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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
Regular Session, 2005

ENROLLED

SENATE BILL NO. 122

(By Senators Minard and McCabe)

PASSED April 6, 2005

In Effect ninety days from **Passage**

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SECRETARY OF STATE

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Senate Bill No. 122

(BY SENATORS MINARD AND MCCABE)

[Passed April 5, 2005; in effect ninety days from passage.]

AN ACT to amend and reenact §31A-1-2 of the Code of West Virginia, 1931, as amended; to amend and reenact §31A-2-5 of said code; and to amend and reenact §31A-4-1 and §31A-4-5 of said code, all relating to the ability of a state-chartered bank to organize as a limited liability company.

Be it enacted by the Legislature of West Virginia:

That §31A-1-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §31A-2-5 of said code be amended and reenacted; and that §31A-4-1 and §31A-4-5 of said code be amended and reenacted, all to read as follows:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§31A-1-2. Definitions.

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

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

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

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

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

34 (e) The word "Board" means the West Virginia Board of
35 Banking and Financial Institutions;

36 (f) The words "branch bank" mean an office or other
37 place at which a bank performs any or all banking busi-

38 ness. For purposes of this chapter, a branch bank does not
39 include:

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

41 (2) Any customer bank communication terminals in-
42 stalled and operated pursuant to section twelve-b, article
43 eight of this chapter; and

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

46 (g) The words "Commissioner" or "Commissioner of
47 Banking" mean the Commissioner of Banking of West
48 Virginia;

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

52 (i) The word "department" or "division" means the
53 Division of Banking of West Virginia;

54 (j) The words "Deputy Commissioner" or "Deputy
55 Commissioner of Banking" mean the Deputy Commis-
56 sioner of Banking of West Virginia;

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

62 (l) The words "financial institutions" mean banks,
63 building and loan associations, industrial banks, industrial
64 loan companies, supervised lenders, credit unions and all
65 other similar institutions, whether persons, firms or
66 corporations, which are by law under the jurisdiction and
67 supervision of the Commissioner of Banking;

68 (m) The word "officer", when referring to any financial
69 institution, means any person designated as such in the

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

87 (n) The words "out-of-state bank" or "out-of-state
88 banking institution" mean a bank chartered under the
89 laws of a state or United States territory, possession or
90 district, other than West Virginia, or organized under
91 federal law and having its main office located in a state,
92 United States territory, possession or district, other than
93 West Virginia;

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

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

107 (q) The words “state bank” or “state banking institu-
 108 tion” mean, unless the context requires otherwise, a bank
 109 chartered under the laws of West Virginia, as distin-
 110 guished from either an out-of-state bank or a national
 111 banking association and is also referred to as a “West
 112 Virginia State Bank” or “West Virginia State Banking
 113 Institution”; and

114 (r) The words “trust business” mean the functions,
 115 services and activities contained, detailed and embraced in
 116 section fourteen, article four of this chapter and as else-
 117 where defined by law and as may be included within the
 118 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 stat-
 utes.**

1 (a) No person shall engage or continue in the business of
 2 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 unsuspending, unexpired and unrevoked except
 6 that a corporation which proposes to apply for such license
 7 or certificate may secure its charter, adopt bylaws, elect its
 8 directors and officers and perfect its organization.

9 (b) No person shall operate an office in West Virginia
 10 which regularly makes consumer loans in this state other
 11 than first mortgage loans unless they are a financial
 12 institution, licensed pawnbroker or a federally insured
 13 depository institution authorized and qualified to do
 14 business in this state. The purchase of consumer paper
 15 does not constitute the making of consumer loans for the
 16 purposes of this subsection, unless the purchase is made by
 17 a business affiliated with the credit provider pursuant to
 18 a standing arrangement.

19 (c) Application for such license or certificate shall be
20 upon such forms and contain such information as the
21 Commissioner may prescribe. In connection with such
22 applications every corporate financial institution shall file
23 a certified copy of its charter and bylaws, a statement as
24 to the amount of capital that has been subscribed and paid
25 in and a statement of its financial condition duly verified
26 under oath by its president or vice president and its
27 cashier or secretary as the case may be and every financial
28 institution other than a corporation shall file a verified
29 statement of its financial condition.

