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OFFICE OF THE GOVERNOR

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1983



ENROLLED

SENATE BILL NO. 315

(By Mr. Heck and Tomblin)



PASSED March 4 1983

In Effect from Passage



ENROLLED
Senate Bill No. 315
(BY MR. HECK AND MR. TOMBLIN)

[Passed March 4, 1983; in effect from passage.]

AN ACT to amend and reenact sections three, four, nine, eleven, fourteen, sixteen and seventeen, article seven, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to industrial loan companies; definitions; incorporation requirements; investment limitations; certificate of indebtedness insurance; loan and certificate of indebtedness limitations; branching limitations; penalties; qualifications of board of directors.

Be it enacted by the Legislature of West Virginia:

That sections three, four, nine, eleven, fourteen, sixteen and seventeen, article seven, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 7. INDUSTRIAL BANKS AND INDUSTRIAL LOAN COMPANIES.

§31-7-3. Definitions.

- 1 As used in this article, unless the context otherwise
- 2 requires a different meaning, the term:
- 3 (a) "Board" means the West Virginia board of banking
- 4 and financial institutions;
- 5 (b) "Commissioner" or "commissioner of banking"
- 6 means the commissioner of banking of West Virginia and
- 7 includes the department of banking of West Virginia;

8 (c) "Deposit" or "deposits" means the unpaid balance of
9 money or its equivalent received or held in the usual course
10 of business and for which there is given or there is obligated
11 to give credit, either conditionally or unconditionally, to a
12 checking, savings, time or thrift account, or which is
13 evidenced by a certificate of deposit;

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

21 (e) "Industrial loan company" means any corporation
22 formed under the provisions of this article with the
23 approval of the commissioner of banking of this state and
24 which is authorized to sell or offer for sale its secured or
25 unsecured evidences or certificates of indebtedness as
26 hereinafter prescribed, but shall not be authorized to accept
27 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.**

1 (a) In the case of an industrial loan company, any number
2 of persons may become an industrial loan company on the
3 terms and conditions and subject to the liabilities
4 prescribed in this article. The name of any industrial loan
5 company formed under this article shall not contain the
6 words "savings" or "savings and loan" and shall not be that
7 of any other existing corporation of this state: *Provided,*
8 That any such corporation heretofore organized which uses
9 the words "savings and loan" as a part of its corporate name
10 shall be authorized to continue to use such words. The
11 capital stock of any such corporation shall not be less than
12 twenty-five thousand dollars, and shall consist of shares of
13 common stock. The voting power and control of the
14 corporation during its life shall be vested in the common
15 stock only if more than one class of stock is to be issued.
16 Such common stock, with which it will commence business,
17 shall be paid in before such corporation shall be authorized

18 to engage in business, except such business as is incidental
19 and necessarily preliminary to its organization.

20 (b) In the case of an industrial bank, any number of
21 persons, not fewer than five, citizens of this state, may
22 become an industrial bank on the terms and conditions and
23 subject to the liabilities prescribed by this article and the
24 provisions of article four, chapter thirty-one-a of this code
25 subject to such exceptions contained in this article. The
26 name of any industrial bank formed under the provisions of
27 this subsection (b), section four, shall be, "Industrial
28 Financing Corporation," and shall include no other words
29 except a trading area, community, city, county or other
30 local identity approved by the board. The capital stock
31 requirements of any such industrial bank shall be the same
32 as those prescribed in subsections (a) and (c) of section
33 three, article four, chapter thirty-one-a of this code. The
34 voting power and control of any industrial bank shall be
35 vested in the common stock only and such corporations
36 shall issue but one class of stock. Such common stock with
37 which it will commence business shall be paid in before
38 such corporation shall be authorized to engage in business
39 as an industrial bank except such business as is incidental
40 and necessarily preliminary to its organization.

**§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.**

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

4 The agreement shall be delivered to the secretary of state,
5 who, after the agreement has been approved in writing by
6 the commissioner of banking, shall issue to the
7 incorporators his certificate under the great seal of the state
8 as provided in article one of this chapter: *Provided*, That
9 hereafter no charter or branch office certificate shall be
10 issued to any industrial loan company under the provisions
11 of this article, nor shall any amendment under general law
12 or under the provisions of this article be made to the charter
13 of any existing industrial loan company coming within the
14 terms of this article, whether heretofore or hereafter

15 organized, until the application for such charter or for an
16 amendment to such already existing charter or a branch
17 office certificate has been approved in writing by the
18 commissioner of banking. Application for a new charter or
19 new branch office certificate shall be filed in duplicate with
20 the commissioner of banking, accompanied by an
21 examination and investigation fee of one thousand dollars
22 payable to the commissioner. A charter, when issued, shall
23 be filed and recorded as provided by law for general
24 corporations organized under the laws of this state. The
25 provisions of section five, article two, chapter thirty-one-a,
26 insofar as the same relates to financial institutions, other
27 than banking institutions, shall apply to the application
28 and issuance of a certificate or license by the commissioner
29 to an industrial loan company or any of its branch offices in
30 this state.

