WEST VIRGINIA CODE CHAPTER 31 ARTICLE 14

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§31-14-1. Short title; definitions.

This article shall be known and may be cited as the "West Virginia Business Development Corporation Act."

As used in this article, the following words and phrases, unless definitely defined or described, shall have the meanings and references as follows:

(1) "Business Development Corporation": A West Virginia business development corporation created and organized under the provisions of this article.

(2) "Financial Institution": Any banking corporation or trust company, savings bank, building and loan association, industrial loan company, insurance company, or similar corporation, partnership, foundation, or other institution, either domestic or foreign, which is engaged in lending or investing funds.

(3) "Member": Any financial institution authorized to do business within this state which shall undertake to lend money to a corporation created under this article, upon its call, and in accordance with the provisions of this article.

(4) "Board of Directors": The board of directors created under this article.

(5) "Loan Limit": For any member, the maximum amount permitted to be outstanding at one time on loans made by such member to the corporation, as determined under the provisions of this article.

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§31-14-2. Incorporators; purposes; agreement of incorporation.

Any number of persons, not fewer than ten, a majority of whom shall be bona fide residents of this state, may associate to create a business development corporation under the provisions of this article for the purpose of promoting, developing and advancing business and industrial development within the state and, to that end, may exercise the powers, rights and privileges hereinafter provided. The persons desiring to form the corporation shall sign, acknowledge and file with the Secretary of State an agreement in the general form prescribed by the Secretary of State, in which shall be set forth:

(1) The name of the corporation, which shall contain the words "Business Development Corporation," together with a designation of the area or locality within the state in which the corporation is intended to operate.

(2) The post-office address of its principal office or place of business.

(3) The object or objects for which the corporation is formed, which shall include the following:

To promote, develop and advance the business prosperity and economic welfare of the State of West Virginia and its citizens; to encourage and assist through loans, investments or other business transactions in the locating of new business and industry within the state and to rehabilitate and assist existing businesses and industries; to stimulate and promote the expansion of all kinds of business and industrial activity which will tend to advance business and industrial development and maintain the economic stability of the state, provide maximum opportunities for employment, encourage thrift, and improve the standard of living of the citizens of the state; to cooperate and act in conjunction with the Department of Commerce and with other organizations, federal, state or local, in the promotion and advancement of industrial, commercial, agricultural and recreational developments within the state; and to furnish money and credit, land and industrial sites, technical assistance and such other aid as may be deemed requisite to approved and deserving applicants for the promotion, development and conduct of all kinds of business activity within the state.

(4) The names and post-office addresses of the incorporators, and the number of shares of stock subscribed by each.

(5) Whether or not the corporation is to have perpetual existence; if not, the time when its existence is to commence and the time when its existence is to cease.

(6) Any provision in which the incorporators may choose to insert for the management of the business and for the conduct of the affairs of the corporation, and any provisions creating, defining, limiting and regulating the powers of the corporation, the directors and the stockholders and members thereof: Provided, however, That such provisions are not contrary to the provisions of this article.

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(7) The agreement may also contain the following provision in these words verbatim:

"Whenever a compromise or arrangement is proposed between this corporation and its creditors or any class of them and/or between this corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of West Virginia may, on the application in a summary way of this corporation or of any creditor or stockholder thereof, or on the application of trustees in dissolution or of any receiver or receivers appointed for this corporation under the laws of the State of West Virginia, order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this corporation, as the case may be, to be summoned in such manner as the court directs. If a majority in number representing three fourths in value of the creditors or class of creditors, and/or of the stockholders of this corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this corporation as consequence of such compromise or arrangement, such compromise or arrangement and such reorganization shall, if sanctioned by the court to which such application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders of this corporation, as the case may be, and also on this corporation."

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§31-14-3. Authorized capital stock; description of shares; consideration for sale of shares.

The agreement of incorporation shall set forth the total amount of authorized capital stock, the number of shares in which it is divided, the par value of each of such shares and the amount of capital stock with which it will commence business and, if there be more than one class of stock, the total number of shares of all classes of stock which the corporation shall have authority to issue, with a description of the different classes and all other information with respect thereto required by section six, article one of this chapter. No corporation organized hereunder shall sell its shares for any consideration other than money.

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§31-14-4. Issuance of charter; exemption from license tax.

