

No: 1688

• APPROVED AND SIGNED BY THE GOVERNOR

Date 3-10-83

RECEIVED

MAR 4 2 29 PM '83

OFFICE OF THE GOVERNOR

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1983



# ENROLLED

HOUSE BILL No. 1688...

(By Mr. Lillian.....)



Passed February 24,..... 1983

In Effect Ninety Days From..... Passage



ENROLLED

# H. B. 1688

(By MR. GILLIAM)

---

[Passed February 24, 1983; in effect ninety days from passage.]

---

AN ACT to amend and reenact sections thirteen and twenty-six, article four, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to powers of state banking institutions generally; limitations on loans and extensions of credit; limitations on investments; loans to officers and employees of banks and banking department; valuation of securities.

*Be it enacted by the Legislature of West Virginia:*

That sections thirteen and twenty-six, article four, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.**

**§31A-4-13. Powers of state banking institutions generally.**

1 Any state-chartered banking institution shall have and exer-  
2 cise all of the powers necessary for, or incidental to, the busi-  
3 ness of banking, and, without limiting or restricting such gen-  
4 eral powers, it shall have the right to buy or discount promis-  
5 sory notes and bonds, negotiate drafts, bills of exchange and  
6 other evidences of indebtedness, borrow money, receive de-  
7 posits on such terms and conditions as its officers may pre-  
8 scribe, buy and sell exchange, bank notes, bullion or coin,  
9 loan money on personal or other security, rent safe-deposit  
10 boxes and receive on deposit, for safekeeping, jewelry, plate,  
11 stocks, bonds and personal property of whatsoever description

12 and provide customer services incidental to the business of  
13 banking, including, but not limited to, the insurance and ser-  
14 vicing of and lending money by means of credit cards as letters  
15 of credit or otherwise. Any state-chartered banking institution  
16 may accept, for payment at a future date, not to exceed one  
17 year, drafts drawn upon it by its customers. Any state-chartered  
18 banking institution may issue letters of credit, with a specified  
19 expiration date or for a definite term, authorizing the holders  
20 thereof to draw drafts upon it or its correspondents, at sight or  
21 on time, but no such letters of credit shall authorize the draw-  
22 ing of drafts beyond one year. Any such banking institution  
23 may organize, acquire, own, operate, dispose of, and otherwise  
24 manage wholly owned subsidiary corporations for purposes  
25 incident to the banking powers and services authorized by  
26 this chapter.

27 Any such banking institution may acquire, own, hold, use  
28 and dispose of, real estate, which shall in no case be carried  
29 on its books at a value greater than the actual cost, subject to  
30 the following limitations and for the following purposes:

31 (a) Such as shall be necessary for the convenient transaction  
32 of its business, including in any buildings, office space or  
33 other facilities to rent as a source of income; such investment  
34 hereafter made shall not exceed sixty-five percent of the  
35 amount of its capital stock and surplus, unless the consent in  
36 writing of the commissioner of banking is first secured;

37 (b) Such as shall be mortgaged to it in good faith as security  
38 for debts in its favor;

39 (c) Such as shall be conveyed to it in satisfaction of debts  
40 previously contracted in the course of its business dealings;

41 (d) Such as it shall purchase at sales under judgments, de-  
42 crees, trust deeds or mortgages in its favor, or shall purchase  
43 at private sale, to secure and effectuate the payment of debts  
44 due to it; and

45 (e) The value at which any real estate is held shall not be  
46 increased by the addition thereto of taxes, insurance, interest,  
47 ordinary repairs, or other charges which do not materially en-  
48 hance the value of the property.

49 Any real estate acquired by any such banking institution  
50 under subdivisions (c) and (d) shall be disposed of by the  
51 banking institution at the earliest practicable date, but the  
52 officers thereof shall have a reasonable discretion in the mat-  
53 ter of the time to dispose of such property in order to save  
54 the banking institution from unnecessary losses. In every case  
55 such property shall be disposed of within five years from the  
56 time it is acquired by the banking institution, unless an ex-  
57 tension of time is given in writing by the commissioner of  
58 banking.

59 No such banking institution shall hereafter invest more than  
60 twenty percent of the amount of its capital and surplus in  
61 furniture and fixtures, whether the same be installed in a  
62 building owned by such banking institution, or in quarters  
63 leased by it, unless the consent in writing of the commissioner  
64 of banking is first secured.

