

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

Senate Bill 446

By Senator Tarr

[Introduced February 13, 2025; referred
to the Committee on Banking and Insurance]

1 A BILL to amend and reenact §31A-8-12, §31A-8A-5, §31A-8D-4, and §31C-10-2 of the Code of
 2 West Virginia, 1931, as amended, relating to banking; precluding establishment of a
 3 branch bank or the acquisition or merger of a bank or a credit union by a bank or credit
 4 union unless they are insured by the Federal Deposit Insurance Corporation.

Be it enacted by the Legislature of West Virginia:

CHAPTER 31A. BANKS AND BANKING.

**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 this state at any place other than at
 2 its principal office in this state, at a branch bank in this state, at a customer bank communication
 3 terminal permitted by section twelve-b of this article or at any loan origination office permitted by
 4 section twelve-c of this article:

5 (1) Acceptance of a deposit or allowing a withdrawal at the banking offices of any
 6 subsidiary affiliate, as defined in §31A-8A-1, for credit or debit to the customer's account at any
 7 other subsidiary of the same bank holding company is permissible and does not constitute branch
 8 banking. In addition, the conduct of activity at branch offices as an agent for any bank subsidiary of
 9 the same bank holding company shall be permitted to the same extent allowed by federal law for
 10 national banks pursuant to 12 U.S.C. §1828 and does not constitute branch banking; nor does this
 11 activity constitute a violation of §31A-4-42. However, a banking institution may not utilize that
 12 agency relationship to evade state consumer protection laws, including usury laws, or any other
 13 applicable laws of this state or to conduct any activity that is not financially related as that term is
 14 defined §31A-8C-2;

15 (2) A banking institution located in a county where there is also a higher educational
16 institution as defined in §18B-1-2 of this code may establish a temporary business office on the
17 campus of any educational institution located in the county for the limited purposes of opening
18 accounts and accepting deposits for a period not in excess of four business days per semester,
19 trimester or quarter. However, prior to opening any temporary office, a banking institution must first
20 obtain written permission from the institution of higher education. The term "business days", for the
21 purpose of this subsection, means days exclusive of Saturdays, Sundays and legal holidays as
22 defined in §2-2-1 two of this code;

23 (3) Any banking institution which on January 1, 1984, was authorized to operate an off-
24 premises walk-in or drive-in facility, pursuant to the law then in effect, may, as of June 7, 1984,
25 operate such facility as a branch bank and it is not necessary, for the continued operation of the
26 branch bank, to obtain additional approvals, notwithstanding the provisions of subsection (d) of
27 this section and subdivision (6), subsection (b), section two, article three of this chapter.

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

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

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

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

38 (d) Subject to and in furtherance of the board's authority under the provisions of
39 subdivision (6), subsection (b) of §31A-3-2 and subsection (g) of this section, the board, by order,

40 may approve or disapprove the application of any state banking institution to establish a branch
41 bank.

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

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

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

51 (h) The commissioner shall prescribe the form of the application for a branch bank under
52 the provisions of this section and shall collect an examination and investigation fee of \$500 for
53 each filed application for a branch bank that is to be established by the construction, lease or
54 acquisition of a branch bank facility and \$500 for a branch bank that is to be established by the
55 purchase of the business and assets and assumption of the liabilities of or merger or consolidation
56 with another banking institution. Notwithstanding the above, if the merger or consolidation is
57 between an existing banking institution and a bank newly incorporated solely for the purpose of
58 facilitating the acquisition of the existing banking institution, the commissioner shall collect an
59 examination and investigation fee of \$100. The commissioner may require an examination of a
60 financial institution or an office of a financial institution that is being merged into a state-chartered
61 bank. If an examination is required, the applicant is responsible for paying the examination costs at
62 a rate of \$50 per examiner hour. The board shall complete the examination and investigation
63 within ninety days from the date on which the application and fee are received, unless the board
64 requests in writing additional information and disclosures concerning the proposed branch bank

65 from the applicant banking institution. If the board makes that request, the ninety-day period shall
66 be extended for an additional period of thirty days plus the number of days between the date of the
67 request and the date the additional information and disclosures are received.

