

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1951

ENROLLED

SENATE BILL NO. 238

(By Mr. Eddy)

PASSED March 9, 1951

In Effect Ninety days from Passage



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Senate Bill No. 238

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[Passed March 9, 1951; in effect ninety days from passage.]

AN ACT to amend and reenact sections one, two, six, seven, eight, nine, ten and fourteen, article seven, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to further amend said article seven, chapter thirty-one, by adding thereto a new section to be designated section nine-a, all relating to industrial loan companies.

Be it enacted by the Legislature of West Virginia:

That sections one, two, six, seven, eight, nine, ten and fourteen, article seven, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, and that said article seven, chapter

thirty-one, be further amended by adding thereto a new section to be designated section nine-a, all to read as follows:

Section 1. *Definition.*—The term “industrial loan company,” as used in this chapter, shall mean any corporation formed under the provisions of this article with the approval of the commissioner of banking of this state.

Sec. 2. *Incorporators; Name; Capital Stock.*—Any number of persons, not fewer than thirteen, citizens of this state, may become an industrial loan company on the terms and conditions and subject to the liabilities prescribed by this article. The name of any corporation formed under this article may contain the words “industrial loan company,” but such name shall not be that of any other existing corporation of this state. The capital stock of any such corporation shall not be less than twenty-five thousand dollars, and shall consist of shares of common stock. The voting power and control of the corporation during its life shall be vested in the common stock only if more than one class of stock is to be issued. Such common stock, with which it will commence business, shall be paid in before such corporation shall be

16 authorized to engage in business, except such business
17 as is incidental and necessarily preliminary to its organ-
18 ization.

Sec. 6. *Powers.*—In addition to the general powers
2 conferred upon corporations by the law of this state, each
3 industrial loan company shall have power to exercise by
4 its board of directors or duly authorized officers or agents,
5 subject to law, all such powers as shall be necessary to:

6 (a) Lend money to any person, firm or corporation,
7 secured by the obligation of such person, firm or corpora-
8 tion, or otherwise; and, in addition, to receive and require
9 uniform periodical installments for the repayment of the
10 loan;

11 (b) Sell or offer for sale its secured or unsecured evi-
12 dences or certificates of indebtedness;

13 (c) Buy and sell bonds or choses in action of any
14 person, firm or corporation;

15 (d) Impose a charge of five cents for each default in
16 the payment of one dollar, or fraction thereof, at the time
17 at which any periodical installment for the repayment of
18 a loan becomes due;

19 (e) Demand and receive for loans or for notes, bills of
20 evidences of debt discounted or purchased, such rate of
21 interest as may be agreed upon by the parties, not exceed-
22 ing the lawful rate of interest, and it shall be lawful to
23 receive such interest in advance;

24 (f) Charge for a loan made pursuant to this section,
25 one dollar for each fifty dollars, or fraction thereof,
26 loaned, for expenses including any examination or in-
27 vestigation of the character and circumstances of the bor-
28 rower, co-maker or surety, and the drawing and taking
29 the acknowledgment of necessary papers, or other ex-
30 penses, incurred in making the loan. No additional charge
31 shall be made except to reimburse the corporation for
32 money actually expended for additional service actually
33 rendered the borrower. No charge shall be collected unless
34 a loan shall have been made as the result of such exami-
35 nation or investigation;

36 (g) Purchase, hold and convey real estate as follows:

37 (1) Such as shall be necessary for the convenient
38 transaction of its business, including with its office other
39 apartments or offices to rent as a source of income, which

40 investment shall not exceed twenty-five per cent of its
41 paid in capital stock and surplus;

42 (2) Such as is mortgaged to it in good faith by way of
43 security for loans made or money due to such industrial
44 loan company;

45 (3) Such as is conveyed to it in satisfaction of debts
46 previously contracted in the course of its dealings;

47 (4) Such as it acquired by sale on execution or judg-
48 ment or decree of any court in its favor.

49 Industrial loan companies shall not purchase, hold or
50 convey any real estate in any other case or for any other
51 purpose whatever. Real estate shall be conveyed only by
52 authority of the board of directors of such industrial loan
53 company. No real estate acquired in the cases contem-
54 plated in the second, third and fourth paragraphs of sub-
55 division (g) shall be held for a longer time than five years,
56 unless such period shall be extended by the commissioner
57 of banking.