**§31A-4-26. Limitation on loans and extensions of credit; limitation  
on investments; loans to officers and employees of  
banks and banking department; exceptions; valua-  
tion of securities.**

1 (a) (1) The total loans and extensions of credit by a  
2 state-chartered banking institution to a person outstanding  
3 at one time and not fully secured, as determined in a manner  
4 consistent with subdivision (2) of this subsection, by col-  
5 lateral having a market value at least equal to the  
6 amount of the loan or extension of credit shall not exceed  
7 fifteen percent of the unimpaired capital and unimpaired  
8 surplus of that state-chartered banking institution.

9 (2) The total loans and extensions of credit by a state-  
10 chartered banking institution to a person outstanding at one  
11 time and fully secured by readily marketable collateral having  
12 a market value, as determined by reliable and continuously  
13 available price quotations, at least equal to the amount of the  
14 funds outstanding shall not exceed ten percent of the unim-  
15 paired capital and unimpaired surplus of that state-chartered  
16 banking institution. This limitation shall be separate from  
17 and in addition to the limitation contained in subdivision (1)  
18 of this subsection.

19 (3) For the purposes of this subsection:

20 (A) The term "loans and extensions of credit" shall in-  
21 clude all direct or indirect advances of funds to a person  
22 made on the basis of any obligation of that person to repay  
23 the funds or repayable from specific property pledged by or  
24 on behalf of the person and to the extent specified by the  
25 commissioner of banking, such terms shall also include any  
26 liability of a state-chartered banking institution to advance  
27 funds to or on behalf of a person pursuant to a contractual  
28 commitment; and

29 (B) The term "person" shall include an individual, part-  
30 nership, society, association, firm, institution, company,  
31 public or private corporation, state, governmental agency,  
32 bureau, department, division or instrumentality, political sub-  
33 division, county commission, municipality, trust, syndicate,  
34 estate or any other legal entity whatsoever, formed, created  
35 or existing under the laws of this state or any other juris-  
36 diction.

37 (4) The limitations contained in this subsection shall be  
38 subject to the following exceptions:

39 (A) Loans or extensions of credit arising from the dis-  
40 count of commercial or business paper evidencing an obliga-  
41 tion to the person negotiating it with recourse shall not be  
42 subject to any limitation based on capital and surplus;

43 (B) The purchase of bankers' acceptances of the kind  
44 described in section thirteen of the federal reserve act and  
45 issued by other banks shall not be subject to any limitation  
46 based on capital and surplus;

47 (C) Loans and extensions of credit secured by bills  
48 of lading, warehouse receipts, or similar documents  
49 transferring or securing title to readily marketable staples  
50 shall be subject to a limitation of thirty-five percent of  
51 capital and surplus in addition to the general limitations  
52 if the market value of the staples securing each additional  
53 loan or extension of credit at all times equals or exceeds  
54 one hundred fifteen percent of the outstanding amount of  
55 such loan or extension of credit. The staples shall be

56 fully covered by insurance whenever it is customary to  
57 insure such staples;

58 (D) Loans or extensions of credit secured by bonds,  
59 notes, certificates of indebtedness, or treasury bills of  
60 the United States or by other such obligations fully  
61 guaranteed as to principal and interest by the United States  
62 or by bonds, notes, certificates of indebtedness which are  
63 general obligations of the state of West Virginia or by  
64 other such obligations fully guaranteed as to principal and  
65 interest by the state of West Virginia shall not be subject to  
66 any limitation based on capital and surplus;

67 (E) Loans or extensions of credit to or secured by  
68 unconditional takeout commitments or guarantees of any  
69 department, agency, bureau, board, commission or es-  
70 tablishment of the United States or of the state of West  
71 Virginia or any corporation wholly owned directly or  
72 indirectly by the United States shall not be subject to  
73 any limitation based on capital and surplus;

74 (F) Loans or extensions of credit secured by a segregated  
75 deposit account in the lending bank shall not be subject to  
76 any limitation based on capital and surplus;

77 (G) Loans or extensions of credit to any banking  
78 institution or to any receiver, conservator or other agent  
79 in charge of the business and property of such banking  
80 institution or other federally insured depository insti-  
81 tution, when such loans or extensions of credit are  
82 approved by the commissioner of banking, shall not be  
83 subject to any limitation based on capital and surplus;

84 (H) (i) Loans and extensions of credit arising from the  
85 discount of negotiable or nonnegotiable installment consumer  
86 paper which carries a full recourse endorsement or un-  
87 conditional guarantee by the person transferring the paper  
88 shall be subject under this section to a maximum limitation  
89 equal to twenty-five percent of such capital and surplus, not-  
90 withstanding the collateral requirements set forth in subdivision  
91 (2) of this subsection.

