreign bank to which such
34 license is issued, the address or addresses at which the
35 West Virginia representative office is to be located and
36 all other information as the commissioner may require.

§31A-8F-15. Representative office; permissible activities.

1 (a) A foreign bank which is licensed to establish and
2 maintain a West Virginia representative office may,
3 subject to such rules as the commissioner may prescribe,
4 engage in the following activities:

5 (1) Solicitation for loans and in connection therewith
6 the assembling of credit information, making of property
7 inspections and appraisals, securing of title information,
8 preparing of applications for loans including making
9 recommendations with respect to action thereon, solici-
10 tating of investors to purchase loans from the foreign
11 bank and searching for such investors to contract with
12 the foreign bank for servicing of such loans;

13 (2) The solicitation of new business;

14 (3) The conduct of research; and

15 (4) Back office administrative functions as may be more
16 specifically defined in rules issued by the commissioner.

17 (b) Any other activity which the foreign bank seeks to
18 conduct at such office shall be subject to the prior
19 written approval of the commissioner upon finding that
20 the character of such other business is such that the
21 granting of the authority would not facilitate evasions of
22 this article or chapter or the rules or orders lawfully
23 made hereunder.

§31A-8F-16. Posting of license.

1 Each foreign bank which is licensed to establish and
2 maintain a West Virginia state agency or West Virginia
3 representative office shall post its license in a conspicu-
4 ous place at the office.

§31A-8F-17. Licenses not transferable.

1 No license issued by the commissioner in accordance
2 with this article shall be transferable or assignable.

**§31A-8F-18. Amended license to establish and maintain a
direct agency office or representative office.**

1 (a) A foreign bank which is licensed to establish and
 2 maintain a West Virginia state agency or West Virginia
 3 representative office must secure an amended license if
 4 it changes its corporate name, changes corporate control,
 5 changes the duration of its corporate existence or desires
 6 to pursue in this state other or additional purposes than
 7 those set forth in its prior application under this article
 8 for a license, by making application therefor to the
 9 commissioner.

10 (b) The requirements with respect to the form and
 11 contents of an application under subsection (a) of this
 12 section, the manner of its execution, the filing of dupli-
 13 cate originals thereof with the commissioner, the issuance
 14 of an amended license and the effect thereof shall be the
 15 same as in the case of an initial application for a license
 16 to establish and maintain a West Virginia state agency or
 17 West Virginia representative office, except as may be
 18 provided by the commissioner in the case of a change of
 19 control which results merely from a corporate reorgani-
 20 zation.

§31A-8F-19. Change of control of foreign bank.

1 A foreign bank which is licensed to establish and
 2 maintain a West Virginia state agency or West Virginia
 3 representative office shall file with the commissioner a
 4 written notice and request an amended license under
 5 section eighteen of this article no later than fourteen
 6 calendar days after the foreign bank becomes aware of
 7 any acquisition of control of the foreign bank or the bank
 8 merges with another foreign or domestic bank.

§31A-8F-20. Relocation of office; written notice necessary.

1 No foreign bank which is licensed to establish and
 2 maintain a West Virginia state agency or West Virginia
 3 representative office shall relocate any office unless the
 4 foreign bank provides prior written notice to the commis-
 5 sioner and the commissioner has approved such reloca-
 6 tion in writing.

§31A-8F-21. Examination; payment of fees.

1 (a) A West Virginia state agency or West Virginia
2 representative office shall be subject to examination by
3 the commissioner at intervals and in a manner as he or
4 she shall establish by rule or order. Unless otherwise
5 provided by rule or order the examinations may be
6 conducted annually.

7 (b) In conducting an examination pursuant to this
8 section, the commissioner shall:

9 (1) Have full access to the offices, books, accounts and
10 records of each office located in this state as well as all of
11 the books, accounts and records maintained in this state
12 of any office not located in this state of such foreign
13 bank; and

14 (2) Have authority to require the attendance of and to
15 examine under oath all persons whose testimony may be
16 required relative to the activities of such office.

17 (c) A foreign bank which is licensed to establish and
18 maintain a West Virginia state agency or West Virginia
19 representative office shall be assessed a reasonable fee
20 for the expenses incurred by the commissioner in making
21 an examination of the office.