Sec. 7. *Limitations.*—A corporation under the provi-
2 sions of this article shall not:

3 (a) Make any loan under the provisions of this article

4 for a longer period than two years from the date thereof,
5 except upon express authorization of the board of direc-
6 tors of such company;

7 (b) Hold at any one time the primary obligation or
8 obligations of any one person, firm or corporation, for
9 more than ten per cent of the amount of the paid up capi-
10 tal and surplus of such industrial loan company;

11 (c) Hold at any one time the obligation or obligations
12 of persons, firms or corporations purchased from any per-
13 son, firm or corporation in excess of twenty per cent of
14 the aggregate paid up capital and surplus of such indus-
15 trial loan company;

16 (d) Hold at any one time the obligation or obligations
17 of persons, firms or corporations secured by real estate
18 aggregating more than one-third of the aggregate paid
19 up capital and surplus of such industrial loan company;

20 (e) Make any loan or discount on the security of its
21 own capital stock (controlling and voting stock, if there
22 be more than one class), unless such security or purchase
23 shall be necessary to prevent loss upon a debt previously
24 contracted in good faith. Stock so purchased or acquired

25 shall be sold at public or private sale or otherwise dis-
26 posed of within ninety days from the time of its purchase
27 or acquisition;

28 (f) Have outstanding at any time its evidences or
29 certificates of indebtedness, in an aggregate sum in excess
30 of ten times the aggregate amount of its paid up capital
31 (voting and controlling stock) and surplus;

32 (g) Deposit any of its funds with any other money
33 corporation unless such corporation has been designated
34 as such depository by a vote of the majority of the board
35 of directors;

36 (h) Pledge or hypothecate any of its securities to any
37 creditor, except that such companies shall have the power
38 to rediscount or to borrow money from any source in addi-
39 tion to selling its evidences or certificates of indebtedness,
40 but the aggregate amount of such rediscounting and
41 borrowing shall at no time exceed the sum total of the
42 capital, surplus and reserve funds of such company, and
43 the security so pledged therefor shall not exceed two
44 times the amount borrowed and rediscounted;

45 (i) Pay any fees, bonuses, commissions, rewards, or

46 other consideration to any person, firm or corporation for
47 the privilege of using any plan of operation, scheme or
48 device for the organization or carrying on of business
49 under this article, or the use of any name, trade-mark or
50 copyright to be so used; nor shall any corporation under
51 this article enter into any contract for such purpose or
52 purposes, or for the purpose of giving to or vesting in any
53 other corporation any power or authority over the organ-
54 ization or management of corporations under this article.

Sec. 8. *Cash Reserve*.—Every industrial loan company,
2 under the provisions of this article, shall at all times
3 maintain a cash reserve equal to five per cent of its issued
4 and outstanding evidences or certificates of indebtedness;

Sec. 9. *Annual and Special Meeting of Stockholders;*
2 *Voting; Proxy; Fiscal Year*.—The stockholders of each
3 industrial loan company shall meet annually in the month
4 of January, a majority of the outstanding voting stock
5 to constitute a quorum; and it shall be the duty of the
6 secretary to prepare and submit to the stockholders a
7 clear and concise statement of the financial condition of
8 the corporation as of the close of business on the first

9 day of the month next preceding. At such meeting the
10 stockholders shall elect a board of directors of not less
11 than five, a majority of which shall be bona fide residents
12 of the State of West Virginia. Special meetings may be
13 called by order of the board of directors or by request
14 in writing of ten per centum of the stockholders.

15 In all elections of directors of the corporation each
16 stockholder shall have the right to cast one vote for each
17 share of stock owned by him and entitled to vote, and
18 he may cast the same in person or by proxy, for as many
19 persons as there are directors to be elected, or he may
20 cumulate such votes and give one candidate as many
21 votes as the number of directors to be elected multiplied
22 by the number of his shares of stock shall equal; or he
23 may distribute them on the same principle among as
24 many candidates and in such manner as he may desire,
25 and the directors shall not be elected in any other man-
26 ner, and on any other question to be determined by a vote
27 of shares at any meeting of stockholders each stockholder
28 shall be entitled to one vote for each share of stock owned
29 by him and entitled to vote, and he may exercise this

30 right in person or by proxy, but if by proxy, in no in-
31 stance can it be voted in any meeting other than which it
32 was first intended.

