

SB 503

FILED

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WEST VIRGINIA LEGISLATURE WEST VIRGINIA
SECRETARY OF STATE

SEVENTY-NINTH LEGISLATURE

REGULAR SESSION, 2009

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ENROLLED

Senate Bill No. 503

(BY SENATORS MINARD, JENKINS AND McCABE)

[Passed April 8, 2009; in effect ninety days from passage.]

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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 branching procedures; and creating a definition for “sound financial condition”.

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
3 this state, at a branch bank in this state, at a customer
4 bank communication terminal permitted by section
5 twelve-b of this article or at any loan origination office
6 permitted by section 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
9 in section one, article eight-a of this chapter, for credit or
10 debit to the customer's account at any other subsidiary of
11 the same bank holding company is permissible and does
12 not constitute branch banking. In addition, the conduct of
13 activity at branch offices as an agent for any bank subsid-
14 iary of the same bank holding company shall be permitted
15 to the same extent allowed by federal law for national
16 banks pursuant to 12 U. S. C. §1828 and does not constitute
17 branch banking; nor does this activity constitute a viola-
18 tion of section forty-two, article four of this chapter.
19 However, a banking institution may not utilize that
20 agency relationship to evade state consumer protection
21 laws, including usury laws, or any other applicable laws of
22 this state or to conduct any activity that is not financially
23 related as that term is defined by section two, article
24 eight-c of this chapter;

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

37 Saturdays, Sundays and legal holidays as defined in
38 section one, article two, chapter two of this code;

39 (3) Any banking institution which on January 1, 1984,
40 was authorized to operate an off-premises walk-in or
41 drive-in facility, pursuant to the law then in effect, may,
42 as of June 7, 1984, operate such facility as a branch bank
43 and it is not necessary, for the continued operation of the
44 branch bank, to obtain additional approvals, notwith-
45 standing the provisions of subsection (d) of this section
46 and subdivision (6), subsection (b), section two, article
47 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,
51 or any other legal entity, or combination of entities acting
52 in concert, to directly or indirectly own, control or hold
53 with power to vote, twenty-five percent or more of the
54 voting shares of each of two or more banks, or to control
55 in any manner the election of a majority of the directors of
56 two or 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 assump-
62 tion of the liabilities of, or merger or consolidation with,
63 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)
67 of this section, the board, by order, may approve or
68 disapprove the application of any state banking institution
69 to establish a branch bank.

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

73 (f) Any banking institution which is authorized to
74 establish branch banks pursuant to this section may
75 provide the same banking services and exercise the same
76 powers at each such branch bank as may be provided and
77 exercised at 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
80 section, provide notice of the application to all banking
81 institutions. A banking institution may, within ten days
82 after receipt of the notice, file a petition to intervene and
83 shall, if it files a petition, thereupon become a party to any
84 hearing relating 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
88 fee of \$500 for each filed application for a branch bank
89 that is to be established by the construction, lease or
90 acquisition of a branch bank facility and \$500 for a branch
91 bank that is to be established by the purchase of the
92 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
95 is between an existing banking institution and a bank
96 newly incorporated solely for the purpose of facilitating
97 the acquisition of the existing banking institution, the
98 commissioner shall collect an examination and investiga-
99 tion fee of \$100. The commissioner may require an
100 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 appli-
103 cant is responsible for paying the examination costs at a
104 rate of \$50 per examiner hour. The board shall complete

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

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

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

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

133 (3) After the hearing and consideration of all the testi-
134 mony and evidence, the board shall make and enter an
135 order approving or disapproving the application, which
136 order shall be accompanied by findings of fact and conclu-
137 sions of law as specified in section three, article five,
138 chapter twenty-nine-a of this code and a copy of the order
139 and accompanying findings and conclusions shall be

140 served upon all parties to the hearing and their attorneys
141 of record, if any.