92 (ii) If the bank's files or the knowledge of its officers

93 of the financial condition of each maker of such consumer  
94 paper is reasonably adequate, and an officer of the bank  
95 designated for that purpose by the board of directors of the  
96 bank certifies in writing that the bank is relying primarily upon  
97 the responsibility of each maker for payment of such loans or  
98 extensions of credit and not upon any full or partial recourse  
99 endorsement or guarantee by the transferor, the limitations of  
100 this section as to the loans or extensions of credit of each such  
101 maker shall be the sole applicable loan limitations;

102 (I) (i) Loans and extensions of credit secured by  
103 shipping documents or instruments transferring or securing  
104 title covering livestock or giving a lien on livestock when  
105 the market value of the livestock securing the obligation is  
106 not at any time less than one hundred fifteen percent of the  
107 face amount of the note covered, shall be subject under this  
108 section, notwithstanding the collateral requirements set  
109 forth in subdivision (2) of this subsection, to a maximum  
110 limitation equal to twenty-five percent of such capital and  
111 surplus.

112 (ii) Loans and extensions of credit which arise from the  
113 discount by dealers in livestock of paper given in payment  
114 for livestock, which paper carries a full recourse en-  
115 dorsement or unconditional guarantee of the seller and  
116 which are secured by the livestock being sold, shall be  
117 subject under this section, notwithstanding the collateral  
118 requirements set forth in subdivision (2) of this sub-  
119 section, to a limitation of twenty-five percent of such  
120 capital and surplus;

121 (J) Loans or extensions of credit to the student loan mark-  
122 eting association shall not be subject to any limitation based  
123 on capital and surplus;

124 (K) Loans or extensions of credit to a corporation own-  
125 ing the property in which that state-chartered banking insti-  
126 tution is located, when that state-chartered banking institu-  
127 tion has an unimpaired capital and surplus of not less than  
128 one million dollars or when approved in writing by the com-  
129 missioner of banking, shall not be subject to any limitation  
130 based on capital and surplus.

131 (5) (A) The commissioner of banking may prescribe rules  
132 and regulations to administer and carry out the purposes of  
133 this subsection including rules or regulations to define or  
134 further define terms used in this subsection and to establish  
135 limits or requirements other than those specified in this  
136 subsection for particular classes or categories of loans or  
137 extensions of credit;

138 (B) The commissioner of banking may also prescribe rules  
139 and regulations to deal with loans or extensions of credit,  
140 which were not in violation of this section prior to the  
141 effective date of this act, but which will be in violation  
142 of this section upon the effective date of this act;

143 (C) The commissioner of banking also shall have authority  
144 to determine when a loan putatively made to a person  
145 shall for purposes of this subsection be attributed to another  
146 person.

147 (b) (1) Except as hereinafter provided or otherwise per-  
148 mitted by law, nothing herein contained shall authorize the pur-  
149 chase by a state-chartered banking institution for its own ac-  
150 count of any shares of stock of any corporation: *Provided,*  
151 That a state-chartered banking institution may purchase and  
152 sell securities and stock without recourse, solely upon the  
153 order and for the account of customers.

154 (2) In no event shall the total amount of investment  
155 securities of any one obligor or maker held by a state-  
156 chartered banking institution for its own account, exceed fif-  
157 teen percent of the unimpaired capital and unimpaired sur-  
158 plus of that state-chartered banking institution.

159 (3) For purposes of this subsection:

160 (A) The term "investment securities" shall include mark-  
161 etable obligations, evidencing indebtedness of any person in  
162 the form of stocks, bonds, notes and/or debentures;  
163 "investment securities" may be further defined by regula-  
164 tion of the commissioner of banking; and

165 (B) The term "person" shall include any individual,  
166 partnership, society, association, firm, institution, com-  
167 pany, public or private corporation, state, governmental

168 agency, bureau, department, division or instrumentality,  
169 political subdivision, county commission, municipality, trust,  
170 syndicate, estate or any other legal entity whatsoever,  
171 formed, created or existing under the laws of this state  
172 or any other jurisdiction.