Upon the filing in the office of the Secretary of State of the agreement provided for in section two of this article, the Secretary of State shall issue his certificate as provided in section seven, article one of this chapter, except that the Secretary of State shall not require the payment of the license tax provided for in sections seventy-eight and seventy-nine, article twelve, chapter eleven of the Code of West Virginia, 1931, as amended. A corporation organized under the provisions of this article shall be exempt from such license tax.

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§31-14-5. Corporate powers.

In furtherance of the purposes set out in section two of this article, and to aid in providing an effective program to alleviate conditions of substantial and persistent unemployment, underemployment, and lack of stable economic development, by taking effective steps in planning and financing economic redevelopment, utilizing such facilities and resources as are provided by the provisions of the federal "Area Redevelopment Act of 1961," as amended, the federal "Public Works and Economic Development Act of 1965," as amended, the federal "Appalachian Regional Development Act of 1965," as amended, the federal "Housing Act of 1968," as amended, the "West Virginia Housing Fund Development Act of 1968," as amended, and the "West Virginia Industrial Development Authority Act of 1961," as amended, and in addition to the powers conferred on business corporations by the provisions of this chapter, such corporation shall, subject to the restrictions and limitations herein contained, have the following powers:

(a) To enter into contracts and incur liabilities for any purposes of the corporation; except that the corporation shall not incur any secondary liability by way of guaranty or endorsement of the obligations of any person, firm, corporation, joint-stock company, association or trust, or in any other manner.

(b) To borrow money for any of the purposes of the corporation, including, but without implied limitation, the right to obtain loans under the provisions of "Title V of the Small Business Investment Act of 1958," as amended, or from any other similar governmental agency; to issue therefor its bonds, debentures, notes or other evidences of indebtedness, whether secured or unsecured, and to secure the same by mortgage, pledge, deed of trust or other lien on its property, franchises, rights and privileges of every kind and nature or any part thereof or interest therein, without securing stockholder or member approval.

(c) To make loans to any person, firm, corporation, joint- stock company, association or trust, and to establish and regulate the terms and conditions with respect to any such loans and the charges for interest and services connected therewith; however, no loans shall be made hereunder unless the loan applied for is not otherwise available through ordinary banking channels, private lenders, or other governmental agencies, on reasonable terms.

(d) To purchase, receive, hold, lease, or otherwise acquire and to sell, convey, transfer, lease, or otherwise dispose of real and personal property, together with such rights and privileges as may be incidental and appurtenant thereto and the use thereof, including, but not restricted to, any real or personal property acquired by the corporation from time to time in the satisfaction of debts or enforcement of obligations.

(e) To acquire, by gift or purchase, the good will, business, rights, real and personal property, both tangible and intangible, and other assets, or any part thereof, or interest therein, from any persons, firms, partnerships, corporations, joint-stock companies, associations or trusts, and to assume, undertake or pay the obligations, debts and liabilities of any such person, firm, partnership, corporation, joint-stock company, association or trust;

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to acquire improved or unimproved real estate for the purpose of constructing industrial plants or other business establishments thereon or for the purpose of disposing of such real estate to others for the construction of industrial plants or other business establishments; and to acquire, construct or reconstruct, alter, repair, maintain, operate, sell, convey, transfer, lease or otherwise dispose of industrial plants or business establishments.

(f) To acquire, subscribe for, own, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of the stock, shares, bonds, debentures, notes or other securities and evidences of interest in, or indebtedness of, any person, firm, corporation, joint-stock company, association or trust, and while the owner or holder thereof to exercise all the rights, powers and privileges of ownership, including the right to vote any such shares of stock.

(g) To mortgage, pledge, or otherwise encumber any property, right or thing of value, acquired pursuant to the powers contained in subdivisions (d), (e) or (f), as security for the payment of any part of the purchase price thereof.

(h) To cooperate with and avail itself of the facilities of the Department of Commerce and the office of commissioner of commerce of this state, the West Virginia industrial development authority, the federal area redevelopment administrator, and any similar federal and state governmental agencies and officers; and to cooperate with and assist, and otherwise encourage organizations in the various communities of the state in the promotion, assistance, and development of the business prosperity and economic welfare of such communities or of this state or any part thereof.

(i) To do all acts and things necessary or convenient to carry out the powers expressly granted in this article.

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§31-14-6. Board of directors; officers.

