ENROLLED

SENATE BILL NO. 315

(By Mr. Heck and Franklin)

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 requires a different meaning, the term:
2 (a) “Board” means the West Virginia board of banking and financial institutions;
3 (b) “Commissioner” or “commissioner of banking” means the commissioner of banking of West Virginia and includes the department of banking of West Virginia;
(c) "Deposit" or "deposits" means the unpaid balance of money or its equivalent received or held in the usual course of business and for which there is given or there is obligated to give credit, either conditionally or unconditionally, to a checking, savings, time or thrift account, or which is evidenced by a certificate of deposit;
(d) "Industrial bank" means 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" means 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 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 five, 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 subsections (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.

§31-7-9. 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 or branch office certificate 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 or a branch office certificate has been approved in writing by the commissioner of banking. Application for a new charter or new branch office certificate shall be filed in duplicate with the commissioner of banking, accompanied by an examination and investigation fee of one thousand dollars payable to the commissioner. A 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, insofar 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 or any of its branch offices in this state.

§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;

(2) Notwithstanding the provisions of subdivision (1), subsection (b) of this section, sell or offer for sale, with prior written approval of the commissioner, 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.

Not later than the thirty-first day of December, one thousand nine hundred eighty-four, every industrial loan company selling or offering for sale its secured or unsecured evidences or certificates of indebtedness, pursuant to this subdivision, shall obtain insurance for or a guarantee of those evidences or certificates of indebtedness by or
through an insurance company or guarantee fund acceptable to and approved by the commissioner. The insurance or guarantee shall provide for the redemption of the investment of the evidence or certificate holder in the event of liquidation, insolvency or bankruptcy of the industrial loan company. The amount of insurance or guarantee benefit to each holder of an evidence or certificate, as an individual or multi-party account, shall at all times be in full force and be equal to the industrial loan company's liability under the evidence or certificate or one-hundred thousand dollars, whichever is less.

Notwithstanding the provisions of subdivision one, subsection (b), section four, article two, chapter thirty-one-a of this code, the commissioner may make available to any accepted and approved insurance company or guarantee fund the reports of examination and other examination findings of any industrial loan company, the evidences or certificates of indebtedness of which that insurance company or guarantee fund is insuring or guaranteeing. For purposes of this subdivision, an insurance company or guarantee fund includes any insurance company authorized to do business in this state, an insurance or guarantee fund organized under the laws of the United States, this state or any other state with the express purpose or authority to guarantee the accounts of industrial loan companies or any other person who contracts with industrial loan companies to insure or guarantee accounts:

Provided, That no insurance company or guarantee fund shall be deemed to be providing insurance within the meaning of section one, article one, chapter thirty-three of this code merely because such company or fund insures or guarantees evidences or certificates under the provisions of this subdivision, nor shall any person be deemed to be offering insurance insofar as his activities involve the offering of insurance or guarantees under the provisions of this subdivision;

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

(4) 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. This section does not limit or
restrict the manner of calculating the loan finance charge,
whether by way of add-on, discount or otherwise, so long as
the rate of loan finance charge does not exceed that
permitted by this section;
(5) 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;
(6) Purchase, hold and convey real estate as follows:
(A) Such as shall be necessary for the convenient
transaction of its business, including with its office other
apartments or offices to rent as a source of income, which
investment shall not exceed sixty-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 as 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
contemplated in paragraphs (B), (C) and (D), subdivision (6)
of this subsection 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) 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 except the obligations of the United States or any department, board, bureau or agency of the United States or any general obligations of the state of West Virginia shall not be subject to such limitation;

(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 loan company;

(4) 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;

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

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

(7) 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 that is not subordinated to its evidences or certificates of indebtedness shall at no time exceed the sum total of the capital, surplus and reserve funds of such company, and the security so pledged therefore shall not exceed two times the amount borrowed and rediscounted;
(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.

(c) An industrial loan company, when not exercising the power granted under subdivision (2), subsection (a) of this section, shall not be subject to subdivisions two, three, four, 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.

(a) No industrial bank shall:

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

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

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

The stockholders of each industrial loan company shall meet annually, 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. Special meetings may be called by order of the board of directors or by request in writing of ten percent 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 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. 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. 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, 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.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James L. Davis  
Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect from passage.

Jed C. Welch  
Clerk of the Senate

Donald L. Kopp  
Clerk of the House of Delegates

Walter H. Moss  
President of the Senate

William M. Lile, Jr.  
Speaker House of Delegates

The within .......... in approved .......... this the 16 .........

day of .......... March ..........., 1983.  

Governor