22 (d) A foreign bank which is licensed to establish and
23 maintain a West Virginia state agency or West Virginia
24 representative office shall be subject to all reasonable
25 fees and expenses in such amounts as the commissioner
26 may require by rule or order.

27 (e) The commissioner may require a West Virginia state
28 agency or West Virginia representative office to be
29 audited by an independent accountant licensed to prac-
30 tice by the state of West Virginia. The accountant must
31 have knowledge and experience with respect to auditing
32 books of international corporations. The audit must be
33 based on generally accepted accounting standards
34 without limitation on its scope. The cost of the audits
35 must be paid by the foreign bank.

§31A-8F-22. Supervision and enforcement.

1 (a) The commissioner shall have all of the powers
2 granted to him or her by the laws of this state to the
3 extent appropriate to enable him or her to supervise each
4 West Virginia state agency or West Virginia representa-
5 tive office.

6 (b) If, after notice and a hearing, the commissioner
7 finds that any person has violated any provision of this
8 article or any regulation or order issued under this
9 article, he or she may, in addition to any other remedy or
10 action available to the commissioner under the laws of
11 this state, seek a civil penalty in an amount in accordance
12 with this chapter and rules thereunder.

13 (c) In order to carry out the purposes under this article,
14 the commissioner may:

15 (1) Enter into cooperative, coordinating or information-
16 sharing agreements with any other bank supervisory
17 agency or any organization affiliated or representing one
18 or more bank supervisory agencies;

19 (2) With respect to periodic examination or other
20 supervision of a foreign bank that maintains a West
21 Virginia state agency or West Virginia representative
22 office, accept reports of examinations performed by, and
23 reports submitted to, other bank supervisory agencies in
24 lieu of conducting examinations, or of receiving reports,
25 as might otherwise be required under this article;

26 (3) Enter into joint examinations or joint enforcement
27 actions with any other bank supervisory agency having
28 concurrent jurisdiction over any foreign bank: *Provided,*
29 That the commissioner may at any time take any actions
30 independently if the commissioner determines that the
31 actions are necessary or appropriate to carry out his or
32 her responsibilities under this article and to ensure
33 compliance with the laws of this state;

34 (4) Enter into contracts with any bank supervisory
35 agency having concurrent regulatory or supervisory
36 jurisdiction over a foreign bank maintaining a West
37 Virginia state agency or West Virginia representative

38 office, to engage the services of such agency's examiners
39 at a reasonable rate of compensation or provide the
40 services of the commissioner's examiners at a reasonable
41 rate of compensation: *Provided*, That any such contract
42 shall be deemed excluded from the requirements of
43 article three, chapter five-a of this code; and

44 (5) Assess supervisory and examination fees that shall
45 be payable by foreign banks maintaining a West Virginia
46 state agency or West Virginia representative office in
47 connection with the commissioner's performance of his or
48 her duties under this article and in accordance with rules
49 adopted by the commissioner.

50 (d) Supervisory or examination fees assessed by the
51 commissioner in accordance with the provisions of this
52 article may be shared with other bank supervisory
53 agencies or any organizations affiliated with or repre-
54 senting one or more bank supervisory agencies in accor-
55 dance with agreements between the commissioner and
56 such agencies or organizations.

§31A-8F-23. Reports.

1 (a) Each foreign bank which is licensed to establish and
2 maintain a West Virginia state agency or West Virginia
3 representative office shall file with the commissioner
4 such reports as and when the commissioner may require.

5 (b) Each report filed with the commissioner under this
6 article or any rule or order issued under this article shall
7 be in such form and contain such information, shall be
8 signed in such manner, and shall be verified in such
9 manner, as the commissioner may reasonably require.

§31A-8F-24. Confidentiality of examination reports.

1 All reports of examinations and other records relating
2 to the financial condition of any foreign bank, branch,
3 agency office or representative office shall be confiden-
4 tial and subject to subpoena in the same manner as those
5 examinations and records of other financial institutions
6 pursuant to section four, article two of this chapter.

§31A-8F-25. Books, accounts and records.

1 Each foreign bank which is licensed to establish and
2 maintain a West Virginia state agency or West Virginia
3 representative office shall maintain or make available at
4 any such office appropriate books, accounts and records
5 in the English language reflecting: (i) All transactions
6 effected by or on behalf of such office; and (ii) all actions
7 taken in this state by employees of the foreign banking
8 corporation located in this state to effect transactions on
9 behalf of any office of the foreign bank located outside
10 this state.