§31-7-11. Powers of industrial loan companies; limitation of powers.

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

6 (1) Lend money to any person, firm or corporation,
7 secured by the obligation of such person, firm or
8 corporation, or otherwise;

9 (2) Notwithstanding the provisions of subdivision (1),
10 subsection (b) of this section, sell or offer for sale, with prior
11 written approval of the commissioner, its secured or
12 unsecured evidences or certificates of indebtedness, and
13 such secured or unsecured evidences or certificates of
14 indebtedness are hereby defined as money for the purpose
15 of taxation, but every such evidence or certificate of
16 indebtedness shall state, on its face, in a clearly visible
17 manner approved by the commissioner, that such evidence
18 or certificate of indebtedness is not federally insured.

19 Not later than the thirty-first day of December, one
20 thousand nine hundred eighty-four, every industrial loan
21 company selling or offering for sale its secured or unsecured
22 evidences or certificates of indebtedness, pursuant to this
23 subdivision, shall obtain insurance for or a guarantee of
24 those evidences or certificates of indebtedness by or

25 through an insurance company or guarantee fund
26 acceptable to and approved by the commissioner. The
27 insurance or guarantee shall provide for the redemption of
28 the investment of the evidence or certificate holder in the
29 event of liquidation, insolvency or bankruptcy of the
30 industrial loan company. The amount of insurance or
31 guarantee benefit to each holder of an evidence or
32 certificate, as an individual or multi-party account, shall at
33 all times be in full force and be equal to the industrial loan
34 company's liability under the evidence or certificate or
35 one-hundred thousand dollars, whichever is less.
36 Notwithstanding the provisions of subdivision one,
37 subsection (b), section four, article two, chapter thirty-one-
38 a of this code, the commissioner may make available to any
39 accepted and approved insurance company or guarantee
40 fund the reports of examination and other examination
41 findings of any industrial loan company, the evidences or
42 certificates of indebtedness of which that insurance
43 company or guarantee fund is insuring or guaranteeing. For
44 purposes of this subdivision, an insurance company or
45 guarantee fund includes any insurance company
46 authorized to do business in this state, an insurance or
47 guarantee fund organized under the laws of the United
48 States, this state or any other state with the express purpose
49 or authority to guarantee the accounts of industrial loan
50 companies or any other person who contracts with
51 industrial loan companies to insure or guarantee accounts:
52 *Provided*, That no insurance company or guarantee fund
53 shall be deemed to be providing insurance within the
54 meaning of section one, article one, chapter thirty-three of
55 this code merely because such company or fund insures or
56 guarantees evidences or certificates under the provisions of
57 this subdivision, nor shall any person be deemed to be
58 offering insurance insofar as his activities involve the
59 offering of insurance or guarantees under the provisions of
60 this subdivision;

61 (3) Buy and sell bonds, obligations of any person, firm or
62 corporation, the United States, and any department, board,
63 bureau or agency of the United States and buy and sell any
64 general obligations of the state of West Virginia;

65 (4) Demand and receive for loans or for notes, bills or
66 evidences of debt discounted or purchased, such rate of

67 interest as may be agreed upon by the parties, not exceeding
68 the lawful rate of interest, and it shall be lawful to receive
69 such interest in advance. This section does not limit or
70 restrict the manner of calculating the loan finance charge,
71 whether by way of add-on, discount or otherwise, so long as
72 the rate of loan finance charge does not exceed that
73 permitted by this section;

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

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

86 (A) Such as shall be necessary for the convenient
87 transaction of its business, including with its office other
88 apartments or offices to rent as a source of income, which
89 investment shall not exceed sixty-five percent of its paid-in
90 capital stock and surplus;

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

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

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

98 Industrial loan companies shall not purchase, hold or
99 convey any real estate in any other case or for any other
100 purpose whatever. Real estate shall be conveyed only by
101 authority of the board of directors of any such industrial
102 loan company. No real estate acquired in the cases
103 contemplated in paragraphs (B), (C) and (D), subdivision (6)
104 of this subsection shall be held for a longer time than five
105 years, unless such period shall be extended by the
106 commissioner of banking.

107 (b) An industrial loan company shall not:

108 (1) Accept or receive deposits;

109 (2) Hold at any one time the primary obligation or
110 obligations of any one person, firm or corporation, for more
111 than ten percent of the amount of the paid-up capital and
112 surplus of such industrial loan company except the
113 obligations of the United States or any department, board,
114 bureau or agency of the United States or any general
115 obligations of the state of West Virginia shall not be subject
116 to such limitation;

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

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

129 (5) Have outstanding at any time its evidences or
130 certificates of indebtedness and any other debt, in an
131 aggregate sum in excess of ten times the aggregate amount
132 of its paid-up capital (voting and controlling stock) and
133 surplus;

134 (6) Deposit any of its funds with any other corporation
135 unless such corporation is insured by the federal deposit
136 insurance corporation or the federal savings and loan
137 insurance corporation or is approved, in writing, by the
138 commissioner;

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

150 (8) Pay any fees, bonuses, commissions, rewards, or other
151 consideration to any person, firm or corporation for the
152 privilege of using any plan of operation, scheme or device
153 for the organization or carrying on of business under this
154 article, or the use of any name, trademark or copyright to be
155 so used.

