

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1943



ENROLLED

HOUSE BILL No. 173

(By Mr. Molers, by request.)



PASSED March 1, 1943

In Effect from Passage

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House Bill No. 173

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[Passed March 1, 1943: in effect from passage.]

AN ACT to amend chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by amending and reenacting section nine, article four, relating to the inhibition against branch banks, the inhibition of a banking institution to sign indemnity contracts or pledge its assets to indemnify a surety, and exceptions as to the guarantee by a banking institution of federal deposits and deposits of state and divisions thereof; section twenty, article four, relating to interest allowed to a banking institution in certain cases; section seven, article eight, relating to examination of the books, accounts and records of a banking institution by the commissioner of banking and the communications from such commissioner; section fifteen, article eight, relating to the annual

meeting of the stockholders of a banking institution, statement of the financial condition of the institution to such stockholders, and the appointment by such stockholders of an examining committee and the duties of such committee; section eighteen, article eight, relating to limitation of loans by a banking institution, the authorization of loans to officers and employees of a bank and banking department and the valuation of securities; all relating to banking institutions.

Be it enacted by the Legislature of West Virginia:

That chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by amending and reenacting sections nine and twenty, article four, and sections seven, fifteen and eighteen, article eight, all to read as follows:

Article 4. Banking Institutions.

Section 9. *Branch Banks Forbidden; Bank Not to Sign*
2 *Indemnity Contract or Pledge Its Assets to Indemnify a*
3 *Surety; Exception as to Guarantee of Federal Deposits,*
4 *Deposits of State and Division thereof, and Deposits of a*
5 *Bankrupt's Estate Made Pursuant to an Order of a Court*

6 of *Bankruptcy*.—No banking institution chartered and
7 authorized to engage in business under the laws of this
8 State, shall hereafter install or maintain any branch bank,
9 or engage in business at any place other than at its prin-
10 cipal office in the State of West Virginia; or engage in
11 any business other than as authorized in this article. No
12 banking institution shall become or be accepted as surety
13 on any bond or undertaking required by the laws or
14 by the courts of this state, or any other state, or shall
15 become surety or guarantor of any person for the
16 discharge of any duty in any position or the perform-
17 ance of any contract or undertaking. No banking in-
18 stitution shall pledge, hypothecate or deliver any of its
19 assets of any description whatsoever to any person to
20 indemnify him as surety for such banking institution
21 or as surety for any other person: *Provided*, That a
22 bank or trust company may pledge, hypothecate, de-
23 liver or deposit securities to guarantee deposits of the
24 United States, its agencies, state of West Virginia, a
25 county, district, school district or a municipal corpora-
26 tion, and the deposits of a bankrupt's estate made pur-

27 suant to an order of a court of bankruptcy, and, with
28 the consent in writing of the commissioner of banking,
29 may pledge, hypothecate, deliver or deposit securities
30 and/or assets to guarantee deposits made by receivers
31 of closed and/or insolvent banking institutions, and the
32 receiver of a closed and/or insolvent banking insti-
33 tution, if the proceeding be not in court, with the
34 consent in writing of the commissioner of banking, and
35 if the proceeding be in court, with the consent in writ-
36 ing of the commissioner of banking and the approval of
37 the court, may accept securities and/or assets of a
38 banking institution to secure deposits made by such
39 receiver: *Provided further*, That the hypothecation of
40 such securities and/or assets shall be by proper legal
41 transfer as collateral security to protect and indemnify
42 by trust any and all loss in case of any default on the
43 part of the banking institution in its capacity as a
44 depository for any such deposits as aforesaid, and such
45 collateral security shall be released only by order of
46 record of the public officer or public body, or by the
47 receiver of a closed and/or insolvent banking institu-

48 tion, if the proceeding be not in court, with the con-
49 sent in writing of the commissioner of banking, and
50 if the proceeding be in court, with the consent in writ-
51 ing of the commissioner of banking and the approval
52 of the court, when satisfied that full and faithful ac-
53 counting and payment of all the moneys has been made
54 under the provisions hereof. The public officer or pub-
55 lic body, or the receiver of a closed and/or insolvent
56 banking institution, shall make ample provision for the
57 safekeeping of such hypothecated securities and/or as-
58 sets, and the interest thereon when paid shall be turned
59 over to the banking institution, so long as it is not in de-
60 fault as aforesaid.

61 The foregoing shall not prevent the hypothecation of
62 the securities and/or assets of any banking institution
63 to secure the repayment of money, borrowed from an-
64 other banking institution.

