WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1974

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ENROLLED

HOUSE BILL No. 912

Originating in the Committee
(By Mr. for the Judiciary)

PASSED March 9, 1974

In Effect Passage

C 641

FILED IN THE OFFICE
EDGAR F. REISKELL, III
SECRETARY OF STATE
THIS DATE 3-27-74
AN ACT to amend and reenact article seven, chapter thirty-one of
the code of West Virginia, one thousand nine hundred thirty-
one, as amended; to amend and reenact section two, article one,
chapter thirty-one-a of said code; and to amend and reenact
sections fourteen and twenty-two, article four of said chapter
thirty-one-a, all relating to industrial banks and industrial loan
companies generally; providing a short title and provisions re-
lating to rules of construction of this act; the definition of certain
terms used herein; applying certain provisions contained in
said chapter thirty-one-a, including the penalty provisions con-
tained therein, to the provisions contained in said article seven,
chapter thirty-one; establishing the procedures for incorporat-
ing and chartering industrial banks and industrial loan com-
panies; providing for the capital stock requirements of such
corporations; providing for the voting rights of the holders of
such stock; restricting the use of certain words in the corporate
name of such corporations; the form and contents of applica-
tion to organize an industrial bank; the examination and in-
vestigation by the West Virginia board of banking and financial
institutions of any proposed industrial bank and the matters to
be considered by such board with respect to such examination
and investigation; the powers and duties of said board and the
commissioner of banking of West Virginia with respect to said
industrial banks and industrial loan companies generally; re-
quiring industrial banks to secure federal deposit insurance and
to notify their depositors upon termination of such insurance;
the rights of depositors upon the termination of such insurance; the powers of industrial banks and industrial loan companies and the limitation of such powers; the cash reserves required to be maintained by industrial banks and industrial loan companies and the form and nature of such reserves; the supervision and control of industrial loan companies by said commissioner and board and the power of each to regulate other firms, corporations, partnerships or associations owning more than forty percent of the stock of any such industrial loan company; the subrogation rights of the federal deposit insurance corporation in certain instances; annual and special meetings of stockholders of industrial banks and industrial loan companies and providing for the voting rights of such stockholders and quorum requirements at such meetings; providing for the number, duties, qualifications and oath of the directors and officers of industrial banks and industrial loan companies and the manner in which vacancies shall be filled; the bonding requirements for such directors, officers and the managers and employees of any such industrial bank or industrial loan company and requirements with respect to the defalcation of any such bond; requiring that a list of stockholders be open for inspection at any such industrial bank and industrial loan company; establishing procedures for the declaring and paying of dividends by any such bank or company; the procedures for amending the charter or bylaws of any such bank or company; procedures for the dissolution of industrial loan companies; limiting loans to officers and employees of industrial loan companies in certain cases and providing for penalty for the violation of such provisions; requiring and prohibiting certain advertising practices by such banks or companies; restricting certain statements made by industrial loan companies with respect to the guaranteeing of payment of its evidences or certificates of indebtedness; prohibiting the use of certain symbols, seals, trademarks or devices by industrial loan companies; the rulemaking and regulatory functions of said commissioner and board and the procedures to be followed for the adoption and promulgation of such rules; the collection of certain fees, costs and expenses by the commissioner in certain cases; procedures for hearings by commissioner and board and providing for appeal and judicial review therefrom; and providing for the applicability of this act to certain existing companies.
Be it enacted by the Legislature of West Virginia:

That article seven, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section two, article one, chapter thirty-one-a of said code be amended and reenacted; and that sections fourteen and twenty-two, article four of said chapter thirty-one-a be amended and reenacted, all to read as follows:

CHAPTER 31. CORPORATIONS.

ARTICLE 7. INDUSTRIAL BANKS AND INDUSTRIAL LOAN COMPANIES.

§31-7-1. Short title.

This article shall be known and may be cited as the "West Virginia Industrial Bank and Industrial Loan Company Act."

§31-7-2. Construction of article; general corporation laws applicable.

(a) Except as otherwise specified herein the provisions of chapter thirty-one-a of this code, insofar as the same relates to the inspection, examination, supervision, regulation and control of banking institutions, including but not limited to all of the penalty provisions contained in said chapter thirty-one-a, shall apply to industrial banks and industrial loan companies organized pursuant to this article to the extent that the provisions of this article and the provisions of said chapter thirty-one-a are not inconsistent. To the extent of any inconsistencies between the provisions of this article and provisions of chapter thirty-one-a of this code, the provisions of this article shall prevail to the extent of such inconsistencies.

(b) The general corporation laws of the state, including the provisions of article one of chapter thirty-one of this code, shall govern industrial loan companies and industrial banks and the chartering thereof, except as otherwise provided herein or where inconsistent with the provisions of this article or chapter thirty-one-a of this code, and to the extent of such inconsistencies, the provisions of this article and chapter thirty-one-a shall prevail.
§31-7-3. Definitions.

As used in this article, unless the context otherwise requires a different meaning, the term:

(a) "Board" shall mean the West Virginia board of banking and financial institutions;

(b) "Commissioner" or "commissioner of banking" shall mean the commissioner of banking of West Virginia and shall also include the department of banking of West Virginia;

(c) "Deposit" or "deposits" shall mean the unpaid balance of money or its equivalent received or held by an industrial bank organized pursuant to this article in the usual course of its business and for which it has given or is obligated to give credit, either conditionally or unconditionally, to a savings, time or thrift account, or which is evidenced by its certificate of deposit, but shall not include checking accounts or demand deposits or evidences or certificates of indebtedness;

(d) "Industrial bank" shall mean any corporation formed under the provisions of this article with the approval of the board and which is authorized to receive deposits from the general public, and such corporations are hereby declared to be banking institutions within the meaning of section two, article one, chapter thirty-one-a, subject to the limitations contained in this article; and

(e) "Industrial loan company" shall mean any corporation formed under the provisions of this article with the approval of the commissioner of banking of this state and which is authorized to sell or offer for sale its secured or unsecured evidences or certificates of indebtedness as hereinafter prescribed, but shall not be authorized to accept deposits.