173 (4) The limitations contained in this subsection (b) shall  
174 be subject to the following exceptions:

175 (A) Obligations of the United States;

176 (B) General obligations of any state or of any political  
177 subdivision thereof;

178 (C) Obligations issued under authority of the Federal  
179 Farm Loan Act, as amended, or issued by the thirteen  
180 banks for cooperatives or any of them or the Federal Home  
181 Loan Banks;

182 (D) Obligations which are insured by the secretary of  
183 housing and urban development under Title XI of the Na-  
184 tional Housing Act (12 USC §§1749aaa et seq.);

185 (E) Obligations which are insured by the secretary of  
186 housing and urban development hereafter in this sentence re-  
187 ferred to as the "secretary" pursuant to section 207 of the  
188 National Housing Act (12 USC §1713), if the debentures to be  
189 issued in payment of such insured obligations are guaranteed as  
190 to principal and interest by the United States;

191 (F) Obligations, participations or other instruments of  
192 or issued by the federal national mortgage association or  
193 the government national mortgage association, or mortgages,  
194 obligations or other securities which are or ever have been  
195 sold by the federal home loan mortgage corporation pursuant  
196 to Section 305 or Section 306 of the Federal Home Loan  
197 Mortgage Corporation Act (12 USC §1454 or §1455);

198 (G) Obligations of the federal financing bank;

199 (H) Obligations or other instruments or securities of the  
200 student loan marketing association;

201 (I) Obligations of the environmental financing author-  
202 ity;

203 (J) Such obligations of any local public agency (as de-  
204 fined in Section 110(h) of the Housing Act of 1949 (42 USC  
205 §1460 (h)) as are secured by an agreement between the local  
206 public agency and the secretary of housing and urban de-  
207 velopment in which the local public agency agrees to bor-  
208 row from said secretary and said secretary agrees to lend  
209 to said local public agency, moneys in an aggregate amount  
210 which (together with any other moneys irrevocably committed  
211 to the payment of interest on such obligations) will suffice  
212 to pay, when due, the interest on and all installments (in-  
213 cluding the final installment) of the principal of such obli-  
214 gations, which moneys under the terms of said agreement are  
215 required to be used for such payments;

216 (K) Obligations of a public housing agency as that term  
217 is defined in the United States Housing Act of 1937, as amend-  
218 ed, (42 USC §§ 1401 et. seq.) as are secured.

219 (i) By an agreement between the public housing agency  
220 and the secretary in which the public housing agency agrees  
221 to borrow from the secretary, and the secretary agrees to  
222 lend to the public housing agency, prior to the maturity of  
223 such obligations, moneys in an amount which, together with  
224 any other moneys irrevocably committed to the payment of  
225 interest on such obligations, will suffice to pay the prin-  
226 cipal of such obligations with interest to maturity thereon,  
227 which moneys under the terms of said agreement are required  
228 to be used for the purpose of paying the principal of and  
229 the interest on such obligations at their maturity;

230 (ii) By a pledge of annual contributions under an annual  
231 contributions contract between such public housing agency  
232 and the secretary if such contract shall contain the  
233 covenant by the secretary which is authorized by subsection  
234 (b) of Section 22 (Section 6 (g) (42 USC §1421a(b)) of  
235 the United States Housing Act of 1937, as amended, and if the  
236 maximum sum and the maximum period specified in such  
237 contract pursuant to said subsection 22(b) shall not be less  
238 than the annual amount and the period for payment which are  
239 requisite to provide for the payment when due of all install-  
240 ments of principal and interest on such obligations; or

241 (iii) By a pledge of both annual contributions under an  
242 annual contributions contract containing the covenant by the  
243 secretary which is authorized by Section 6 (g) of the United  
244 States Housing Act of 1937 (42 USC §1437d (g)) and a loan  
245 under an agreement between the local public housing agency  
246 and the secretary in which the public housing agency agrees to  
247 borrow from the secretary, and the secretary agrees to lend to  
248 the public housing agency, prior to the maturity of the obliga-  
249 tions involved, moneys in an amount which, together with any  
250 other moneys irrevocably committed under the annual contri-  
251 butions contract to the payment of principal and interest on  
252 such obligations will suffice to provide for the payment when  
253 due of all installments of principal and interest on such ob-  
254 ligations, which moneys under the terms of the agreement are  
255 required to be used for the purpose of paying the principal  
256 and interest on such obligations at their maturity;