§31A-8F-26. Separate assets.

1 (a) Each foreign bank which is licensed to establish and
2 maintain a West Virginia state agency in this state shall
3 keep the assets of its business in this state separate and
4 apart from the assets of its business outside this state as
5 though the West Virginia office was conducted as a
6 separate and distinct entity.

7 (b) The creditors of a foreign bank arising out of
8 transactions with, and recorded on the books of, its West
9 Virginia state agency shall be entitled to absolute prefer-
10 ence and priority over the creditors of the foreign bank's
11 offices located outside this state with respect to the assets
12 of the foreign bank in this state.

§31A-8F-27. Disclosure of lack of federal deposit insurance.

1 Each foreign bank which is licensed to establish and
2 maintain a West Virginia state agency shall clearly and
3 conspicuously disclose that moneys held by or credit
4 balances in such office are not insured by the federal
5 deposit insurance corporation.

§31A-8F-28. Capital equivalency deposit.

1 (a) Each foreign bank which is licensed to establish and
2 maintain a West Virginia state agency office shall keep on
3 deposit with an unaffiliated West Virginia bank(s) as the
4 foreign bank may designate and the commissioner may
5 approve, the capital equivalency deposit required by

6 section nine of this article in the form of interest-bearing
7 stocks and bonds, notes, debentures or other obligations
8 of the United States or any agency or instrumentality
9 thereof, or guaranteed by the United States, or of this
10 state, or of a city, county, town, village, school district or
11 instrumentality of this state or guaranteed by this state,
12 or dollar deposits or obligations of the international bank
13 for reconstruction and development, or obligations issued
14 by the interAmerican development bank, or obligations
15 of the Asian development bank, or obligations issued by
16 the African development bank, or other assets as the
17 commissioner may by rule or order permit, based upon
18 principal amount or market value, whichever is lower, in
19 the case of the above-described securities, and subject to
20 the limitations as he or she shall prescribe.

21 (b) The West Virginia bank designated to hold the
22 assets in deposit shall issue a written receipt addressed
23 and delivered to the commissioner reciting that the
24 deposit is being held for the sole benefit of the United
25 States domiciled creditors of the foreign bank's West
26 Virginia state agency office and that the deposit is
27 subject to the commissioner's order without offset for the
28 payment of the creditors. For the purpose of this subsec-
29 tion, the term "creditor" shall not include any other
30 offices, branches, subsidiaries or affiliates of the foreign
31 bank.

32 (c) So long as it shall continue business in the ordinary
33 course, such foreign bank shall be permitted to collect
34 interest on the securities deposited under this section and
35 from time to time exchange, examine and compare such
36 securities.

37 (d) The commissioner in his or her discretion may
38 require additional capital equivalency deposits if: (i) The
39 financial condition of either the office(s) or the foreign
40 bank warrants such additional protection; or (ii) other
41 circumstances exist which may impair the office(s) or
42 foreign bank's safety or soundness.

43 (e) West Virginia state agency offices must maintain a

44 capital equivalency ledger showing the amount of net
45 liabilities requiring capital equivalency coverage for each
46 business day. On the last day of business of each month
47 the average daily balance shall be computed, and based
48 upon this computation, an increase in the deposit, if
49 necessary to maintain the deposit at the level required by
50 this section, shall be made. Any such required increase
51 must be made within the first two business days of the
52 following month. For foreign banks having more than one
53 agency office in this state, the deposit required shall be
54 determined on an aggregate basis for all such agency
55 offices in this state. If securities comprise all or part of
56 the deposit, and interest rate changes or a decline in
57 credit quality of the security results in the depreciation
58 of its market value, the security shall be replaced with an
59 instrument that qualifies under subsection (a) of this
60 section or other appropriate action shall be taken to
61 ensure the capital equivalency deposit is adequately
62 maintained.

§31A-8F-29. Voluntary closure of agency or representative office; application.

1 (a) No foreign bank which is licensed to establish and
2 maintain a West Virginia state agency or West Virginia
3 representative office shall close the office without filing
4 an application with, and obtaining the prior approval of,
5 the commissioner. The failure of an agency or representa-
6 tive office to remain open to the public for business at
7 least six hours per day four days per week (excluding
8 legal holidays) shall, unless previous approval for lesser
9 hours has been granted by the commissioner, constitute
10 a closing, and may result in a suspension or revocation of
11 license.