§31-7-4. Incorporators; name; minimum capital stock; voting rights of classes of stock; common stock to be paid in before business commenced; use of certain words in corporate name prohibited.

(a) In the case of an industrial loan company, 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 in this article.
The name of any industrial loan company formed under this article shall not contain the words “savings” or “savings and loan” and shall not be that of any other existing corporation of this state: Provided, That any such corporation heretofore organized which uses the words “savings and loan” as a part of its corporate name shall be authorized to continue to use such words. 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 authorized to engage in business, except such business as is incidental and necessarily preliminary to its organization.

(b) In the case of an industrial bank, any number of persons, not fewer than thirteen, citizens of this state, may become an industrial bank on the terms and conditions and subject to the liabilities prescribed by this article and the provisions of article four, chapter thirty-one-a of this code subject to such exceptions contained in this article. The name of any industrial bank formed under the provisions of this subsection (b), section four, shall be, “Industrial Financing Corporation”, and shall include no other words except a trading area, community, city, county or other local identity approved by the board. The capital stock requirements of any such industrial bank shall be the same as those prescribed in subsection (a) and (c) of section three, article four, chapter thirty-one-a of this code. The voting power and control of any industrial bank shall be vested in the common stock only and such corporations shall issue but one class of stock. Such common stock with which it will commence business shall be paid in before such corporation shall be authorized to engage in business as an industrial bank except such business as is incidental and necessarily preliminary to its organization.

§31-7-5. Industrial banks; requirements and procedure for incorporation; agreement of incorporation, issuance of certificate of incorporation.

Persons desiring to form an industrial bank shall sign and
acknowledge an agreement of incorporation, as provided in article one of this chapter.

The incorporators shall file with the board such agreement in duplicate and, when filed with the board, shall be accompanied by the statutory corporation charter fees, and an examination and investigation fee of one thousand dollars payable to the board. If, at the time of such filing, the corporation has already qualified and is conducting business as an industrial loan company, then an examination and investigation fee of five hundred dollars shall be payable to the board. When transmitting the agreement to the board, the incorporators shall designate by name and give the address of the attorney, agent or other responsible party with whom the board may communicate, on whom the board may call for further information, and to whom the board may officially report as to action on the agreement so filed with him. The agreement shall constitute and may be considered and treated by the board as an application for the board’s approval to incorporate and organize an industrial bank in this state.

The provisions of section seven, article four, chapter thirty-one-a of this code shall apply to any application for a charter and the issuance of such charter to any industrial bank.

§31-7-6. Application for authority to organize an industrial bank; contents; forms prescribed by commissioner.

In addition to any of the requirements contained in chapter thirty-one-a of this code, written application for authority to establish an industrial bank shall be filed with the board by an existing industrial loan company or by a newly formed corporation desiring to become an industrial bank and such application shall include:

(a) The name, residence and occupation of each incorporator and stock subscriber and the amount of stock held or subscribed for by each, together with a statement under oath of each stock subscriber or stockholder that he subscribes for or holds such stock in good faith in his own right and not as agent or attorney or trustee for any undisclosed person, or, if such agency, attorney relationship or trusteeship exists, then the name, residence and occupation of the beneficial owners
or prospective holders of such stock shall be included.

(b) The proposed name of such industrial bank.

(c) The total capital, the number of shares and the par value of such shares.

(d) The address where the proposed industrial bank is to be located.

(e) The names of the persons who are to serve as officers and directors of the proposed industrial bank and the official position proposed to be held by each.

(f) Such additional information as may be prescribed by the board or the commissioner.

Such application shall be made upon forms prescribed and furnished by the commissioner and the commissioner may require such information as he deems necessary to properly consider the merits of such application.

§31-7-7. Examination and investigation of proposed industrial bank by board.

(a) When an agreement of incorporation and an application, fully complying with the requirements of this article, have been filed with the board, it shall promptly make or cause to be made a careful examination and investigation relative to the following:

(1) The character, reputation, financial standing and motives of the organizers, incorporators and subscribers in organizing the proposed industrial bank;

(2) The need for the facilities and services which the proposed industrial bank will offer in the community where it is to be located, giving particular consideration to the adequacy of existing banking services and facilities and financial institutions;

(3) The present and future ability of the community to support the proposed industrial bank and all other existing banking and other financial institution facilities and services in the community;

(4) The character, financial responsibility, banking exper-
ience and business qualifications of the proposed officers; and

(5) The character, financial responsibility, business experience and standing of the proposed stockholders and directors.

(b) The board shall approve or disapprove the application, in the exercise of its reasonable discretion, but shall not approve such application unless it finds:

(1) Public convenience and advantage will be promoted by the establishment of the proposed industrial bank;

(2) Local conditions assure reasonable promise of successful operation for the proposed industrial bank and other financial institutions and other banking institutions already established in the community;

(3) The proposed capital structure is adequate;

(4) The proposed officers and directors have sufficient banking experience, ability, character and standing to assure reasonable promise of successful operation;

(5) The name of the proposed industrial bank is not so similar as to cause confusion with the name of an existing bank or other financial institution; and

(6) Provision has been made for suitable banking house quarters in the community specified in the application.

(c) In the course of its examination and investigation, the board may call upon the attorney, agent or other responsible person representing the incorporators and upon the incorporators for additional information and disclosures it deems necessary in taking appropriate action on and making proper disposition of the application.