257 (L) Obligations of a corporation owning the property in  
258 which that state-chartered banking institution is located  
259 when that state-chartered banking institution has an  
260 unimpaired capital and surplus of not less than one million  
261 dollars or when approved in writing by the commissioner of  
262 banking;

263 (5) Notwithstanding any other provision in this sub-  
264 section, a state-chartered banking institution may pur-  
265 chase for its own account shares of stock issued by a  
266 corporation authorized to be created pursuant to Title IX of  
267 the Housing and Urban Development Act of 1968 (42 USC  
268 §§3931 et. seq.) and may make investments in a partnership,  
269 limited partnership, or joint venture formed pursuant to sec-  
270 tion 907 (a) or 907 (c) of that act (42 USC §3937 (a) or (c))  
271 and may purchase shares of stock issued by any West Virginia  
272 housing corporation and may make investments in loans  
273 and commitments for loans to any such corporation: *Provided,*  
274 That in no event shall the total amount of such stock held  
275 for its own account and such investments in loans and  
276 commitments made by the state-chartered banking insti-  
277 tution exceed at any time five percent of the unimpaired  
278 capital and unimpaired surplus of that state-chartered  
279 banking institution.

280 (6) Notwithstanding any other provision in this sub-  
281 section, a state-chartered banking institution may pur-  
282 chase, for its own account, shares of stock of small  
283 business investment companies chartered under the laws of  
284 this state, which are licensed under the act of Congress  
285 known as the "Small Business Investment Act of 1958," as  
286 amended, and of business development corporations created and  
287 organized under the act of the Legislature known as the  
288 "West Virginia Business Development Corporation Act," as  
289 amended: *Provided*, That in no event shall any such state-  
290 chartered banking institution hold shares of stock in small  
291 business investment companies and/or business development  
292 corporations in any amount aggregating more than five per-  
293 cent of the unimpaired capital and unimpaired surplus of that  
294 state-chartered banking institution.

295 (7) The commissioner of banking may prescribe rules and  
296 regulations to administer and carry out the purposes of this  
297 subsection, including rules and regulations to define or fur-  
298 ther define terms used in this subsection and to establish  
299 limits or requirements other than those specified in this  
300 subsection for particular classes or categories of investment  
301 securities.

302 (c) No officer, director, clerk or other employee of any  
303 banking institution or the commissioner of banking or any  
304 employee of the department of banking shall borrow, directly  
305 or indirectly, from the banking institution with which he is  
306 connected, or which is subject to examination by the com-  
307 missioner of banking, any sum of money without the  
308 approval of a majority of the board of directors or discount  
309 committee of the banking institution, or of any duly con-  
310 stituted committee whose duties include those usually  
311 performed by a discount committee, embodied in a resolution  
312 adopted by a majority vote of such board or committee,  
313 exclusive of the director to whom the loan is made. If any  
314 officer, clerk or other employee of any bank shall own or  
315 control a majority of the stock of any other corporation, a  
316 loan to such corporation shall, for the purpose of this sec-  
317 tion, constitute a loan to such officer, clerk or other em-  
318 ployee.

319 (d) Securities purchased by a banking institution shall  
320 be entered upon the books of the bank at actual cost. For  
321 the purpose of calculating the undivided profits applicable  
322 to the payment of dividends, securities shall not be valued  
323 at a valuation exceeding their present cost as determined by  
324 amortization, that is, by deducting from the cost of a security  
325 purchased at a premium, and charging to profit and loss a  
326 sum sufficient to bring it to par at maturity.

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

*James L. Davis*  
-----  
Chairman Senate Committee

*Arnold Anzella*  
-----  
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

*Jedd C. Vukobratovic*  
-----  
Clerk of the Senate

*Donald L. Hoop*  
-----  
Clerk of the House of Delegates

*Warren R. McKean*  
-----  
President of the Senate

*Walter M. Lee, Jr.*  
-----  
Speaker House of Delegates

The within *is approved* this the *10*  
day of *March*, 1983.

*John R. Rhyne*  
-----  
Governor

RECEIVED

83 MAR 11 PM 12:43

OFFICE  
SECY. OF STATE