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

71 (1) Notice of hearing must be given to the banking institution with respect to which the
72 hearing is to be conducted in accordance with the provisions of §29A-7-2 and the hearing and the
73 administrative procedures in connection therewith are governed by all of the provisions of article
74 five, chapter twenty-nine-a of this code and must be held at a time and place set by the board but
75 may not be less than ten nor more than thirty days after the notice is given;

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

78 (3) After the hearing and consideration of all the testimony and evidence, the board shall
79 make and enter an order approving or disapproving the application, which order shall be
80 accompanied by findings of fact and conclusions of law as specified in §29A-5-3 of this code and a
81 copy of the order and accompanying findings and conclusions shall be served upon all parties to
82 the hearing and their attorneys of record, if any.

83 (j) A state banking institution may not establish a branch bank until the board, following an
84 examination, investigation, notice and hearing, enters an order approving an application for that
85 branch bank. However, a hearing is not required with respect to any application to establish a
86 branch bank which is approved by the board unless a banking institution has timely filed a petition
87 to intervene pursuant to subsection (g) of this section. The order shall be accompanied by findings
88 of fact that:

89 (1) The applicant state-chartered banking institution satisfies such reasonable and

90 appropriate requirements as to sound financial condition. For purposes of this subdivision, "sound
91 financial condition" means that a state banking institution meets the required minimum level to be
92 adequately capitalized for each capital measure as determined by its primary federal regulator and
93 is not subject to supervisory action by either a state or federal financial regulatory agency;

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

97 (3) The establishment of the proposed branch bank would not have the effect in any
98 section of the state of substantially lessening competition, nor tend to create a monopoly or in any
99 other manner be in restraint of trade, unless the anticompetitive effects of the establishment of that
100 proposed branch bank are clearly outweighed in the public interest by the probable effect of the
101 establishment of the proposed branch bank in meeting the convenience and needs of the
102 community to be served by that proposed branch bank;

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

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

109 (6) The applicant state-chartered banking institution meets acceptable standards for
110 investment in premises and fixed assets as permitted by §31A-4-13; and

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

113 (k) Any party who is adversely affected by the order of the board is entitled to judicial review
114 thereof in the manner provided in §29A-5-4. Any such party adversely affected by a final judgment

115 of a circuit court following judicial review as provided in the foregoing sentence may seek review
 116 thereof by appeal to the Supreme Court of Appeals in the manner provided in §29A-6-1, *et seq.* of
 117 this code.

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

122 (m) The board shall not approve, nor shall the commissioner consent to, the establishment
 123 of a branch bank under this article unless the state banking institution is a financial institution
 124 insured by the Federal Deposit Insurance Corporation.

125 ~~(m)~~ (n) Any violation of any provision of this section is a misdemeanor offense punishable
 126 by applicable penalties as provided in section 15 of this article.

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

§31A-8A-5. Standards for approval.

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

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

8 (2) Result in a substantial reduction of competition in any section of this state, or result in a
 9 monopoly, or would be in furtherance of any combination or conspiracy to monopolize or to
 10 attempt to monopolize the business of banking in any section of this state;

11 (3) Have a significantly adverse effect on the convenience and needs of the community or

12 communities in this state that are served by the West Virginia state bank or the West Virginia bank
 13 holding company to be acquired; or

14 (4) Violate the acquisition deposit limitation set forth in §31A-8A-3, *et seq.*.

15 (b) The board shall not approve an application for, nor shall the commissioner consent to,
 16 an acquisition under this article unless the West Virginia bank to be acquired, or all West Virginia
 17 bank subsidiaries of the bank holding company to be acquired, have as of the proposed date of
 18 acquisition been in existence and in continuous operation for more than two years: *Provided*, That
 19 this limitation shall not apply to acquisitions made on or after May 31, 1997.

20 (c) The board shall not approve, nor shall the commissioner consent to, an acquisition
 21 under this article unless the buyer or transferee is a financial institution insured by the Federal
 22 Deposit Insurance Corporation.

23 ~~(e)~~ (d) The board may approve an application which may lessen competition if the
 24 anticompetitive effects of the proposed action are clearly outweighed in the public interest by the
 25 probable effect of the action in meeting the convenience and needs of the community to be served.