(d) If the proposed industrial bank was in existence and was conducting its affairs as an industrial loan company prior to the effective date of this act, and was selling its certificates or evidences of indebtedness to the general public prior to January first, one thousand nine hundred seventy-four, the board shall not disapprove the application solely for the reasons set forth in subsections (a) (2), (a) (3), (b) (1) and (b) (2) of this section if the proposed industrial bank meets all other requirements.
§31-7-8. Requirements for federal deposit insurance; notice to depositors upon termination.

In addition to any other requirements set forth in this article, or which may be set forth in chapter thirty-one-a of this code, any proposed industrial bank shall qualify for federal deposit insurance and be, in fact, insured by the federal deposit insurance corporation prior to engaging in business as an industrial bank and shall maintain such insurance during its corporate existence as an industrial bank.

If any industrial bank proposes or intends to terminate its insurance with the federal deposit insurance corporation or if notice of termination by the federal deposit insurance corporation has been received by such industrial bank, such industrial bank shall abide by rules and regulations of the federal deposit insurance corporation.

§31-7-9. Industrial loan companies; agreement of incorporation; issuance of certificate of incorporation; recordation; application for and issuance of certificate or license to engage in business.

Persons desiring to form an industrial loan company shall sign and acknowledge an agreement of incorporation, as provided in article one of this chapter.

The agreement shall be delivered to the secretary of state, who, after the agreement has been approved in writing by the commissioner of banking, shall issue to the incorporators his certificate under the great seal of the state as provided in article one of this chapter: Provided, That hereafter no charter shall be issued to any industrial loan company under the provisions of this article, nor shall any amendment under general law or under the provisions of this article be made to the charter of any existing industrial loan company coming within the terms of this article, whether heretofore or hereafter organized, until the application for such charter or for an amendment to such already existing charter has been approved in writing by the commissioner of banking. Such charter, when issued, shall be filed and recorded as provided by law for general corporations organized under the laws of this state. The provisions of section five, article two, chapter thirty-one-a, in-
sofar as the same relates to financial institutions, other than banking institutions, shall apply to the application and issuance of a certificate or license by the Commissioner to an industrial loan company.

§31-7-10. Powers of industrial banks; limitation of powers.

(a) The provisions of sections thirteen and fourteen, article four, chapter thirty-one-a to the contrary notwithstanding, and subject to the provisions of subsection (b) of this section, in addition to the general powers conferred upon corporations by the laws of this state and subject to the restrictions, rules and regulations of the federal deposit insurance corporation and the provisions of chapter sixteen of title twelve of the United States Code, each industrial bank organized pursuant to this article shall have power to exercise by its board of directors or duly authorized officers or agents only those powers conferred upon industrial loan companies under the provisions of section eleven of this article and in addition thereto shall have the power to receive deposits from the general public only as long as such deposits are insured by the federal deposit insurance corporation, but shall not be depositories of funds from the government of the United States or from any of its agencies or political subdivisions or from the state of West Virginia or from any of its agencies or political subdivisions or from any other governmental agency.

(b) Notwithstanding the provisions of subsection (a) of this section, an industrial bank under the provisions of this article shall not:

(1) Make any loan under the provisions of this article for a longer period than two years from the date thereof, except upon express authorization of the board of directors of such industrial bank;

(2) Hold at any one time the primary obligation or obligations of any one person, firm or corporation, for more than ten percent of the amount of the paid-up capital and surplus of such industrial bank;

(3) Hold at any one time the obligation or obligations of persons, firms or corporations purchased from any person,
firm or corporation in excess of twenty percent of the aggregate paid-up capital and surplus of such industrial bank;

(4) Make any loan or discount on the security of its own capital stock unless such security or purchase shall be necessary to prevent loss upon a debt previously contracted in good faith. Stock so purchased or acquired shall be sold at public or private sale or otherwise disposed of within ninety days from the time of its purchase or acquisition;

(5) Have deposited with it deposits in an aggregate sum in excess of ten times the aggregate amount of its paid-up capital and surplus;

(6) Deposit any of its funds except with a national or state bank doing business in this state or with solvent banking institutions in other states which are federally insured;

(7) Pledge or hypothecate any of its securities or notes owned by it to any of its creditors except in the same manner as other banking institutions are permitted to do so under either the provisions of chapter thirty-one-a of this code, the rules and regulations of the commissioner of banking or the rules and regulations of the federal deposit insurance corporation and the provisions of chapter sixteen of title twelve of the United States Code;

(8) Pay any fees, bonuses, commissions, rewards, or other consideration to any person, firm or corporation for the privilege of using any plan of operation, scheme or device for the organization or carrying on of business under this article, or the use of any name, trademark or copyright to be so used; nor shall any industrial bank organized under this article enter into any contract for such purpose or purposes, or for the purpose of giving to or vesting in any other corporation any power or authority over the organization or management of such industrial bank organized under this article;

(9) Pay greater rates of interest on its deposits than are permitted to be paid by other banking institutions;

(10) Sell or offer for sale evidences or certificates of indebtedness; or

(11) Receive checking accounts or demand deposits.
§31-7-11. Powers of industrial loan companies; limitation of powers.