12 (b) If the commissioner finds, with respect to an appli-
13 cation by a foreign bank under this section, that the
14 closing of the office will not be substantially detrimental
15 to the public convenience and advantage, the commis-
16 sioner shall approve the application. If the commissioner
17 finds otherwise, he or she shall deny the application.

18 (c) Whenever an application by a foreign bank under
19 this section has been approved and all conditions prece-
20 dent to the closing have been fulfilled, such foreign bank
21 may close the office and shall promptly thereafter
22 surrender to the commissioner the license which autho-
23 rized the foreign bank to maintain the office.

**CHAPTER 44. ADMINISTRATION OF ESTATES
AND TRUSTS.**

ARTICLE 5. GENERAL PROVISIONS AS TO FIDUCIARIES.

**§44-5-3. Appointment of nonresident; bond; service of notice
and process; fees; penalty.**

1 (a) Notwithstanding any other provision of law, no
2 individual who is a nonresident of this state, nor any
3 banking institution which does not maintain a main
4 office or branch office within this state nor any corpora-
5 tion having its principal office or place of business
6 outside this state, may be appointed or act as executor,
7 administrator, curator, testamentary guardian, guardian
8 or conservator in this state, except that:

9 (1) An individual who is a nonresident of this state may
10 be appointed ancillary administrator of a nonresident
11 decedent's assets situate in this state if such nonresident
12 individual is lawfully acting as executor in said dece-
13 dent's state of domicile and submits letters of probate
14 authenticated by the probate authorities of the decedent's
15 state of domicile to the clerk of the county commission of
16 any county of this state wherein ancillary administration
17 is sought;

18 (2) An individual who is a nonresident of this state may
19 be appointed ancillary administrator of a nonresident
20 decedent's assets situate in this state if such nonresident
21 individual is acting as administrator in said decedent's
22 state of domicile and submits letters of administration
23 authenticated by the probate authorities of the decedent's
24 state of domicile to the clerk of the county commission of
25 any county of this state wherein ancillary administration
26 is sought;

27 (3) An individual who is a nonresident of this state may
28 be appointed and act as testamentary guardian of a
29 nonresident infant and thereby exercise dominion and
30 control over such nonresident infant's assets situate in
31 this state upon submission of authenticated documenta-
32 tion that such nonresident testamentary guardian was so
33 appointed at the place of domicile of the nonresident
34 infant. Such authenticated documentation shall be
35 submitted to the clerk of the county commission of any
36 county of this state wherein assets belonging to such
37 nonresident infant are situate;

38 (4) An individual who is a nonresident of this state and
39 who is named executor by a resident decedent may
40 qualify and act as executor in this state;

41 (5) An individual who is a nonresident of this state may
42 be appointed and act as administrator of a resident
43 decedent's assets in this state if appointed in accordance
44 with the provisions of section four, article one of this
45 chapter;

46 (6) An individual who is a nonresident of this state may
47 be appointed as the testamentary guardian of a resident
48 infant if appointed in accordance with the provisions of
49 section one, article ten of this chapter; and

50 (7) An individual who is a nonresident of this state may
51 be appointed as guardian or conservator of a resident
52 incompetent: *Provided*, That such appointment is made
53 in accordance with the provisions of article two, chapter
54 forty-four-a of this code and if such nonresident individ-
55 ual may otherwise qualify as guardian or conservator.

56 (b) Nonresident individuals enumerated in subsection
57 (a) of this section shall give bond with corporate surety
58 thereon, qualified to do business in this state, and the
59 amount of such bond shall not be less than double the
60 value of the personal assets and double the value of any
61 real property authorized to be sold or double the value of
62 any rents and profits from any real property which the
63 nonresident individual is authorized to receive, except

64 that:

65 (1) Any nonresident individual enumerated in subsec-
66 tion (a) of this section who is the spouse, parent, sibling,
67 lineal descendent or sole beneficiary of a resident or
68 nonresident decedent shall give bond with corporate
69 surety thereon qualified to do business in this state, with
70 such penalty as may be fixed pursuant to the provisions
71 of section seven, article one of this chapter, as approved
72 by the clerk of the county commission;

73 (2) Where the terms of a decedent's will directs that a
74 nonresident individual enumerated in subdivisions (1),
75 (3), (4) and (6) of subsection (a) of this section named in a
76 decedent's will shall not give bond or give bond at a
77 specified amount, it shall not be required or shall be
78 required only to the extent required under the terms of
79 the will, unless at the time the will is admitted to record
80 or at any time subsequently, on the application of any
81 person interested, or from the knowledge of the commis-
82 sion or clerk admitting the will to record, it is deemed
83 proper that greater bond be given.