The business and affairs of the corporation shall be managed and conducted by a board of directors, a president and treasurer, and such other officers and such agents as the corporation by its bylaws shall authorize. The board of directors shall be determined by the incorporators and, thereafter, by the stockholders and the members of the corporation, but the number of directors shall be a multiple of three.

The board of directors may exercise all the powers of the corporation except such as are conferred by law or by the bylaws of the corporation upon the stockholders or members and shall choose and appoint all the agents and officers of the corporation and fill all vacancies except vacancies in the office of director which shall be filled as hereinafter provided.

The board of directors shall be elected in the first instance by the incorporators and thereafter at each annual meeting of the corporation, or, if no annual meeting shall be held in any year at the time fixed by the bylaws, at a special meeting held in lieu thereof, the members of the corporation shall elect two thirds of the board of directors and the stockholders shall elect the remaining directors. The directors shall hold office until the next annual meeting of the corporation or special meeting held in lieu of the annual meeting after their election, and until their successors are elected and qualified unless sooner removed in accordance with the provisions of the bylaws.

Any vacancy in the office of a director elected by the members shall be filled by the directors elected by the members, and any vacancy in the office of a director elected by the stockholders shall be filled by the directors elected by the stockholders.

Directors and officers shall not be responsible for losses unless the same shall have been occasioned by the wilful misconduct of such directors and officers.

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§31-14-7. Financial institutions as members of corporation; loans to corporation by members.

Any financial institution as defined in section one of this article is authorized to become a member of a corporation organized under the provisions of this article by making application to the board of directors on such form and in such manner as the board of directors may require and membership shall become effective upon acceptance of such application by said board. Membership in the corporation shall be for the duration of the corporation: Provided, That upon written notice given to the corporation one year in advance, a member may withdraw from membership in the corporation at the expiration date of such notice and shall not thereafter be obligated to make any loans to the corporation.

Each member of the corporation shall make loans to the corporation as and when called upon by it to do so on such terms and other conditions as shall be mutually approved from time to time by the board of directors of the corporation and such member, subject to the following conditions:

(1) All loan limits shall be established at the thousand-dollar amount nearest to the amount computed in accordance with the provisions of this section.

(2) No loans to the corporation shall be made if immediately thereafter, the total amount of the obligations of the corporation would exceed ten times the amount then paid in on the outstanding capital stock of the corporation. This limitation shall not apply with respect to that portion of the corporation's obligations incurred for the purpose of providing funds for making loans or for the acquisition of assets or investments to the extent that such loans, assets or investments are federally guaranteed, which for the purposes of this section seven means secured or covered by guaranties or by commitments or agreements to take over, or purchase, made by the United States of America, or by any department, bureau, agency, board, commission or establishment of the United States including any corporation, wholly owned, directly or indirectly, by the United States.

(3) The total amount outstanding on loans to the corporation made by any member at any one time, when added to the amount of the investment in the capital stock of the corporation then held by such member, shall not exceed:

(a) Twenty percent of the total amount then outstanding on loans to the corporation by all members, including in said total amount outstanding, amounts validly called for loans but not yet loaned.

(b) The following limit, to be adjusted annually on the basis of the audited balance sheet of such member at the close of its fiscal year, or, in the case of an insurance company, its annual statement to the commissioner of insurance: Two percent of the capital, surplus and undivided profits of commercial banks and trust companies; one percent of the total outstanding loans made by a building and loan association or industrial loan company; one percent of the capital and unassigned surplus of stock insurance companies, except fire

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insurance companies; one percent of the unassigned surplus of mutual insurance companies, except fire insurance companies; one tenth of one percent of the assets of fire insurance companies; and such limits as may be approved by the board of directors of the corporation for other financial institutions.

In computing the total amount outstanding on loans to the corporation made by a member at any time, there shall be excluded such portion of such loans as were obtained by the corporation for the purpose of providing funds for the making of loans or for the acquisition of assets or investments to the extent that such loans, assets or investments are federally guaranteed.

Subject to paragraph three (a) of this section, each call made by the corporation shall be prorated among the members of the corporation in substantially the same proportion that the adjusted loan limit of each member bears to the aggregate of the adjusted loan limit of all members. The adjusted loan limit of a member shall be the amount of such member's loan limit, reduced by the balance of outstanding loans by such member to the corporation and the investment in capital stock of the corporation held by such member at the time of such call.