Sec. 20. *Interest Allowed in Certain Cases.*—In addi-
2 tion to the interest rate provided in the article dealing
3 with money and interest in chapter forty-seven of this
4 code, a banking institution may charge and collect a

5 reasonable amount to cover the expenses incurred in
6 procuring reports and information respecting loans and
7 the value of and title to property offered as security
8 therefor, and a charge of one dollar may be made for
9 any loan or forbearance of money or other thing where
10 the interest at the rate of six per cent per annum
11 would not amount to that sum, and the same shall not
12 be a usurious charge or rate of interest. Any banking
13 institution authorized to do, and doing business in this
14 state may contract for and charge for a secured or un-
15 secured loan, repayable in installments, not in excess of
16 six per cent per annum upon the face amount of the
17 instrument or instrument evidencing the obligation to
18 repay the loan, for the entire period of the loan, and
19 deduct such charge in advance: *Provided, however,* That
20 if the entire unpaid balance outstanding on the loan is
21 paid on any installment date, prior to maturity, the bank
22 shall make a refund or rebate of such charge in an amount
23 computed on the aggregate installments not due, at the
24 original contract rate of charge, prorated to the period of
25 the loan covered by such unmatured installments; and

26 any note evidencing any such installment loan may pro-
27 vide that the entire unpaid balance thereof at the option
28 of the holder shall become due and payable upon default
29 in the payment of any stipulated installment without im-
30 pairing the negotiability of such note, if otherwise nego-
31 tiable.

**Article 8. Business Operations and Supervision of Banking
Institutions, Industrial Loan Companies and Building and
Loan Associations.**

Section 7. Examination of Books, Accounts and Records;

2 *Communications from Banking Commissioner.*—The com-
3 missioner of banking shall make, or cause to be made,
4 at least once each calendar year, a thorough examina-
5 tion of all the books, accounts, records and papers of
6 every banking institution, industrial loan company and
7 building and loan association, except national banking
8 associations organized under the acts of congress, en-
9 gaged in business in the state of West Virginia. He shall
10 carefully examine all of the assets of the corporation,
11 including its notes, drafts, checks, mortgages, securities
12 deposited to assure the payment of debts unto it, and

13 all papers, documents and records showing, or in any
14 manner relating to, its business affairs, and shall ascer-
15 tain the full amount and the nature in detail of all of
16 its liabilities. A full report of every such examination
17 shall be made and filed and preserved in the office of
18 the department of banking.

19 For the purpose of facilitating such examination, every
20 corporation subject to supervision shall preserve and
21 keep all of its records of final entry, including cards
22 used under the card system, and deposit tickets for de-
23 posits made, for a period of at least six years from the
24 date of the last entry on such books and the date of
25 the making of such deposit tickets, and card records.

26 Every official communication from the office of the
27 department of banking to any corporation or any offi-
28 cer of such corporation subject to the supervision of
29 said department, relating to an examination or an in-
30 vestigation of the affairs of such institution conducted
31 by the department of banking and supervision or con-
32 taining suggestions or recommendations as to the man-
33 ner of conducting the business of the corporation, shall

34 be submitted and read to the board of directors at the
35 next meeting after the receipt thereof, and the presi-
36 dent, or other executive officer, of the corporation shall
37 report in writing forthwith to the commissioner of bank-
38 ing the fact of the presentation and reading of such
39 report, and communicate any action taken thereon by
40 the corporation.

Sec. 15. *Annual Meeting; Examining Committee; Ap-
2 pointment; Failure to Act.*—The stockholders of each
3 banking institution shall meet annually and at such
4 annual meeting it shall be the duty of the cashier or other
5 executive officer of such banking institution to prepare
6 and submit to the stockholders a clear and concise state-
7 ment of the financial condition of the corporation as
8 of the close of business on the last day of the month next
9 preceding. At such meeting the stockholders shall ap-
10 point an examining committee, whose duty it shall be
11 to examine the condition of the bank at least once dur-
12 ing each calendar year. The examining committee shall
13 report to the board of directors, giving in detail all
14 items included in assets of the bank which they have

15 reason to believe are not of the value at which they
16 appear on the books and records of the bank, and giving
17 the value of each of such items according to their
18 judgment. Should such committee deem it advisable,
19 it may, with the consent and approval of the board of
20 directors, employ competent accountants or auditors to
21 make such examination or make same in conjunction
22 with the regular examination of the banking depart-
23 ment. The examiners may require the presence of the
24 examining committee or the executive committee dur-
25 ing their examination. The board shall cause such re-
26 port to be recorded in the minute books of the bank,
27 and a duly authenticated copy thereof transmitted to
28 the commissioner of banking.