84 (c) When a nonresident individual is appointed as
85 executor, administrator, testamentary guardian, guardian
86 or conservator pursuant to the provisions of subsection
87 (a) of this section, said individual thereby constitutes the
88 clerk of the county commission wherein such appoint-
89 ment was made as his true and lawful attorney-in-fact
90 upon whom may be served all notices and process in any
91 action or proceeding against him as executor, administra-
92 tor, testamentary guardian, guardian or conservator or
93 with respect to such estate, and such qualification shall
94 be a manifestation of said nonresident individual's
95 agreement that any notice or process, which is served in
96 the manner hereinafter provided in this subsection, shall
97 be of the same legal force and validity as though such
98 nonresident was personally served with notice and
99 process within this state. Service shall be made by
100 leaving the original and two copies of any notice or
101 process together with a fee of five dollars with the clerk

102 of such county commission. The fee of five dollars shall
103 be deposited with the county treasurer. Such clerk shall
104 thereupon endorse upon one copy thereof the day and
105 hour of service and shall file such copy in his office and
106 such service shall constitute personal service upon such
107 nonresident: *Provided*, That the other copy of such notice
108 or process shall be forthwith sent by registered or certi-
109 fied mail, return receipt requested, deliver to addressee
110 only, by said clerk or to such nonresident at the address
111 last furnished by him to said clerk and either: (1) Such
112 nonresident's return receipt signed by him; or (2) the
113 registered or certified mail bearing thereon the stamp of
114 the post office department showing that delivery there-
115 fore was refused by such nonresident is appended to the
116 original notice or process filed therewith in the office of
117 the clerk of the county commission from which such
118 notice or process was issued. No notice or process may be
119 served on such clerk of the county commission or ac-
120 cepted by him less than thirty days before the return date
121 thereof. The clerk of such county commission shall keep
122 a record in his office of all such notices and processes and
123 the day and hour of service thereof. The provision for
124 service of notice or process herein provided is cumulative
125 and nothing herein contained shall be construed as bar to
126 service by publication where proper or the service of
127 notice or process in any other lawful mode or manner.

128 (d) The personal estate of a resident decedent, infant or
129 incompetent may not be removed from this state until the
130 inventory or appraisal of that resident decedent's,
131 infant's, or incompetent's assets have been filed and any
132 new or additional bond required to satisfy the penalty
133 specified in subsection (b) of this section has been
134 furnished. The liability of a nonresident executor,
135 administrator, testamentary guardian, guardian or
136 conservator and of any such surety shall be joint and
137 several and a civil action on any such bond may be
138 instituted and maintained against the surety, notwith-
139 standing any other provision of this code to the contrary,
140 even though no civil action has been instituted against

141 such nonresident.

142 (e) Any such nonresident who removes from this state
143 assets administered in and situate in this state without
144 complying with the provisions of this section, the provi-
145 sions of article eleven of this chapter or any other re-
146 quirement pertaining to fiduciaries generally, shall be
147 guilty of a misdemeanor, and, upon conviction thereof,
148 shall be fined not more than one thousand dollars or
149 confined in the county jail for not more than one year, or,
150 in the discretion of the court, by both such fine and
151 imprisonment.

152 (f) If a nonresident appointed pursuant to subsection (a)
153 of this section fails or refuses to file an accounting
154 required by this chapter, and the failure continues for
155 two months after the due date, he may, upon notice and
156 hearing, be removed or subjected to any other appropri-
157 ate order by the county commission, and if his failure or
158 refusal to account continues for six months, he shall be
159 removed by the county commission.

ARTICLE 10. GUARDIANS AND WARDS GENERALLY.