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

ARTICLE 8D. INTERSTATE BRANCHING BY BANK MERGERS.

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

1 (a) Beginning on May 31, 1997, one or more West Virginia banks may enter into an
 2 interstate merger transaction with one or more out-of-state banks under this article, and an out-of-
 3 state bank resulting from such transaction may maintain and operate the branches and offices in
 4 West Virginia of a West Virginia bank that participated in such transaction: *Provided*, That the
 5 conditions and filing requirements of this article are met.

6 (b) A merger transaction shall not be permitted under this article if, upon consummation of
 7 such transaction, the resulting bank (including all insured depository institution affiliates of the
 8 resulting bank) would assume sufficient additional deposits to cause it to control deposits in this
 9 state in excess of that allowed by §31-2-12A: *Provided*, That the commissioner may by rule adopt
 10 a procedure whereby said acquisition deposit limitation as set forth in this code may be waived for
 11 good cause shown. The commissioner shall calculate the acquisition deposit limitation based
 12 upon the most recently available reports containing such deposit information filed with state or
 13 federal authorities.

14 (c) A merger transaction resulting in the acquisition by an out-of-state bank of a West
 15 Virginia state bank, or all or substantially all of the branches of a West Virginia state bank, or
 16 resulting in the acquisition by an out-of-state state bank of a West Virginia bank or the change of
 17 control over a branch operating in West Virginia, shall not be permitted under this article unless: (i)
 18 The out-of-state bank confirms in writing to the commissioner that as long as it maintains a branch
 19 in West Virginia, it will comply with all applicable laws of this state, including consumer protection
 20 laws; (ii) deposits of the resulting bank in this state are insured in conformity with the provisions of
 21 §31A-1-6, *et seq.* of this chapter; and (iii) the resulting bank, if state chartered, meets the capital
 22 requirements set forth in §31A-4-3, *et seq.* of this chapter.

1 (d) A merger transaction shall not be permitted unless the out-of-state bank who is a party
 2 to the proposed merger is a financial institution insured by the Federal Deposit Insurance
 3 Corporation.

CHAPTER 31C. CREDIT UNIONS.

ARTICLE 10. CHANGE IN CORPORATE STATUS.
§31C-10-2. Merger of credit unions.

1 (a) A credit union organized under this chapter may, with the approval of the commissioner
 2 and regardless of common bond, merge with one or more other credit unions organized under this

3 chapter, the laws of another state or territory of the United States or the laws of the United States:
4 Provided, That a credit union organized under this chapter may not merge with any credit union
5 not insured by the Federal Deposit Insurance Corporation.

6 (b) When two or more credit unions merge, they shall either designate one of them as the
7 continuing credit union, or they shall structure a totally new credit union and designate it as the
8 new credit union. If the latter procedure is followed, the new credit union shall be organized under
9 article two of this chapter. All participating credit unions other than the continuing or new credit
10 union shall be designated as merging credit unions.

11 (c) Any merger of credit unions shall be done according to a plan of merger. After approval
12 by the boards of directors of all participating credit unions, the plan shall be submitted to the
13 commissioner for review and hearing to grant preliminary approval. If the plan includes the
14 creation of a new credit union, all documents required by §31C-2-1 of this chapter shall be
15 submitted as part of the plan. In addition to any other documents or information required by the
16 commissioner, each participating credit union shall submit the following:

17 (1) The time and place of the meeting of the board of directors at which the plan was
18 agreed upon;

19 (2) The vote of the directors in favor of the adoption of the plan; and

20 (3) A copy of the resolution or other action by which the plan was agreed upon.

21 (d) The commissioner shall after review and hearing, grant preliminary approval by written
22 order, if: (i) The plan has been approved properly by each board of directors; (ii) the documentation
23 required to form a new credit union, if any, complies with §31C-2-1; (iii) the action would not result
24 or tend to create a monopoly, or substantially lessen competition, or otherwise further a restraint of
25 trade, unless the anticompetitive effects of the proposed action are clearly outweighed in the
26 public interest by the probable effect of the action in meeting the convenience and needs of the
27 members to be served; and (iv) taking into consideration the financial and managerial resources

28 and further prospects of the credit unions concerned, the action would not be contrary to the best
29 interests of the community whose shares are affected by such action, nor detrimental to the safety
30 and soundness of the credit union to be acquired.