All loans to the corporation by members shall be evidenced by bonds, debentures, notes or other evidences of indebtedness of the corporation, which shall be freely transferable at all times, and which shall bear interest at a rate of not less than one quarter of one percent in excess of the rate of interest determined by the board of directors to be the prime rate prevailing at the date of issuance thereof on unsecured commercial loans.

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§31-14-8. Powers of stockholders and members; voting.

The stockholders and the members of the corporation shall have the power to determine the number of and to elect directors as provided heretofore, to make, amend and repeal bylaws, to amend the corporate charter in the manner hereinafter provided, and to exercise such other of the powers of the corporation as may be conferred on the stockholders and the members by the bylaws. As to all matters requiring action by the stockholders and the members of the corporation, said stockholders and said members shall vote separately thereon by classes, and, except as otherwise herein provided, such matters shall require the affirmative vote of a majority of the votes to which the stockholders present or represented at the meeting shall be entitled and the affirmative vote of a majority of the votes to which the members present or represented at the meeting shall be entitled. Each stockholder shall have one vote, in person or by proxy, for each share of capital stock held by him and each member shall have one vote, in person or by proxy, except that any member having a loan limit of more than $1,000 shall have one additional vote, in person or by proxy, for each additional $1,000 which such member is authorized to have outstanding on loans to the corporation at any one time.

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§31-14-8a. Statewide corporation; economic regions created; loan committees.

1. Without limitation upon the power created by this article for the formation of business development corporations restricted in activity or in membership to areas or regions less than statewide, there may be created under the provision hereof a business development corporation coextensive, in the area to be served and from which membership may be drawn, with the State of West Virginia.

2. In the event of organization of such statewide business development corporation, and for the purpose of this section the state is hereby divided into ten economic regions as follows:

(1) Wheeling region: The counties of Hancock, Brooke, Ohio, Marshall, Wetzel and Tyler.

(2) Parkersburg region: The counties of Pleasants, Wood, Ritchie, Wirt, Calhoun, Roane and Jackson.

(3) Clarksburg region: The counties of Harrison, Doddridge, Taylor, Marion, Monongalia and Preston.

(4) Keyser region: The counties of Grant, Hardy, Mineral, Hampshire, Berkeley, Morgan and Jefferson.

(5) Elkins region: The counties of Barbour, Randolph, Pocahontas, Tucker and Pendleton.

(6) Weston region: The counties of Lewis, Gilmer, Braxton, Webster and Upshur.

(7) Lewisburg region: The counties of Greenbrier, Nicholas, Fayette, Summers and Monroe.

(8) Charleston region: The counties of Kanawha, Clay, Putnam, Mason and Boone.

(9) Huntington region: The counties of Cabell, Wayne, Lincoln, Mingo and Logan.

(10) Bluefield region: The counties of Raleigh, Wyoming, McDowell and Mercer.

3. Loan Committees: (a) There shall be a loan committee of such corporation for each of the ten economic regions as defined in this section. The members of the board of directors elected from such regions shall serve as members and chairman of each such loan committee for their respective regions. Each such loan committee shall have four additional members who shall be elected by the members of such corporation from such region and each of whom shall be of full age and a citizen of the United States and shall be a resident of such region or maintain a regular place of business therein.

In such elections, members of the corporation from each such region shall have one vote each, and each member having a loan limit, as defined by section seven of this article, of more than $50,000, shall have one additional vote. The elected members of each such loan committee shall be elected at the annual meetings of such corporation and shall serve for

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terms of one year.

(b) If a vacancy occurs in the elected membership of any such loan committee, the remaining members of such committee shall elect a person from its economic region to fill such vacancy for the unexpired term. Upon the expiration of their terms the elected members of each such loan committee shall continue as such until their successors have been elected and have qualified.

(c) The board of directors of such corporation may establish an office for any such loan committee, within such committee's economic region.

(d) Every application to such corporation for a loan or financial assistance shall be made through the loan committee for the economic region wherein the applicant resides or maintains a regular place of business, and such application shall thereupon be reviewed by such loan committee and promptly transmitted by it to the board of directors for consideration, along with the recommendation of such loan committee with respect thereto: Provided, however, That where there is no member of such corporation from the economic region wherein the applicant resides or maintains a regular place of business, such applicant may make his application through the loan committee for any other economic region.

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§31-14-9. Purchase of securities and stock by other corporations, fiduciaries and financial institutions.