(a) In addition to the general powers conferred upon corporations by the laws of this state, each industrial loan company shall have power to exercise by its board of directors or duly authorized officers or agents, subject to law, all such powers as shall be necessary to:

1. Lend money to any person, firm or corporation, secured by the obligation of such person, firm or corporation, or otherwise; and, in addition, to receive and require uniform periodical installments for the repayment of the loan;

2. Sell or offer for sale its secured or unsecured evidences or certificates of indebtedness, and such secured or unsecured evidences or certificates of indebtedness are hereby defined as money for the purpose of taxation, but every such evidence or certificate of indebtedness shall state, on its face, in a clearly visible manner approved by the commissioner, that such evidence or certificate of indebtedness is not federally insured;

3. Buy and sell bonds or choses in action of any person, firm or corporation;

4. Impose a charge of five cents for each default in the payment of one dollar, or fraction thereof, at the time at which any periodical installment for the repayment of a loan becomes due;

5. Demand and receive for loans or for notes, bills or evidences of debt discounted or purchased, such rate of interest as may be agreed upon by the parties, not exceeding the lawful rate of interest, and it shall be lawful to receive such interest in advance;

6. Charge for a loan made pursuant to this section, one dollar for each fifty dollars, or fraction thereof, loaned, for expenses including any examination or investigation of the character and circumstances of the borrower, comaker or surety, and the drawing and taking the acknowledgment of necessary papers, or other expenses, incurred in making the loan. No additional charge shall be made except to reimburse the corporation for money actually expended for additional
service actually rendered the borrower. No charge shall be
collected unless a loan shall have been made as the result
of such examination or investigation;

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

(A) Such as shall be necessary for the convenient trans-
action of its business, including with its office other apart-
ments or offices to rent as a source of income, which invest-
ment shall not exceed twenty-five percent of its paid-in
capital stock and surplus;

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

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

(D) Such is acquired by sale on execution or judgment
or decree of any court in its favor.

Industrial loan companies shall not purchase, hold or
convey any real estate in any other case or for any other
purpose whatever. Real estate shall be conveyed only by
authority of the board of directors of any such industrial
loan company. No real estate acquired in the cases con-
templated in paragraphs (B), (C) and (D) of subdivision (7)
shall be held for a longer time than five years, unless such
period shall be extended by the commissioner of banking.

(b) An industrial loan company shall not:

(1) Accept or receive deposits;

(2) Make any loan under the provisions of this article for
a longer period than two years from the date thereof, except
upon express authorization of the board of directors of such
company;

(3) Hold at any one time the primary obligation or
obligations of any one person, firm or corporation, for more
than ten percent of the amount of the paid-up capital and
surplus of such industrial loan company;

(4) Hold at any one time the obligation or obligations
of persons, firms or corporations purchased from any person, firm or corporation in excess of twenty percent of the aggregate paid-up capital and surplus of such industrial loan company;

(5) Make any loan or discount on the security of its own capital stock (controlling and voting stock, if there be more than one class), unless such security or purchase shall be necessary to prevent loss upon a debt previously contracted in good faith. Stock so purchased or acquired shall be sold at public or private sale or otherwise disposed of within ninety days from the time of its purchase or acquisition;

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

(7) Deposit any of its funds with any other moneyed corporation unless such corporation has been designated as such depository by a vote of the majority of the board of directors;

(8) Pledge or hypothecate any of its securities or notes owned by it to any creditor, except that such companies shall have the power to rediscount or to borrow money from any source in addition to selling its evidences or certificates of indebtedness, but the aggregate amount of such rediscounting and borrowing shall at no time exceed the sum total of the capital, surplus and reserve funds of such company, and the security so pledged therefor shall not exceed two times the amount borrowed and rediscounted;

(9) Pay any fees, bonuses, commissions, rewards, or other consideration to any person, firm or corporation for the privilege of using any plan of operation, scheme or device for the organization or carrying on of business under this article, or the use of any name, trademark or copyright to be so used; nor shall any industrial loan company under this article enter into any contract for such purpose or purposes, or for the purpose of giving to or vesting in any other corporation any power or authority over the organization or management of corporations under this article.
§31-7-12. Cash reserves.

(a) Every industrial bank organized pursuant to this article shall at all times maintain a cash reserve equal to five percent of its aggregate deposits and for such purpose the regulatory, reporting and penalty provisions of section twenty-two, article four, chapter thirty-one-a of this code shall apply to such reserves as shall the provision of said section twenty-two with respect to the form or nature of such reserves.

(b) Every industrial loan company organized pursuant to the provisions of this article, shall at all times maintain a cash reserve equal to five percent of its issued and outstanding evidences or certificates of indebtedness and the commissioner may prescribe by rule or regulation the form or nature of such reserves.

§31-7-13. Supervision and control.

(a) Every industrial loan company shall be subject to the inspection, examination, supervision, jurisdiction and control of the commissioner and the board in the same manner and to the same extent as is the case of banking institutions organized under the laws of this state under the provisions of chapter thirty-one-a of this code insofar as the same are applicable thereto. Where forty percent or more of the common stock of any industrial loan company is owned or is held in trust for the benefit of or by any other single firm, corporation, partnership or association, such other firm, corporation, partnership or association shall also be subject to the same jurisdiction and powers of inspection, examination, supervision and control of the commissioner and of the board in the same manner and to the same extent as if such other firm, corporation, partnership or association were an industrial loan company.

(b) Every industrial bank shall be subject to the inspection, examination, supervision, jurisdiction and control of the commissioner and of the board in the manner provided in chapter thirty-one-a of this code and to the same extent as is the case of other banking institutions organized under the laws of this state and in addition, shall be subject to all of the provisions, regulations and requirements of the federal deposit insurance corporation including the right of inspection, exami-
nation, supervision and control as may be required by the federal deposit insurance corporation.

§31-7-14. **Branch industrial loan companies or industrial banks forbidden; limited off-premises industrial bank facility permitted; limitation on purchases of industrial bank stock; penalties.**

(a) No industrial loan company or industrial bank shall:

(1) Install or maintain any branch industrial loan company or branch industrial bank; or

(2) Engage in business at any place other than at its principal office in this state: Provided, That at any time any such industrial bank may operate one and only one off-premises walk-in or drive-in industrial banking facility, on or in conjunction with or entirely separate from a parking lot for the customers of such industrial bank, for the purpose of receiving deposits, cashing checks, making change, selling and issuing money orders and travelers checks and receiving payments on installment accounts, and for no other purposes, provided such off-premises banking facility is located within two thousand feet of the banking house premises of the industrial bank operating such off-premises facility measured between the nearest points of the banking house premises and the premises on which such off-premises banking facility is located.