**§44-10-7. Management of ward's estate; maintenance, educa-
tion and custody; duration of guardianship;
settlement.**

1 Every guardian who is appointed as aforesaid, and
2 gives bond when it is required, shall have the possession,
3 care and management of his ward's estate, real and
4 personal, and out of the proceeds of such estate shall
5 provide for his maintenance and education; and shall
6 have also, except as otherwise provided in this article, the
7 custody of his ward. Unless the guardian shall die, be
8 removed or resign his trust (and the court before which
9 he qualified may allow him to resign), he shall continue
10 in office until his ward shall attain the age of eighteen
11 years notwithstanding the ward may marry before that
12 time, or, in the case of a testamentary guardianship, until
13 the termination of the period limited therefor. At the
14 expiration of his trust, he shall deliver and pay all the
15 estate and money in his hands, or with which he is

16 chargeable, to the person or persons entitled thereto. But
17 the father or mother of any minor child or children shall
18 be entitled to the custody of the person of such child or
19 children, and to the care of his or their education. If
20 living together, the father and mother shall be the joint
21 guardians of the person of their minor child or children,
22 with equal powers, rights and duties in respect to the
23 custody, control, services, earnings, and care of the
24 education of such minor child or children; and neither the
25 father nor the mother shall have any right paramount to
26 that of the other in respect to such custody, control,
27 services or earnings and care of the education of such
28 minor child or children. If the father and mother be living
29 apart, the court to which application is made from the
30 appointment of a guardian, or before which any such
31 matter comes in question, shall appoint, as guardian of
32 the person of the minor child or children of such father
33 and mother, that parent who is, in the court's opinion,
34 best suited for the trust, considering the welfare and best
35 interests of such minor child or children. No corporation
36 or trust company shall be guardian of any minor child or
37 children be entitled to the custody, control, services,
38 earnings and care of the education of such minor child or
39 children, and when any corporation or trust company is
40 guardian of the estate of any minor child or children and
41 neither of the parents of such child or children is living,
42 or is a suitable person to act as guardian of the person of
43 such child or children, then the court shall appoint a
44 guardian of the person of such child or children who shall
45 be entitled to the custody, control, services, earnings and
46 care of the education of such minor child or children. Any
47 corporation or trust company appointed as guardian of
48 the estate of any minor child or children shall, unless for
49 such minor child or children a nonresident of this state
50 may be appointed guardian, be a corporation organized
51 under the laws of this state and doing business in this
52 state, or an authorized banking institution, defined as one
53 authorized to exercise trust and fiduciary powers within
54 this state under section fourteen, article four, chapter
55 thirty-one-a of this code.

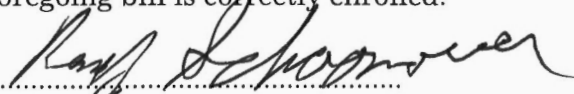
**CHAPTER 44A. WEST VIRGINIA GUARDIANSHIP
AND CONSERVATORSHIP ACT.**

ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS.

**§44A-1-11. Guardian or conservator who resides out of state
to designate resident agent.**

1 A guardian or conservator who is or who later becomes
2 a nonresident of this state shall file with the clerk of the
3 circuit court in the county in which the proceeding is
4 pending or where he or she was appointed guard-
5 ian/conservator a designation of an agent residing in this
6 state to accept service of process. Such filing shall be
7 made promptly following the change of residence. No
8 bank authorized to execute trust powers or engage in
9 trust business in this state shall be considered to be a
10 nonresident of this state for purposes of this section
11 regardless of the location of the main office of the bank.

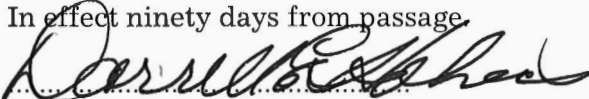
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


.....
Chairman Senate Committee

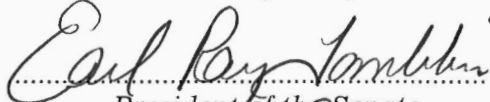

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Chairman House Committee

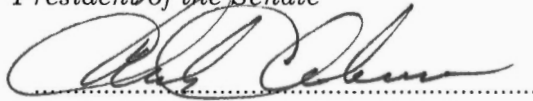
Originated in the Senate.

In effect ninety days from passage.



.....
Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


.....
Speaker House of Delegates

The within is approved this the 1st
day of April, 1996.


.....
Governor

PRESENTED TO THE
GOVERNOR
Date 3/27/96
Time 10:18am