31 (e) After the commissioner grants preliminary approval, each merging credit union shall,
32 unless waived by the commissioner, conduct a membership vote on its participation in the plan.
33 The vote shall be conducted either at a special membership meeting called for that purpose or by
34 mail ballot. If a majority of the members voting approve the plan, the credit union shall submit a
35 record of that fact to the commissioner indicating the vote by which the members approved the
36 plan and either the time and place of the membership meeting or the mailing date and closing date
37 of the mail ballot.

38 (f) The commissioner may waive the membership vote described in subsection (e) of this
39 section for any credit union upon determining that the credit union is insolvent or about to be
40 insolvent.

41 (g) The commissioner shall grant final approval of the plan of merger after determining that
42 the requirements of subsection (e) of this section in the case of each merging credit union have
43 been met. If the plan of merger includes the creation of a new credit union, the commissioner must
44 approve the organization of the new credit union under §31C-2-2 as part of the approval of the plan
45 of consolidation. The commissioner shall notify all participating credit unions of the approval of the
46 plan.

47 (h) Upon final approval of the plan by the commissioner and the filing of the proper
48 documents with the office of the Secretary of State, all property, property rights, and members'
49 interests in each merging credit union shall vest in the continuing or new credit union as applicable
50 without deed, endorsement, or other instrument of transfer, and all debts, obligations and liabilities
51 of each merging credit union shall be deemed to have been assumed by the continuing or new
52 credit union. The rights and privileges of the members of each participating credit union shall

53 remain intact; however, if a person is a member of more than one of the participating credit unions,
54 that person shall be entitled to only a single set of membership rights in the continuing or new
55 credit union.

56 (i) If the surviving or new credit union created by the transaction is chartered by another
57 state or territory of the United States, it shall, in addition to the criteria set forth in subsection (c) of
58 this section, be subject to the requirements of §31C-2-6. No merger resulting in an out-of-state
59 credit union acquiring a West Virginia credit union shall be permitted unless that other state or
60 territory permits a West Virginia credit union to merge or acquire credit unions in their state or
61 territory on terms that are, on the whole, substantially no more restrictive than those established
62 under the terms of this section: *Provided*, That no such merger shall be approved where the West
63 Virginia credit union to be acquired has been in operation for less than two years.

64 (j) Notwithstanding any other provision of law, the commissioner may, without prior
65 hearing, authorize a merger or consolidation of a credit union which is insolvent or is about to be
66 insolvent with any other credit union or may authorize a credit union to purchase any of the assets
67 of, or assume any of the liabilities of, any other credit union which is insolvent or about to be
68 insolvent if the commissioner is satisfied that:

69 (1) An emergency requiring expeditious action exists with respect to such other credit
70 union;

71 (2) Other alternatives are not reasonably available; and

72 (3) The public interest would best be served by approval of such merger, consolidation,
73 purchase or assumption.

74 (k) Notwithstanding any other provision of law, the commissioner may authorize an
75 institution whose deposits or accounts are insured by the Federal Deposit Insurance Corporation
76 to purchase any of the assets of, or assume any of the liabilities of, a credit union which is insolvent
77 or about to be insolvent, except that prior to exercising this authority the commissioner should

78 consider attempting to effect a merger or consolidation with, or purchase and assumption by,
79 another credit union as provided in subsection (j) of this section; and

80 (l) For purposes of the authority contained in subsection (k) of this section, insured share
81 and deposit accounts of the credit union may upon consummation of the purchase and
82 assumption be converted to insured deposits or other comparable accounts in the acquiring
83 institution, and the commissioner and the insuring organization shall be absolved of any liability to
84 the credit union's members with respect to those accounts.

NOTE: The purpose of this bill is to preclude the establishment of a branch bank or the acquisition or merger of a bank or a credit union by a bank or credit union unless they are insured by the Federal Deposit Insurance Corporation.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.