(b) It shall be unlawful for any individual, partnership, society, association, firm, institution, trust, syndicate, public or private corporation, or any other legal entity, or combination of entities acting in concert, to directly or indirectly own, control or hold with power to vote, twenty-five percent or more of the voting shares of more than seven industrial banks, or to control in any manner the election of a majority of the directors of more than seven industrial banks, and the provisions of this subsection shall govern and control irrespective of any other provision of this code restricting or limiting the ownership or control of voting shares of industrial banks or the control of the election of directors thereof, whether such other provision was enacted before or after the enactment of this article.

(c) Any violation of any provision of this section shall
constitute a misdemeanor offense punishable by applicable penalties as provided in section fifteen of article eight of chapter thirty-one-a of this code."

§31-7-15. Subrogation.

The provisions of section 1821 (g) of chapter sixteen of Title twelve of the United States code shall specifically apply to and shall be a condition upon each deposit in an industrial bank to the same extent as if such provisions were set forth in extenso herein.

§31-7-16. Annual and special meetings of stockholders; quorum; annual report; voting; proxies.

The stockholders of each industrial loan company shall meet annually in the month of February, a majority of the outstanding voting stock to constitute a quorum; and it shall be the duty of the secretary to prepare and submit to the stockholders a clear and concise statement of the financial condition of the corporation as of the close of business on the last day of the year next preceding. At such meeting the stockholders shall elect a board of directors of not less than five nor more than twenty-five, a majority of which shall be bona fide residents of the state of West Virginia. Special meetings may be called by order of the board of directors or by request in writing of ten per centum of the stockholders.

In all elections of directors of the corporation each stockholder shall have the right to cast one vote for each share of stock owned by him and entitled to vote, and he may cast the same in person or by proxy, for as many persons as there are directors to be elected, or he may cumulate such votes and give one candidate as many votes as the number of directors to be elected multiplied by the number of his shares of stock shall equal; or he may distribute them on the same principle among as many candidates and in such manner as he may desire, and the directors shall not be elected in any other manner, and on any other question to be determined by a vote of shares at any meeting of stockholders each stockholder shall be entitled to one vote for each share of stock owned by him and entitled to vote, and he may exercise this right in person or by proxy, but if by proxy, in
no instance can it be voted in any meeting other than which it was first intended.

The provisions of section twenty, article four, chapter thirty-one-a shall govern and control stockholders' meetings of industrial banks.

§31-7-17. Directors; officers.

The affairs of every industrial bank and industrial loan company shall be managed by a board of not less than five nor more than twenty-five directors who shall meet at least once each month, a majority of whom shall at all times be bona fide residents of this state, and shall own and hold in his own name at least five hundred dollars par value in unpledged shares of the capital stock or voting stock of such industrial bank or industrial loan company.

Immediately upon the adjournment of the stockholders' meeting or as soon thereafter as convenient, the newly elected directors shall meet and every such director elected shall take an oath that he will, so far as duty devolves on him, diligently and honestly administer the affairs of such industrial bank or industrial loan company, and will not knowingly and willingly violate, or permit to be violated, any of the provisions of this article, and that he is the owner in good faith, and in his own right, of at least five hundred dollars par value in shares of the capital stock of such industrial bank or industrial loan company, as required by this section, subscribed by him or standing in his name on the books of such industrial bank or loan company, and that the same are not hypothecated or in any way pledged as security for any loan or debt. Such oath, when subscribed by the director making it, and certified by the officer before whom it was taken, shall immediately be transmitted to the commissioner of banking, and shall be filed and preserved in his office. Should a director fail to subscribe to the oath herein provided for within sixty days after notice of his election or at any time after qualifying as such, sell or dispose of, or in any manner hypothecate or pledge as security for a debt or obligation, such qualifying shares, or any number thereof, necessary for his qualification, or due to death, resignation or inability to serve of any
elected director, thereupon the remaining directors shall elect another director in his stead.

It shall be the duty of the board at their organization meeting or as soon thereafter as convenient to elect a president who shall be a director, one or more vice-presidents, a secretary or manager, treasurer and such other officers necessary for the conduct of business as may be designated in the bylaws.

§31-7-18. Chief executive and other officers to be bonded; personal liability of directors for manager's defalcation.

(a) The directors of every industrial loan company shall require the manager or other chief executive officer appointed by them in lieu of a manager, before he performs or enters upon any duties as such manager or chief executive officer, to give a bond or bonds, with a surety company authorized to transact business in this state as surety thereon, the amount to be fixed by them, but in no case shall the penalty be less than five thousand dollars. Other officers and personnel are to be bonded in amounts commensurate with their duties and responsibilities, to be fixed by the board of directors, and all bonds are to be approved by the commissioner of banking and a copy filed with his department; and it shall be the duty of the directors, as often as once in every year, to pass upon the sufficiency of such bond or bonds, and if insufficient, to require without delay new and additional bonds and securities to be given. If the directors shall fail to perform any or all of the requirements of this section, they shall be jointly and severally liable to the industrial bank or to the industrial loan company, as the case may be; to the extent of any defalcation of or deficiency in the funds of such bank or company created or caused by such manager, not in excess of the penalty of his bond, the same to be recovered by such industrial bank or industrial loan company in any court of competent jurisdiction of this state.