Sec. 18. *Limitation on Loans; Authorization of Loans
2 to Officers and Employees of Banks and Banking Depart-
3 ment; Valuation of Securities.*—The total liabilities to
4 any banking institution of any persons, firm or corpora-
5 tion, for money borrowed by note, bond, certificate of
6 indebtedness or other device, including, in the liabili-
7 ties of the firm the liabilities of the several members

8 thereof, including in the liabilities of any corporation
9 an investment by such banking institution in the stock
10 of such corporation, shall at no time exceed ten per cent
11 of the unimpaired capital stock, including debentures
12 and surplus fund of such banking institution. But the
13 discount of commercial or business paper actually owned
14 by the person, firm or corporation negotiating the same
15 shall not be considered as money borrowed within the
16 limitation of this section; and the obligations of any
17 person, firm or corporation, in the form of notes or drafts
18 secured by shipping documents, warehouse receipts or
19 other such documents transferring or securing titles cov-
20 ering readily marketable, nonperishable staples when
21 such property is fully covered by insurance, if it is
22 customary to insure such staples, shall be considered
23 money borrowed within the meaning of this section, but
24 shall be subject to the exception that with respect
25 thereto the limitation of ten per cent of the unimpaired
26 capital stock, including debentures and surplus fund, to
27 which reference has hereinbefore been made, may be
28 increased to twenty-five per cent when the market

29 value of such staples securing such obligations is not
30 at any time less than one hundred fifteen per cent of
31 the face amount of such obligations, and may be in-
32 creased up to fifty per cent of such unimpaired capital
33 stock, including debentures and surplus fund, with a
34 corresponding increase in market value of such staples
35 securing such obligation up to not less than one hun-
36 dred forty per cent of the face amount of such ad-
37 ditional obligation, but this exception shall not apply
38 to obligations of any one person, firm or corporation
39 arising from the same transaction or secured upon the
40 identical staples for more than ten months. This sec-
41 tion shall not apply to the obligations of the United
42 States or general obligations of any state or political
43 subdivision thereof (when there has been no default
44 in the payment of interest or principal in respect of
45 the general obligations of any state or political sub-
46 division thereof within ten years prior to the purchase
47 of such obligations), bonds or obligations issued un-
48 der the authority of the West Virginia bridge commis-
49 sion or the state road commission, commonly known

50 as bridge revenue bonds, or obligations issued under
51 authority of the federal farm loan act, as amended, or
52 issued by the federal home loan bank, or the home
53 owners' loan corporation, or any loans or obligations
54 to the extent that they are secured or covered by guar-
55 anties, or by commitments or agreements to take over
56 or to purchase the same, made by any federal reserve
57 bank or by the United States or any department, board,
58 bureau, commission or establishment of the United
59 States, including any corporation wholly owned directly
60 or indirectly by the United States. Neither shall this
61 section apply to the obligations of a corporation owning
62 the building in which the banking institution is located,
63 when such banking institution has an unimpaired capital
64 and surplus of not less than one million dollars, or when
65 approved in writing by the commissioner of banking.
66 Nothing herein shall be construed to forbid the sale upon
67 credit of a bank building owned by a banking institu-
68 tion at the time this act takes effect.

69 No officer, director, clerk or other employee of any
70 banking institution or the commissioner of banking or

71 any employee of the department of banking shall bor-
72 row, directly or indirectly, from the banking institution
73 with which he is connected, or is subject to his examina-
74 tion, any sum of money without the written approval
75 of a majority of the board of directors or discount com-
76 mittee thereof filed in its office, or embodied in a reso-
77 lution adopted by a majority vote of such board, exclu-
78 sive of the director to whom the loan is made. If an of-
79 ficer, clerk or other employee of any bank shall own or
80 control a majority of the stock of any other corporation,
81 a loan to such corporation shall, for the purpose of this
82 section, constitute a loan to such officer, clerk or other
83 employee.

84 Securities purchased by a banking institution shall be
85 entered upon the books of the bank at actual cost, but
86 may be carried thereafter at market value. For the
87 purpose of calculating the undivided profits applicable to
88 the payment of dividends, securities shall not be esti-
89 mated at a valuation exceeding their present cost as
90 determined by amortization; that is, by deducting from
91 the cost of a security purchased at a premium, and charg-

92 ing to profit and loss a sum sufficient to bring it to par at
93 maturity.

94 All acts or parts of acts in conflict with the provisions
95 of this act are hereby repealed.

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

Ray Quinn
Chairman Senate Committee

Paul H. Patton
Chairman House Committee

Originated in the House of Delegates

Takes effect from passage.

Wale Watkins
Clerk of the Senate

Asliff
Clerk of the House of Delegates

James Paule
President of the Senate

John E. Canine
Speaker House of Delegates

The within approved this the 11
day of March, 1943.

Matthew M. Reese
Governor.

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Filed in the office of the Secretary of State
of West Virginia **MAR 11 1943**
Wm. S. O'BRIEN,
Secretary of State