WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1983

ENROLLED

HOUSE BILL No. 1688

(By Mr. [Signature])

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 exercise all of the powers necessary for, or incidental to, the business of banking, and, without limiting or restricting such general powers, it shall have the right to buy or discount promissory notes and bonds, negotiate drafts, bills of exchange and other evidences of indebtedness, borrow money, receive deposits on such terms and conditions as its officers may prescribe, buy and sell exchange, bank notes, bullion or coin, loan money on personal or other security, rent safe-deposit boxes and receive on deposit, for safekeeping, jewelry, plate, stocks, bonds and personal property of whatsoever description
and provide customer services incidental to the business of
banking, including, but not limited to, the insurance and ser-
vicing of and lending money by means of credit cards as letters
of credit or otherwise. Any state-chartered banking institution
may accept, for payment at a future date, not to exceed one
year, drafts drawn upon it by its customers. Any state-chartered
banking institution may issue letters of credit, with a specified
expiration date or for a definite term, authorizing the holders
thereof to draw drafts upon it or its correspondents, at sight or
on time, but no such letters of credit shall authorize the draw-
ing of drafts beyond one year. Any such banking institution
may organize, acquire, own, operate, dispose of, and otherwise
manage wholly owned subsidiary corporations for purposes
incident to the banking powers and services authorized by
this chapter.

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

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

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

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

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

(e) The value at which any real estate is held shall not be
increased by the addition thereto of taxes, insurance, interest,
ordinary repairs, or other charges which do not materially en-
hance the value of the property.
Any real estate acquired by any such banking institution under subdivisions (c) and (d) shall be disposed of by the banking institution at the earliest practicable date, but the officers thereof shall have a reasonable discretion in the matter of the time to dispose of such property in order to save the banking institution from unnecessary losses. In every case such property shall be disposed of within five years from the time it is acquired by the banking institution, unless an extension of time is given in writing by the commissioner of banking.

No such banking institution shall hereafter invest more than twenty percent of the amount of its capital and surplus in furniture and fixtures, whether the same be installed in a building owned by such banking institution, or in quarters leased by it, unless the consent in writing of the commissioner 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; valuation of securities.

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

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

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

(B) The term "person" shall include an individual, partnership, society, association, firm, institution, company, public or private corporation, state, governmental agency, bureau, department, division or instrumentality, political subdivision, county commission, municipality, trust, syndicate, estate or any other legal entity whatsoever, formed, created or existing under the laws of this state or any other jurisdiction.

The limitations contained in this subsection shall be subject to the following exceptions:

(A) Loans or extensions of credit arising from the discount of commercial or business paper evidencing an obligation to the person negotiating it with recourse shall not be subject to any limitation based on capital and surplus;

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

(C) Loans and extensions of credit secured by bills of lading, warehouse receipts, or similar documents transferring or securing title to readily marketable staples shall be subject to a limitation of thirty-five percent of capital and surplus in addition to the general limitations if the market value of the staples securing each additional loan or extension of credit at all times equals or exceeds one hundred fifteen percent of the outstanding amount of such loan or extension of credit. The staples shall be
fully covered by insurance whenever it is customary to
insure such staples;

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

(E) Loans or extensions of credit to or secured by
unconditional takeout commitments or guarantees of any
department, agency, bureau, board, commission or es-

tablishment of the United States or of the state of West
Virginia or any corporation wholly owned directly or
indirectly by the United States shall not be subject to
any limitation based on capital and surplus;

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

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

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

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

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

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

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

(J) Loans or extensions of credit to the student loan marketing association shall not be subject to any limitation based on capital and surplus;

(K) Loans or extensions of credit to a corporation owning the property in which that state-chartered banking institution is located, when that state-chartered banking institution has an unimpaired capital and surplus of not less than one million dollars or when approved in writing by the commissioner of banking, shall not be subject to any limitation based on capital and surplus.
(5) (A) The commissioner of banking may prescribe rules and regulations to administer and carry out the purposes of this subsection including rules or regulations to define or further define terms used in this subsection and to establish limits or requirements other than those specified in this subsection for particular classes or categories of loans or extensions of credit;

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

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

(b) (1) Except as hereinafter provided or otherwise permitted by law, nothing herein contained shall authorize the purchase by a state-chartered banking institution for its own account of any shares of stock of any corporation: Provided, That a state-chartered banking institution may purchase and sell securities and stock without recourse, solely upon the order and for the account of customers.

(2) In no event shall the total amount of investment securities of any one obligor or maker held by a state-chartered banking institution for its own account, exceed fifteen percent of the unimpaired capital and unimpaired surplus of that state-chartered banking institution.

(3) For purposes of this subsection:

(A) The term "investment securities" shall include marketable obligations, evidencing indebtedness of any person in the form of stocks, bonds, notes and/or debentures; "investment securities" may be further defined by regulation of the commissioner of banking; and

(B) The term "person" shall include any individual, partnership, society, association, firm, institution, company, public or private corporation, state, governmental
agency, bureau, department, division or instrumentality, political subdivision, county commission, municipality, trust, syndicate, estate or any other legal entity whatsoever, formed, created or existing under the laws of this state or any other jurisdiction.