(b) The directors, managers, chief executive officers and employees of an industrial bank shall give a bond or bonds as may be required by the provisions of chapter thirty-one-a of this code and the federal deposit insurance corporation. The requirements of said chapter thirty-one-a and the requirements,
rules and regulations of the federal deposit insurance corporation shall apply to any defalcation of any such bond or bonds.

§31-7-19. List of stockholders; right of inspection.

The president, manager or treasurer of every industrial bank or of every industrial loan company shall at all times cause to be kept a true and accurate list of the names of stockholders of record, with the amount of stock held by each, which list shall at all times during business hours be open to the inspection of any stockholder, or to the inspection of the commissioner or his duly authorized representative or to the authorized personnel or representatives of the federal deposit insurance corporation.

§31-7-20. Dividends.

The board of directors of any industrial loan company may at any time declare dividends out of the net accrued cash earnings of the company, payable upon the controlling and voting stock thereof, but no such dividend shall be paid until after the payment of all the fixed amounts agreed to be paid upon other classes of stock and the interest upon the evidences or certificates of indebtedness of the company. Unearned interest, accrued and uncollected interest shall not be distributed as a part of the profits.

Dividends of an industrial bank shall be declared and paid in accordance with the provisions of section twenty-five, article four, chapter thirty-one of this code.

§31-7-21. Amendments to bylaws by industrial loan companies.

The stockholders at any regular, or special meeting called for that purpose, may amend the bylaws of any industrial loan company organized under the provisions of this article, but before they become operative they must be approved by the commissioner of banking.

§31-7-22. Voluntary dissolution of industrial loan companies.

Whenever any industrial loan company shall determine by its board of directors, with the consent of three fourths of the holders of its controlling and voting stock, to discontinue its business and settle its affairs, it shall be lawful for such board
of directors to file with the commissioner of banking of this
state a certificate in writing, signed and acknowledged by such
stockholders, expressing such consent, and likewise the certi-
ficate of the board of directors under the corporate seal, set-
ning forth such intention, and that they thereby surrender to
the state their corporate privileges and powers and authority
to do business as an industrial loan company. Thereupon such
corporation shall be deemed and taken to be dissolved, except
for the purpose of distributing its assets and otherwise setting
its affairs, as provided in article one of this chapter.

§31-7-23. Loans to officers and employees of industrial loan com-
panies; penalty.

No industrial loan company shall make any loan to its
president, its vice-president, its manager, or to any of its di-
rectors, or to any of its clerks, tellers, bookkeepers, agents, ser-
vants or other persons in its employ, until the proposition to
make such loan, stating the amount, terms and security, if
any, offered therefor shall have been submitted in writing by
the person desiring the same to a meeting of the board of di-
rectors of such company or of the executive or discount com-
mittee of such board, if any, and accepted and approved by
the vote of a majority of those present constituting a quorum.
The president, vice-president, director, manager, clerk, teller,
bookkeeper, or agent of any industrial loan company who
knowingly violates this section, or who aids or abets any offi-
cer, clerk or agent in any such violation, shall be deemed guilty
of a misdemeanor, and, upon conviction thereof, shall be fined
not more than one thousand dollars or imprisoned in the
county jail not more than one year, or both.

§31-7-24. Advertising requirements and prohibitions.

(a) No industrial loan company shall hereafter advertise
for the purpose of soliciting the sale or offer for sale of its
secured or unsecured evidences or certificates of indebtedness
irrespective of the advertising media used unless such adver-
tisement shall contain a statement that such corporation is not
insured by any agency of the federal government and that such
evidences or certificates of indebtedness are not insured by any
agency of the federal government unless such insurance does
in fact exist and, if so, the amount of such insurance shall be stated; nor shall any such advertisement refer to such evidences or certificates of indebtedness as “savings accounts,” “deposits” or “savings deposits” and the use of such terms in any such advertisements is hereby prohibited.

The display of the words “NOT FEDERALLY INSURED” in letters at least one third the size of the largest type size used in any display or advertisement, but in no event smaller than twelve point type bold upper case, shall be deemed to be compliance with this section.

(b) No industrial bank shall advertise itself as a bank nor shall any of its advertisements, irrespective of the media used, contain the word or term “bank,” “banker,” “banking company,” “banking association,” “bankers association,” “savings bank,” or “trust company.”

§31-7-25. Restrictions upon statements or advertisements relating to guaranteeing the payment to holders of certificates of indebtedness; use of certain symbols or devices prohibited.

(a) No industrial loan company in advertising for the purpose of soliciting the sale or offer for sale or for any other purpose related to the sale of its secured or unsecured evidences or certificates of indebtedness or for any other purpose irrespective of the media used or in any statements made in any manner to any prospective purchaser of such evidences or certificates shall state that the payment required by the terms of such evidences or certificates of indebtedness is guaranteed unless such payment is so guaranteed by a source or from resources which are independent of and separate from the resources and assets of such company and if so guaranteed the source, terms and conditions of such guarantee shall be stated upon the face of every such evidence or certificate of indebtedness in the manner and form prescribed by the commissioner and such source, terms and conditions shall be first approved in writing by the commissioner.

(b) No industrial loan company shall use in any of its advertisements, signs, displays, stationery, or documents or in any other manner use any symbol, device, trademark or
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20 seal which is alike or deceptively similar to any device, symbol, trademark, or seal of the federal deposit insurance corporation or of any other federal agency or of any other corporation authorized to transact business in this state and any such symbol, device, trademark or seal proposed to be adopted or used by any such industrial loan company shall, prior to its adoption or use, be approved in writing by the commissioner.

§31-7-26. Rules and regulations.

1 The commissioner and the board may, from time to time, adopt and promulgate such rules and regulations as they deem appropriate to carry into effect the provisions of this article in accordance with the provisions of chapter thirty-one-a of this code. All such rules and regulations shall be so adopted and promulgated in the manner prescribed in chapter twenty-nine-a of this code and the provisions of said chapter twenty-nine-a shall apply to the adoption and promulgation of such rules and regulations as if such provisions were set forth in extenso herein.

