

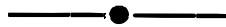
HB 2712 S
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FILED

2007 MAR 19 PM 2: 34

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2007



ENROLLED

House Bill No. 2712

(By Delegates Moore, Kominar, Perry,
Barker, Camichael and Ashley)



Passed March 7, 2007

In Effect Ninety Days from Passage

FILED

2007 MAR 19 PM 2: 34

ENROLLED

OFFICE WEST VIRGINIA
SECRETARY OF STATE

H. B. 2712

(BY DELEGATES MOORE, KOMINAR, PERRY,
BARKER, CARMICHAEL AND ASHLEY)

[Passed March 7, 2007; in effect ninety days from passage.]

AN ACT to amend and reenact §31A-8-12 and §31A-8-12d of the Code of West Virginia, 1931, as amended, all relating to providing that the board of banking and financial institutions and the Commissioner of Banking shall determine whether a bank presents a significant supervisory concern or raises a significant legal or policy issue when evaluating an application to establish a bank branch.

Be it enacted by the Legislature of West Virginia:

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

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

**§31A-8-12. Procedure for authorization of branch banks;
temporary offices at colleges and universities;
limitations and restrictions; examinations and
hearings; standards of review; penalties for
violation of section.**

1 (a) A banking institution may not engage in business in
2 this state at any place other than at its principal office in this
3 state, at a branch bank in this state, at a customer bank
4 communication terminal permitted by section twelve-b of this
5 article or at any loan origination office permitted by section
6 twelve-c of this article:

7 (1) Acceptance of a deposit or allowing a withdrawal at
8 the banking offices of any subsidiary affiliate, as defined in
9 section one, article eight-a of this chapter, for credit or debit
10 to the customer's account at any other subsidiary of the same
11 bank holding company is permissible and does not constitute
12 branch banking. In addition, the conduct of activity at branch
13 offices as an agent for any bank subsidiary of the same bank
14 holding company shall be permitted to the same extent
15 allowed by federal law for national banks pursuant to 12
16 U.S.C. §1828, and does not constitute branch banking; nor
17 does this activity constitute a violation of section forty-two,
18 article four of this chapter: *Provided*, That a banking
19 institution may not utilize that agency relationship to evade
20 state consumer protection laws, including usury laws, or any
21 other applicable laws of this state, or to conduct any activity
22 that is not financially-related, as that term is defined by
23 section two, article eight-c of this chapter;

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

38 (3) Any banking institution which on the first day of
39 January, one thousand nine hundred eighty-four, was
40 authorized to operate an off-premises walk-in or drive-in
41 facility, pursuant to the law then in effect, may, as of the
42 seventh day of June, one thousand nine hundred eighty-four,
43 operate such facility as a branch bank and it is not necessary,
44 for the continued operation of the branch bank, to obtain
45 additional approvals, notwithstanding the provisions of
46 subsection (d) of this section and subdivision (6), subsection
47 (b), section two, article three of this chapter.

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

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

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

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

64 (d) Subject to and in furtherance of the board's authority
65 under the provisions of subdivision (6), subsection (b),
66 section two, article three of this chapter, and subsection (g) of
67 this section, the board, by order, may approve or disapprove
68 the application of any state banking institution to establish a
69 branch bank.

70 (c) The main office or a branch of a West Virginia state
71 banking institution may not be relocated without the approval
72 by order of the commissioner.

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

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

85 (h) The commissioner shall prescribe the form of the
86 application for a branch bank under the provisions of this
87 section and shall collect an examination and investigation fee
88 of five hundred dollars for each filed application for a branch
89 bank that is to be established by the construction, lease or
90 acquisition of a branch bank facility, and five hundred dollars
91 for a branch bank that is to be established by the purchase of
92 the business and assets and assumption of the liabilities of, or
93 merger or consolidation with another banking institution.
94 Notwithstanding the above, if the merger or consolidation is
95 between an existing banking institution and a bank newly
96 incorporated solely for the purpose of facilitating the
97 acquisition of the existing banking institution, the
98 commissioner shall collect an examination and investigation
99 fee of one hundred dollars. The commissioner may require
100 an examination of a financial institution or an office of a
101 financial institution that is being merged into a state-
102 chartered bank. If an examination is required, the applicant
103 is responsible for paying the examination costs at a rate of
104 fifty dollars per examiner hour. The board shall complete the

105 examination and investigation within ninety days from the
106 date on which the application and fee are received, unless the
107 board requests in writing additional information and
108 disclosures concerning the proposed branch bank from the
109 applicant banking institution. If the board makes that request,
110 the ninety-day period shall be extended for an additional
111 period of thirty days plus the number of days between the
112 date of the request and the date the additional information
113 and disclosures are received.