156 (c) An industrial loan company, when not exercising the
157 power granted under subdivision (2), subsection (a) of this
158 section, shall not be subject to subdivisions two, three, four,
159 five, six and seven, subsection (b) of this section.

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

1 (a) No industrial bank shall:

2 (1) Install or maintain any branch industrial bank; or

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

18 (b) It shall be unlawful for any individual, partnership,
19 society, association, firm, institution, trust, syndicate,
20 public or private corporation, or any other legal entity, or
21 combination of entities acting in concert, to directly or
22 indirectly own, control or hold with power to vote, twenty-
23 five percent or more of the voting shares of more than seven
24 industrial banks, or to control in any manner the election of
25 a majority of the directors of more than seven industrial
26 banks, and the provisions of this subsection shall govern
27 and control irrespective of any other provision of this code

28 restricting or limiting the ownership or control of voting
29 shares of industrial banks or the control of the election of
30 directors thereof, whether such other provision was enacted
31 before or after the enactment of this article.

32 (c) No industrial loan company shall install or maintain
33 any branch industrial loan company, unless it has applied
34 for and received a branch office certificate from the
35 commissioner. Application for a branch office certificate
36 shall be filed in duplicate with the commissioner, on forms
37 prescribed by the commissioner, accompanied by an
38 examination and investigation fee of one thousand dollars
39 payable to the commissioner. The provision of section five,
40 article two, chapter thirty-one-a of this code, insofar as the
41 same relates to financial institutions, other than banking
42 institutions, shall apply to the application and issuance of a
43 branch office certificate or license by the commissioner to
44 an industrial loan company.

45 (d) Any violation of any provision of this section shall
46 constitute a misdemeanor offense punishable by applicable
47 penalties as provided in section fifteen, article eight,
48 chapter thirty-one-a of this code.

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

1 The stockholders of each industrial loan company shall
2 meet annually, a majority of the outstanding voting stock to
3 constitute a quorum; and it shall be the duty of the secretary
4 to prepare and submit to the stockholders a clear and
5 concise statement of the financial condition of the
6 corporation as of the close of business on the last day of the
7 year next preceding. At such meeting the stockholders shall
8 elect a board of directors of not less than five nor more than
9 twenty-five. Special meetings may be called by order of the
10 board of directors or by request in writing of ten percent of
11 the stockholders.

12 In all elections of directors of the corporation each
13 stockholder shall have the right to cast one vote for each
14 share of stock owned by him and entitled to vote, and he
15 may cast the same in person or by proxy, for as many
16 persons as there are directors to be elected, or he may
17 cumulate such votes and give one candidate as many votes
18 as the number of directors to be elected multiplied by the
19 number of his shares of stock shall equal; or he may

20 distribute them on the same principle among as many
21 candidates and in such manner as he may desire, and the
22 directors shall not be elected in any other manner, and on
23 any other question to be determined by a vote of shares at
24 any meeting of stockholders each stockholder shall be
25 entitled to one vote for each share of stock owned by him
26 and entitled to vote, and he may exercise this right in person
27 or by proxy, but if by proxy, in no instance can it be voted in
28 any meeting other than which it was first intended.

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

§31-7-17. Directors; officers.

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

8 Immediately upon the adjournment of the stockholders'
9 meeting or as soon thereafter as convenient, the newly
10 elected directors shall meet and every such director elected
11 shall take an oath that he will, so far as duty devolves on
12 him, diligently and honestly administer the affairs of such
13 industrial bank or industrial loan company, and will not
14 knowingly and willingly violate, or permit to be violated,
15 any of the provisions of this article. Such oath, when
16 subscribed by the director making it, and certified by the
17 officer before whom it was taken, shall immediately be
18 transmitted to the commissioner of banking, and shall be
19 filed and preserved in his office. Should a director fail to
20 subscribe to the oath herein provided for within sixty days
21 after notice of his election, thereupon the remaining
22 directors shall elect another director in his stead.

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

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

James L. Davis
.....
Chairman Senate Committee

Arnold Green
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

Judd C. Welch
.....
Clerk of the Senate

Donald L. Kepp
.....
Clerk of the House of Delegates

Walter M. Cohen
.....
President of the Senate

W. M. Lee, Jr.
.....
Speaker House of Delegates

The within... *is approved* this the *16*
day of... *March*, 1983.

.....
John A. Palfrey
Governor

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SECY. OF STATE