§31-7-27. Additional powers and duties of the commissioner; fees; powers of the board; appeals and judicial review.

(a) Except as may be inconsistent with the provisions of this article, all of the duties, powers and authority imposed upon the commissioner or vested in him by the provisions of chapter thirty-one-a of this code shall be applicable with respect to industrial banks and industrial loan companies created pursuant to the provisions of this article and all fees, costs and expenses authorized to be collected by the commissioner by the terms of said chapter thirty-one-a shall apply to and be collected from such industrial banks and industrial loan companies when appropriate. Appeals from any orders or actions of the commissioner or judicial review thereof shall be in the same manner as may be prescribed in chapter twenty-nine-a of this code.

(b) Except as may be inconsistent with the provisions of this article, the board shall have the same general powers and duties with respect to industrial banks and industrial loan companies organized and created under the provisions of this
article as are contained in chapter thirty-one-a of this code.
All provisions for hearing procedures and procedures for
judicial review and appeals therefrom as are contained in
said articles three and eight, chapter thirty-one-a shall apply
to this article to the same extent as if such provisions were
set forth in extenso herein.

§31-7-28. Article applicable to existing companies of like nature
originally chartered under building and loan associa-
tion laws.

Any corporation now organized, existing and doing any
business in this state on a plan which would come within the
scope of the regulatory provisions of this article, and which
was originally chartered with the approval of the commissioner
of banking under the laws of this state providing for the
organization of building and loan associations, shall fully
comply with, and be subject to, all the regulatory provisions
hereof and shall be subject to the supervision and control of
the commissioner as herein provided; but nothing herein
shall affect or modify the corporate existence of any such
existing corporation, and any such existing corporation shall
be authorized and allowed to sell the full amount of its
present authorized capital stock on the terms and conditions
heretofore approved by the commissioner.

§31-7-29. Severability and constitutionality.

If any provisions of this article or the application thereof to
any person or circumstance is held to be unconstitutional or
otherwise invalid, the remainder of this article and the applica-
tion of such provision to other persons or circumstances shall
not be affected thereby, and it shall be conclusively presumed
that the Legislature would have enacted the remainder of this
article without such invalid or unconstitutional provisions.

CHAPTER 31A. BANKS AND BANKING.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.


As used in this chapter, unless the context in which used
plainly requires a different meaning:
(a) The word "action," in the sense of a judicial proceeding, means any proceeding in a court of competent jurisdiction in which rights are adjudicated and determined and shall embrace and include recoupment, counterclaim, setoff and other related, similar and summary proceedings;

(b) The words "bank" and "banking institution" mean a corporation heretofore or hereafter chartered to conduct a banking business under the laws of West Virginia or an association heretofore or hereafter authorized to conduct a banking business in West Virginia under the laws of the United States and having its principal office in this state and shall embrace and include a trust company or an institution combining banking and trust company facilities, functions and services so chartered or authorized to conduct such business in this state, and shall include industrial banks authorized by article seven, chapter thirty-one of this code, subject to the limitations therein imposed on such industrial banks and further subject to the limitations imposed thereon in this article;

(c) The term "banking business" means the functions, services and activities contained, detailed and embraced in sections thirteen and fourteen of article four of this chapter and as elsewhere defined by law;

(d) The word "board" means the West Virginia board of banking and financial institutions;

(e) The words "commissioner" or "commissioner of banking" mean the commissioner of banking of West Virginia;

(f) The word "community" means a city, town or other incorporated area, or, where not so incorporated, a trading area;

(g) The word "department" means the department of banking of West Virginia;

(h) The words "deputy commissioner" or "deputy commissioner of banking" mean the deputy commissioner of banking of West Virginia;

(i) The word "fiduciary" means any trustee, agent, executor, administrator, curator, committee, guardian or conserva-
tor, special commissioner, receiver, trustee in bankruptcy, assignee for creditors, or any holder of a similar position of trust or responsibility;

(j) The words "financial institutions" mean banks, building and loan associations, industrial banks, industrial loan companies, small loan companies, credit unions and all other similar institutions, whether persons, firms or corporations, which are by law under the jurisdiction and supervision of the commissioner of banking;

(k) The word "officer" when referring to any financial institution, means any person designated as such in the bylaws and includes, whether or not so designated, any executive officer, the chairman of the board of directors, the chairman of the executive committee, and any trust officer, assistant vice-president, assistant treasurer, assistant secretary, assistant trust officer, assistant cashier, assistant comptroller, or any other person who performs the duties appropriate to those offices, and the term "executive officer" as herein used, when referring to banking institutions, means an officer of a bank whose duties involve regular, active and substantial participation in the daily operations of such institution and who, by virtue of his position, has both a voice in the formulation of the policy of the bank and responsibility for implementation of the policy, such responsibility of and functions performed by the individual, and not his title or office, being determinative of whether he is an "executive officer";

(l) The words "person" or "persons" mean any individual, partnership, society, association, firm, institution, company, public or private corporation, state, governmental agency, bureau, department, division or instrumentality, political subdivision, county court, municipality, trust, syndicate, estate or any other legal entity whatsoever, formed, created or existing under the laws of this state or any other jurisdiction;

(m) The words "safe-deposit box" mean a safe-deposit box, vault or other safe-deposit receptacle maintained by a lessor bank, and the rules relating thereto apply to property or documents kept therein in the bank's vault under the joint control of lessor and lessee;
(n) The words "state bank" or "state banking institution" mean a bank chartered under the laws of West Virginia, as distinguished from a national banking association; and

(o) The words "trust business" mean the functions, services and activities contained, detailed and embraced in section fourteen of article four of this chapter and as elsewhere defined by law and as may be included within the meaning of the term "banking business".