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

119 (1) Notice of hearing must 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 two,
122 article seven, chapter twenty-nine-a of this code, and the
123 hearing and the administrative procedures in connection
124 therewith are governed by all of the provisions of article five,
125 chapter twenty-nine-a of this code, and must be held at a time
126 and place set by the board but may not be less than ten nor
127 more than thirty days after the notice is given;

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

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

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

148 (1) The applicant state-chartered banking institution
149 satisfies such reasonable and appropriate requirements as to
150 sound financial condition as the commissioner or board may
151 from time to time establish;

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

156 (3) The establishment of the proposed branch bank would
157 not have the effect in any section of the state of substantially
158 lessening competition, nor tend to create a monopoly or in
159 any other manner be in restraint of trade, unless the
160 anticompetitive effects of the establishment of that proposed
161 branch bank are clearly outweighed in the public interest by
162 the probable effect of the establishment of the proposed
163 branch bank in meeting the convenience and needs of the
164 community to be served by that proposed branch bank;

165 (4) The applicant state-chartered banking institution
166 meets a satisfactory standard of compliance with federal and
167 state community reinvestment act requirements as evidenced
168 by its most recent state or federal examination;

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

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

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

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

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

193 (m) Any violation of any provision of this section is a
194 misdemeanor offense punishable by applicable penalties as
195 provided in section fifteen of this article.

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

1 (a) As an alternative to using the procedures established
2 in subdivisions (g) through (j) of section twelve of this
3 article, a banking institution desiring to establish a branch
4 bank by de novo construction or lease may file a notice,
5 containing information as prescribed by the commissioner, of
6 its intent which must be received by the commissioner at
7 least thirty-five days prior to the date on which the proposed

8 branch will be established accompanied by a fee of two
9 hundred fifty dollars. The commissioner must provide
10 written notice of his or her acceptance or rejection of the
11 branch notice prior to the expiration of the thirty-five day
12 period. However, if the commissioner requests additional
13 information from the branching institution, the period for the
14 commissioner's consideration of the notice shall be extended
15 an additional fifteen days from the time the information
16 requested is received by the commissioner.

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

23 (1) Satisfies such reasonable and appropriate
24 requirements as to sound financial condition as the
25 commissioner or board, from time to time, may establish;

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

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

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

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

39 (c) Any party who is adversely affected by an action of
40 the commissioner taken pursuant to the criteria established by
41 subsection (b) of this section may appeal within ten business
42 days of the commissioner's decision to the board of banking
43 and financial institutions which must, after holding a hearing
44 pursuant to the provisions of subdivision (12), subsection (b),
45 section two, article three of this chapter, affirm, reverse or
46 modify the order of the commissioner. Any party who is
47 adversely affected by an order of the board of banking and
48 financial institutions issued pursuant to the provisions of this
49 subsection is entitled to judicial review in the same manner
50 as provided by the provisions of subsection (k), section
51 twelve of this article.

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



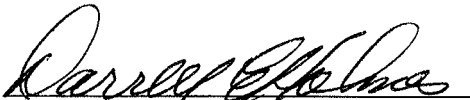
Chairman Senate Committee



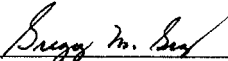
Chairman House Committee

Originating in the House.

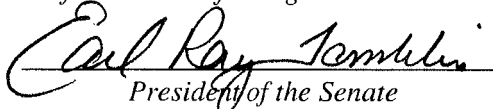
In effect ninety days from passage.



Clerk of the Senate



Clerk of the House of Delegates



President of the Senate



Speaker of the House of Delegates

The within is appended this the 19th
day of March, 2007.



Governor

PRESENTED TO THE
GOVERNOR

MAR 15 2007

Time

4:00 pm