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

151 (1) The applicant state-chartered banking institution
152 satisfies such reasonable and appropriate requirements as
153 to sound financial condition. For purposes of this subdivi-
154 sion, "sound financial condition" means that a state
155 banking institution meets the required minimum level to
156 be adequately capitalized for each capital measure as
157 determined by its primary federal regulator and is not
158 subject to supervisory action by either a state or federal
159 financial regulatory agency;

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

164 (3) The establishment of the proposed branch bank
165 would not have the effect in any section of the state of
166 substantially lessening competition, nor tend to create a
167 monopoly or in any other manner be in restraint of trade,
168 unless the anticompetitive effects of the establishment of
169 that proposed branch bank are clearly outweighed in the
170 public interest by the probable effect of the establishment
171 of the proposed branch bank in meeting the convenience
172 and needs of the community to be served by that proposed
173 branch bank;

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

178 (5) The applicant state-chartered banking institution
179 meets a satisfactory standard of compliance with federal
180 and state consumer compliance law and regulations as
181 evidenced by its most recent state or federal regulatory
182 examination;

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

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

190 (k) Any party who is adversely affected by the order of
191 the board is entitled to judicial review thereof in the
192 manner provided in section four, article five, chapter
193 twenty-nine-a of this code. Any such party adversely
194 affected by a final judgment of a circuit court following
195 judicial review as provided in the foregoing sentence may
196 seek review thereof by appeal to the Supreme Court of
197 Appeals in the manner provided in article six, chapter
198 twenty-nine-a of this code.

199 (l) Pursuant to the resolution of its board of directors
200 and with the prior written approval of the commissioner,
201 a state banking institution may discontinue the operation
202 of a branch bank upon at least thirty days' prior public
203 notice given in such form and manner as the commissioner
204 prescribes.

205 (m) Any violation of any provision of this section is a
206 misdemeanor offense punishable by applicable penalties
207 as 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), 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,
6 of its intent which must be received by the commissioner
7 at least thirty-five days prior to the date on which the
8 proposed branch will be established accompanied by a fee
9 of \$250. The commissioner must provide written notice of
10 his or her acceptance or rejection of the branch notice
11 prior to the expiration of the 35-day period. However, if
12 the commissioner requests additional information from
13 the branching institution, the period for the commis-
14 sioner's consideration of the notice shall be extended an
15 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
18 branch bank under this section until the commissioner
19 provides written approval of the notice for that branch
20 bank. The commissioner's approval or rejection of the
21 notice must be accompanied by findings of fact on whether
22 the applicant bank:

23 (1) Satisfies such reasonable and appropriate require-
24 ments as to sound financial condition. For purposes of
25 this subdivision, "sound financial condition" means that
26 a state banking institution meets the required minimum
27 level to be well capitalized for each capital measure as
28 determined by its primary federal regulator and is not
29 subject to supervisory action by either a state or federal
30 financial regulatory agency;

31 (2) Meets a satisfactory standard of compliance with
32 federal and state community reinvestment act require-
33 ments as evidenced by its most recent state or federal
34 examination;

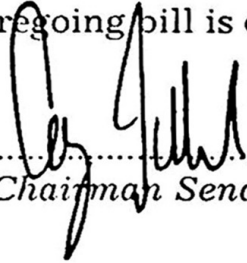
35 (3) Meets a satisfactory standard of compliance with
36 federal and state consumer compliance law and regula-
37 tions as evidenced by its most recent state or federal
38 regulatory examination;

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

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

45 (c) Any party who is adversely affected by an action of
46 the commissioner taken pursuant to the criteria estab-
47 lished by subsection (b) of this section may appeal within
48 ten business days of the commissioner's decision to the
49 Board of Banking and Financial Institutions which must,
50 after holding a hearing pursuant to the provisions of
51 subdivision (12), subsection (b), section two, article three
52 of this chapter, affirm, reverse or modify the order of the
53 commissioner. Any party who is adversely affected by an
54 order of the Board of Banking and Financial Institutions
55 issued pursuant to the provisions of this subsection is
56 entitled to judicial review in the same manner as provided
57 by the provisions of subsection (k), section twelve of this
58 article.


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


.....
Chairman Senate Committee


.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.


.....
Clerk of the Senate


.....
Clerk of the House of Delegates


.....
President of the Senate


.....
Speaker House of Delegates

The within is approved this the 30th
Day of April, 2009.


.....
Governor

PRESENTED TO THE
GOVERNOR

APR 27 2009

Time 2:15pm