Notwithstanding any other provision of law or any provision in their respective charters or trust indentures, any domestic corporation, including without implied limitation, any public utility company or insurance or casualty company; all foreign corporations licensed to do business in this state; all trusts or other fiduciaries and any financial institution as defined in section one of this article are hereby authorized and empowered to acquire, purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of any bonds, notes, debentures, securities or other evidences of indebtedness created by, or the shares of the capital stock of any corporation organized under the provisions of this article and, while owners of such stock, to exercise all of the rights, powers and privileges of owners, including the right to vote said stock, all without the approval of any regulatory authority of the state; except, however, that the amount of the capital stock of such corporation which may be acquired by any member pursuant to the authority granted herein shall not exceed ten percent of the loan limit of such member. A financial institution which does not become a member of the corporation shall not be permitted to acquire any shares of the capital stock of the corporation. The amount of capital stock of such corporation which any member is authorized to acquire pursuant to the authority granted herein is in addition to the amount of capital stock in corporations which such member may otherwise be authorized to acquire.

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§31-14-10. Creation of surplus from annual net earnings.

Each year the corporation shall set apart as earned surplus not less than ten percent of its net earnings for the preceding fiscal year until such surplus shall be equal in value to one half of the amount paid in on the capital stock then outstanding. Whenever the amount of surplus established herein shall become impaired, it shall be built up again to the required amount in the manner provided for its original accumulation. Net earnings and surplus shall be determined by the board of directors, after providing for such reserves as said directors deem desirable, and the determination of the directors, made in good faith, shall be conclusive on all persons.

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§31-14-11. Corporation not to receive deposits; designation of depository bank.

No corporation organized under the provisions hereof shall at any time be authorized to receive money on deposit. The corporation shall not deposit any of its funds in any banking institution unless such institution has been designated as a depository by a vote of a majority of the directors present at an authorized meeting of the board of directors, exclusive of any director who is an officer or director of the depository so designated.

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§31-14-12. Examination by and reports to banking commissioner.

Every corporation organized under the provisions of this article shall be subject to the examination and supervision of the commissioner of banking of this state, and shall make a report annually of its condition in such form and containing such information as the commissioner may require, who shall transmit a copy of such annual report to the Insurance Commissioner of the state.

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§31-14-13. Exemption from payment of business and occupation taxes; treatment as banking institution for purposes of property taxation.

Every corporation organized under the provisions of this article shall be exempt from payment or collection of the business and occupation tax as provided for by chapter eleven, article thirteen of the Code of West Virginia, 1931, as amended, upon the business done by it. Upon certification by the corporation to the State Tax Commissioner that it is a corporation organized under and pursuant to the provisions of this article, such corporation shall not be required to file annual or other returns under the requirements of said chapter and article. Every business development corporation organized under the provisions of this article shall be taxed as a banking institution for the purposes of article three, chapter eleven of this code.

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§31-14-14. Amendment of charter.

The charter of any corporation organized under the provisions of this article may be amended by the vote of the stockholders and the members of the corporation, voting separately by classes, and such amendments shall require approval by the affirmative vote of two thirds of the votes to which the stockholders shall be entitled and two thirds of the votes to which the members shall be entitled, except that no amendment which affects or limits the right of the commissioner of banking to examine the corporation or the obligation of the corporation to make annual reports to the commissioner as provided in section twelve shall be made without amendment of this article; and except, further, that no amendment to the charter of the corporation which increases the obligation of a member to make loans to the corporation, or makes any change in the principal amount, maturity date or in the security or credit position of any outstanding loan of a member to the corporation, or affects a member's right to withdraw from membership, or its voting rights as provided in sections seven and eight, shall be made without the consent of each member affected by such amendment.

Within thirty days after any meeting at which amendment of the charter has been adopted, certification thereof shall be made by the corporation to the Secretary of State in the manner provided for by section twelve, article one of this chapter, whereupon the Secretary of State shall issue his certificate as therein provided for.

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§31-14-15. Applicability of general corporation law.

Every corporation organized under the provisions of this article shall be governed by the provisions of chapter thirty-one of the Code of West Virginia, 1931, as amended, except insofar as the provisions of that chapter are in conflict with the provisions of this article, in which case the provisions of this article shall prevail.

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§31-14-16. Severability of provisions.

The provisions of this article are severable, and if any of its provisions shall be held unconstitutional by any court of competent jurisdiction, the decision of such court with respect thereto shall not affect or impair any of the remaining provisions hereof.

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