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.
§31A-4-14. Trust powers of banking institutions.

Every state banking institution, except industrial banks created and organized pursuant to the provisions of article seven, chapter thirty-one-a of this code, which files the certificate required in the following section and which is otherwise authorized to do so, shall have and exercise the following powers:

(a) All the powers, rights and privileges of any state banking institution;

(b) To act as trustee, assignee, special commissioner, general or special receiver, guardian, executor, administrator, committee, agent, curator, or in any other fiduciary capacity, and to take, assume, accept and execute trusts of every description not inconsistent with the Constitution and laws of the United States of America or of this state; and to receive, hold, manage and apply any sinking fund on the terms and for the purposes specified in the instrument creating such fund;

(c) To act as registrar, transfer agent or dividend or coupon paying agent for any corporation;

(d) To make, hold and dispose of investments and establish common trust funds, and account therefor, pursuant to the provisions of chapter forty-four of this code;

(e) To purchase and sell and take charge of and receive the rents, issues and profits of any real estate for other persons or corporations;

(f) To act as trustee or agent in any collateral trust and in order to secure the payment of any obligations of any person,
firm, private corporation, public corporation, public body or
public agency to receive and hold in trust any items of personal
property (including without limitation notes, bonds, debentures,
obligations and certificates for shares of stock) with the right in
case of default to sell and dispose of such personal property
and to collect, settle and adjust any obligations for the pay-
ment of money, and at any sale of such personal property held
by it, to purchase the same for the benefit of all or any of the
holders of the obligations, to secure the payment of which such
items of personal property were pledged and delivered to the
trustee or agent. Any such sale may be made without any pro-
ceedings in any court, and at such times and upon such terms
as may be specified in the instrument or instruments creating
the trust, or, in the absence of any specification of terms, at
such time and upon such terms as the trustee shall deem rea-
sonable; and

(g) To do and perform any act or thing requisite or neces-
sary in, or incidental to, the exercise of the general powers
herein set forth.

All national banks having their principal offices in this state
which have been, or hereafter may be, authorized under the
laws of the United States to act as trustee and in other fidu-
ciary capacities in the state of West Virginia shall have all the
rights, powers, privileges and immunities conferred hereunder,
provided they have a capital of at least one hundred thousand
dollars and comply with the requirements hereof.

§31A-4-22. Reserves required of banking institutions; reports;
penalties.

1 Each state banking institution, except industrial banks
created and organized pursuant to the provisions of article
seven, chapter thirty-one of this code shall at all times main-
tain on hand as a reserve in lawful money of the United
States of America an amount equal to at least seven percent
of the aggregate of all of its deposits which are subject to
withdrawal on demand and three percent of its time deposits.
Whenever the commissioner of banking shall determine that
the maintenance of sound banking practices or the prevention
of injurious credit expansion or contraction makes such
action advisable, he may by rule or regulation from time to
time change such requirements as to reserves against demand
or time deposits, or both, but the reserves so prescribed shall
in no event be less than those specified in this section nor
more than twice those specified. Whenever such reserve shall
fall below that required, the institution shall not thereafter
make any new loan or investment until the required reserve
shall be restored. For the purpose of computing such reserve,
all deposits requiring notice of thirty days or more for with-
drawal and time certificates of deposit and Christmas savings
shall be deemed time deposits, and all checking accounts,
certified checks, cashier's checks, demand certificates of deposit
and balances due other banks shall be deemed demand de-
posits. But in lieu of lawful money on hand, four fifths of
such reserve may consist of balances payable on demand
from any national or state bank doing business in this state
or solvent banking institutions in other states. The reserve
balances required herein shall be computed on the basis of
average daily net deposit balances and average daily currency
and coin during biweekly periods. The required reserve bal-
ance of each bank shall be computed at the close of business
each day based upon its net deposit balances and currency and
coin at the opening of business on the same day. The
biweekly period shall end at the close of business on days
to be fixed by the commissioner in his promulgated rules
and regulations. When, however, the reserve computation
period ends with a nonbusiness day, or two or more con-
secutive nonbusiness days, such nonbusiness day or days may,
at the option of the banking institution, and whether or not
it had a deficiency in reserve balances in such computation
period, be included in the next biweekly computation period.

The commissioner shall, by rule and regulation, require
regular reports from such banking institutions, which reports
shall be submitted at such times and contain such information
as will enable the commissioner to adequately supervise the
maintenance of reserves under this section. Penalties for any
deficiencies in the required reserves of any banking institution
shall be assessed monthly by the commissioner on the basis
of average daily deficiencies during each of the computation
periods ending in the preceding calendar month. Such
penalties shall be assessed at a rate of two percent per annum above the lowest rate applicable to borrowings by member banks from the federal reserve bank of the district in which such deficient institution is located on the first day of the calendar month in which the deficiencies occurred. Such penalties shall be paid by the commissioner into the treasury of the state of West Virginia and credited to the general fund.

Compliance on the part of any such banking institution which is a member of the federal reserve system with the reserve requirements of the Federal Reserve Act, as amended, shall be full compliance with the provisions hereof. No such member bank shall be required to carry or maintain a reserve other than such as required under terms of the Federal Reserve Act, as amended.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

H. Daniel Clardy  
Chairman Senate Committee

Clarence A. tenth
Chairman House Committee

Originated in the House.
Takes effect ninety days from passage.

Howard W. Cannon  
Clerk of the Senate

M. Blankenship  
Clerk of the House of Delegates

J. P. Brotherton, Jr.  
President of the Senate

L. W. Manns  
Speaker House of Delegates

The within approved this the 26th day of March, 1974.

Audra H.驚  
Governor