Sec. 9-a. *Directors.*—The affairs of every industrial
2 loan company shall be managed by a board of not less
3 than five directors who shall meet at least once each
4 month, a majority of whom shall at all times be bona
5 fide residents of this state, and shall own and hold in his
6 own name at least five hundred dollars par value in un-
7 pledged shares of the capital stock or voting stock of such
8 company.

9 Immediately upon the adjournment of the stockhold-
10 ers' meeting or as soon thereafter as convenient, they
11 shall meet and every director elected shall take an oath
12 that he will, so far as duty devolves on him, diligently
13 and honestly administer the affairs of such company,
14 and will not knowingly and willingly violate, or permit
15 to be violated, any of the provisions of this article, and
16 that he is the owner in good faith, and in his own right,
17 of at least five hundred dollars par value in shares of the
18 capital stock of the company, as required by this section,

19 subscribed by him or standing in his name on the books
20 of said company, and that the same are not hypothecated
21 or in any way pledged as security for any loan or debt.
22 Such oath, when subscribed by the director making it,
23 and certified by the officer before whom it was taken,
24 shall immediately be transmitted to the commissioner of
25 banking, and shall be filed and preserved in his office.
26 Should a director fail to subscribe to the oath herein pro-
27 vided for within sixty days after notice of his election or
28 at any time after qualifying as such, sell or dispose of,
29 or in any manner hypothecate or pledge as security for
30 a debt or obligation, such qualifying shares, or any num-
31 ber thereof, necessary for his qualification, or due to
32 death, resignation or inability to serve of any elected
33 director, thereupon the remaining directors shall elect
34 another director in his stead.

35 It shall be the duty of the board at their organization
36 meeting or as soon thereafter as convenient to elect a
37 president who shall be a director, one or more vice presi-
38 dents, a secretary or manager, treasurer and such other

39 officers necessary for the conduct of business as may be
40 designated in the by-laws.

Sec. 10. *Chief Executive Officer to be Bonded.*—The
2 directors of every industrial loan company shall require
3 the manager or other chief executive officer appointed
4 by them in lieu of a manager, before he performs or
5 enters upon any duties as such manager or chief executive
6 officer, to give a bond or bonds, with a surety company
7 authorized to transact business in this state as surety
8 thereon, the amount to be fixed by them, but in no case
9 shall the penalty be less than five thousand dollars. Other
10 officers and personnel to be bonded in amounts com-
11 mensurate with their duties and responsibilities, to be
12 fixed by the board of directors, and all bonds to be ap-
13 proved by the commissioner of banking and a copy filed
14 with his department; and it shall be the duty of the
15 directors of such industrial loan company, as often as
16 once in every year, to pass upon the sufficiency of such
17 bond or bonds, and if insufficient, to require without
18 delay new and additional bonds and securities to be given.
19 If the directors of such industrial loan company shall fail

20 to perform any or all of the requirements of this section,
21 they shall be jointly and severally liable to the industrial
22 loan company to the extent of any defalcation of or de-
23 ficiency in the funds of such company created or caused
24 by such manager, not in excess of the penalty of his bond,
25 the same to be recovered by such industrial loan com-
26 pany in any court of competent jurisdiction of this state.

Sec. 14. *Amendments to By-Laws.*—The stockholders
2 at any regular, or special meeting called for that purpose,
3 may amend the by-laws of any industrial loan company
4 organized under the provisions of this article, but before
5 they become operative must be approved by the commis-
6 sioner of banking.

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

Robert C. Byrd

Chairman Senate Committee

James M. Loepp

Chairman House Committee

Originated in the Senate.

Takes effect

Ninety days from

passage.

Howard Byler

Clerk of the Senate

W. R. Giff

Clerk of the House of Delegates

W. L. Hunter

President of the Senate

W. E. Ramey

Speaker House of Delegates

The within

approved

this the

16th

day of

March

, 1951.

Chas. L. Patton

Governor.



of West Virginia

MAR 16 1951

D. PITT O'BRIEN,

SECRETARY OF STATE

MAR 16 1951