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

(A) Obligations of the United States;

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

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

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

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

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

(G) Obligations of the federal financing bank;

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

(I) Obligations of the environmental financing authority;
(J) Such obligations of any local public agency (as defined in Section 110(h) of the Housing Act of 1949 (42 USC §1460 (h)) as are secured by an agreement between the local public agency and the secretary of housing and urban development in which the local public agency agrees to borrow from said secretary and said secretary agrees to lend to said local public agency, moneys in an aggregate amount which (together with any other moneys irrevocably committed to the payment of interest on such obligations) will suffice to pay, when due, the interest on and all installments (including the final installment) of the principal of such obligations, which moneys under the terms of said agreement are required to be used for such payments;

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

(i) By an agreement between the public housing agency and the secretary in which the public housing agency agrees to borrow from the secretary, and the secretary agrees to lend to the public housing agency, prior to the maturity of such obligations, moneys in an amount which, together with any other moneys irrevocably committed to the payment of interest on such obligations, will suffice to pay the principal of such obligations with interest to maturity thereon, which moneys under the terms of said agreement are required to be used for the purpose of paying the principal of and the interest on such obligations at their maturity;

(ii) By a pledge of annual contributions contract between such public housing agency and the secretary if such contract shall contain the covenant by the secretary which is authorized by subsection (b) of Section 22 (Section 6 (g) (42 USC §1421a(b)) of the United States Housing Act of 1937, as amended, and if the maximum sum and the maximum period specified in such contract pursuant to said subsection 22(b) shall not be less than the annual amount and the period for payment which are requisite to provide for the payment when due of all installments of principal and interest on such obligations; or
(iii) By a pledge of both annual contributions under an annual contributions contract containing the covenant by the secretary which is authorized by Section 6 (g) of the United States Housing Act of 1937 (42 USC §1437d (g)) and a loan under an agreement between the local public housing agency and the secretary in which the public housing agency agrees to borrow from the secretary, and the secretary agrees to lend to the public housing agency, prior to the maturity of the obligations involved, moneys in an amount which, together with any other moneys irrevocably committed under the annual contributions contract to the payment of principal and interest on such obligations will suffice to provide for the payment when due of all installments of principal and interest on such obligations, which moneys under the terms of the agreement are required to be used for the purpose of paying the principal and interest on such obligations at their maturity;

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

(5) Notwithstanding any other provision in this subsection, a state-chartered banking institution may purchase for its own account shares of stock issued by a corporation authorized to be created pursuant to Title IX of the Housing and Urban Development Act of 1968 (42 USC §§3931 et. seq.) and may make investments in a partnership, limited partnership, or joint venture formed pursuant to section 907 (a) or 907 (c) of that act (42 USC §3937 (a) or (c)) and may purchase shares of stock issued by any West Virginia housing corporation and may make investments in loans and commitments for loans to any such corporation: Provided, That in no event shall the total amount of such stock held for its own account and such investments in loans and commitments made by the state-chartered banking institution exceed at any time five percent of the unimpaired capital and unimpaired surplus of that state-chartered banking institution.
(6) Notwithstanding any other provision in this subsection, a state-chartered banking institution may purchase, for its own account, shares of stock of small business investment companies chartered under the laws of this state, which are licensed under the act of Congress known as the "Small Business Investment Act of 1958," as amended, and of business development corporations created and organized under the act of the Legislature known as the "West Virginia Business Development Corporation Act," as amended: Provided, That in no event shall any such state-chartered banking institution hold shares of stock in small business investment companies and/or business development corporations in any amount aggregating more than five percent of the unimpaired capital and unimpaired surplus of that state-chartered banking institution.

(7) The commissioner of banking may prescribe rules and regulations to administer and carry out the purposes of this subsection, including rules and regulations to define or further define terms used in this subsection and to establish limits or requirements other than those specified in this subsection for particular classes or categories of investment securities.

(c) No officer, director, clerk or other employee of any banking institution or the commissioner of banking or any employee of the department of banking shall borrow, directly or indirectly, from the banking institution with which he is connected, or which is subject to examination by the commissioner of banking, any sum of money without the approval of a majority of the board of directors or discount committee of the banking institution, or of any duly constituted committee whose duties include those usually performed by a discount committee, embodied in a resolution adopted by a majority vote of such board or committee, exclusive of the director to whom the loan is made. If any officer, clerk or other employee of any bank shall own or control a majority of the stock of any other corporation, a loan to such corporation shall, for the purpose of this section, constitute a loan to such officer, clerk or other employee.
(d) Securities purchased by a banking institution shall be entered upon the books of the bank at actual cost. For the purpose of calculating the undivided profits applicable to the payment of dividends, securities shall not be valued at a valuation exceeding their present cost as determined by amortization, that is, by deducting from the cost of a security purchased at a premium, and charging to profit and loss a 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 V. Carallo
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

J. C. Wells
Clerk of the Senate

Donald L. Kopp
Clerk of the House of Delegates

Warren P. McQuillen
President of the Senate

J. M. Lee
Speaker House of Delegates

The within ............... this the 10th day of March, 1983.

Governor