30 (d) If the application be that of a West Virginia state
31 banking institution, the Commissioner of Banking shall
32 examine the information, documents and statements
33 submitted and, if he or she finds that such banking
34 institution has adopted bylaws which provide practical,
35 safe, just and equitable rules and methods for the manage-
36 ment of its business and it has complied in all respects
37 with the provisions of this chapter and other applicable
38 laws, he or she shall issue to it a certificate or license
39 permitting it to engage in business. If the application be
40 that of a financial institution other than a banking institu-
41 tion, the Commissioner of Banking shall examine the
42 information, documents and statements submitted and, if
43 he or she finds that such financial institution has adequate
44 resources for the proposed business and has provided
45 practical, safe, just and equitable rules and methods for
46 the management of its business, and it has complied in all
47 respects with the provisions of this chapter and other
48 applicable laws, and that the public convenience and
49 advantage will be promoted by the issuance of a certificate
50 or license thereto, he or she shall issue to it a certificate or
51 license permitting it to engage in business. Such certifi-
52 cate or license shall be preserved and the original or copy
53 thereof displayed in all the places of business of such
54 banking or other financial institution located in this state.

55 (e) In addition to the requirements of subsections (b) and
56 (c) of this section, every foreign corporation applying for
57 a license or certificate to engage in the business of a
58 financial institution in this state, other than an out-of-
59 state banking institution, shall file with the Commissioner
60 of Banking a copy of the bylaws under which it operates,
61 together with a cite to the statutes of the jurisdiction
62 where it is organized which pertain to its organization and
63 powers and the conduct of its business. The Commissioner
64 shall examine the information, documents and statements
65 submitted by such foreign corporation and if he or she
66 finds that they provide practical, safe, just and equitable
67 rules and methods for the management of the business of
68 the corporation, that it has adequate resources for the
69 proposed business and it has complied in all respects with
70 the provisions of this chapter and other applicable laws
71 and that the public convenience and advantage will be
72 promoted by the issuance of a license or certificate thereto,
73 he or she shall issue to such corporation a certificate or
74 license permitting it to engage in business in this state,
75 which certificate or license shall authorize such corpora-
76 tion to engage in the business of the type of financial
77 institution specified therein, until the thirtieth day of the
78 following June. Thereafter a new certificate or license
79 shall be secured annually by any such foreign corporation,
80 except where annual renewal of the license or certificate
81 is specifically not required for the type of institution
82 involved. The fee for the original and each additional
83 license or certificate issued to a foreign corporation shall
84 be one hundred dollars, unless otherwise provided by
85 statute. A verified statement of the financial condition of
86 every such foreign corporation shall be filed with the
87 Commissioner before the issuance of each annual certifi-
88 cate or license. Such certificate or license shall be pre-
89 served and the original or copy thereof displayed in the
90 West Virginia place of business of such corporation.

91 (f) Unless the institution is a federally insured depository
92 institution or it is otherwise provided for by statute, a new

93 certificate or license shall be secured annually by all
94 domestic state financial institutions and the fee for the
95 original and each additional license or certificate shall be
96 one hundred dollars.

97 (g) No amendment of the charter or bylaws of any
98 domestic or foreign corporation, other than an out-of-state
99 banking institution, engaging in business in this state as a
100 financial institution shall become effective until the
101 proposed change shall have been submitted to and ap-
102 proved by the Commissioner of Banking; but, if the
103 Commissioner does not disapprove such proposed change
104 within twenty days after it is received by him or her, it
105 shall be deemed to have been approved.

106 (h) Unless specifically provided for by this chapter,
107 nothing contained in this code shall authorize any person
108 to engage in the banking business in this state except
109 corporations chartered to conduct a banking business
110 under the laws of West Virginia and which hold a license
111 or certificate to do so issued under this section, limited
112 liability companies organized to conduct a banking
113 business under the laws of West Virginia and which hold
114 a license or certificate to do so under this section or
115 associations authorized to conduct a banking business in
116 West Virginia under the laws of the United States and
117 having their principal place of business in this state.

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

**§31A-4-1. General corporation laws applicable; charter appli-
cations to be approved by West Virginia Board of
Banking and Financial Institutions.**

1 (a) The general corporation laws of the state, including
2 the provisions of chapter thirty-one-d of this code, shall
3 govern banking institutions and the chartering thereof,
4 except as otherwise provided in or where inconsistent with
5 the provisions of this chapter, when the banking institu-
6 tions are chartered as business corporations.

7 (b) The provisions of the Uniform Limited Liability
8 Company Act, chapter thirty-one-b of this code shall
9 govern banking institutions and the organizing thereof,
10 except as otherwise provided in or where inconsistent with
11 the provisions of this chapter when the banking institu-
12 tions are chartered as limited liability companies. Any
13 reference in this chapter to “directors” of a bank, in the
14 case of limited liability company banks, refers to the
15 bank’s members if the bank is a member-managed com-
16 pany or to the bank’s managers if it is a manager-managed
17 company.

18 (c) No charter shall issue in this state for any banking
19 institution unless the application therefor shall have been
20 submitted to and approved by the West Virginia Board of
21 Banking and Financial Institutions: *Provided*, That the
22 Board may not approve the application to charter any
23 banking institution unless the proposed banking institu-
24 tion does business within this state and is subject to the
25 supervision of the Commissioner of Banking.

§31A-4-5. Requirements and procedure for incorporation of state banks.

1 (a) A state bank may be organized by five or more
2 incorporators, a majority of whom shall be residents of the
3 State of West Virginia. Such banking institution shall
4 have as a part of its corporate name or title one or more of
5 the following words indicative of the business which it is
6 authorized to conduct, namely, “bank”, “banking com-
7 pany”, “banking association”, “trust company”, “banking
8 and trust company” or “bank and trust company”.

9 The incorporators shall file with the board an agreement
10 of incorporation, in duplicate, following generally the
11 form prescribed by the Secretary of State for chartering
12 corporations under the provisions of article one, chapter
13 thirty-one of this code. The information set forth in the
14 agreement shall include the following:

- 15 (1) The name of the proposed bank;
- 16 (2) The community and county in which the bank is to be
17 located, together with the post office address of the place
18 of business of the bank;
- 19 (3) Whether such bank proposes also to engage in the
20 trust business;
- 21 (4) The name, residence and occupation of each incorpo-
22 rator, and the amount of capital stock subscribed and paid
23 for by each;
- 24 (5) The names of the persons who are to serve as officers
25 and directors of the banking institution and the official
26 position proposed to be held by each; and
- 27 (6) The total authorized capital stock of the institution.

28 The agreement of incorporation shall be signed and
29 acknowledged by each of the incorporators and, when filed
30 with the Board, shall be accompanied by the statutory
31 corporation charter fees and an examination and investi-
32 gation fee of five thousand dollars payable to the Board.
33 However, if the agreement is for the incorporation of a
34 bank to be organized solely for the purpose of facilitating
35 the acquisition of another bank, the examination and
36 investigation fee is five hundred dollars payable to the
37 Board. When transmitting the agreement to the Board, the
38 incorporators shall designate by name and give the address
39 of the attorney, agent or other responsible party with
40 whom the Board may communicate, on whom the Board
41 may call for further information and to whom the Board
42 may officially report as to action on the agreement so filed
43 with him or her. The agreement shall constitute and may
44 be considered and treated by the Board as an application
45 for the Board's approval to incorporate and organize a
46 banking institution in this state.

47 (b) Notwithstanding the provisions of subsection (a) of
48 this section, a person may apply to the Commissioner to

49 obtain a certificate of authority to organize and operate as
50 a bank under this chapter as a limited liability company,
51 if that limited liability company is formed to have perpet-
52 ual existence, centralized management, limited liability,
53 free transferability of interests and the Federal Deposit
54 Insurance Corporation has ruled that a bank so organized
55 will be eligible for federal deposit insurance.

56 (c) An existing bank structured as a corporation may
57 apply to the Commissioner to reorganize and operate as a
58 limited liability company.

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

Chandy White
.....
Chairman Senate Committee

W. Richard Burg
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Daniel E. Nelson
.....
Clerk of the Senate

Bruce M. Sord
.....
Clerk of the House of Delegates

Carl Ray Tomblin
.....
President of the Senate

Robert Skiss
.....
Speaker House of Delegates

The within *is approved* this the *19th*
Day of *April* 2005.

[Signature]
.....
Governor

**PRESENTED TO THE
GOVERNOR**

Date 4/3/05

Time 10:48 am