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SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1987



ENROLLED

SENATE BILL NO. 538

Originating in the Committee on
[Redacted] Banking and Insurance



PASSED March 12, 1987

In Effect from Passage



ENROLLED
Senate Bill No. 538

(Originating in the Committee on Banking and Insurance)

[Passed March 12, 1987; in effect from passage.]

AN ACT to amend and reenact section twenty-six, article four, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to state chartered banking institutions; authorizing state chartered banks to invest its funds in investments authorized for national banking associations.

Be it enacted by the Legislature of West Virginia:

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

§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.

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

19 (3) For the purposes of this subsection:

20 (A) The term "loans and extensions of credit" shall
21 include 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,
30 partnership, society, association, firm, institution,
31 company, public or private corporation, state,
32 governmental agency, bureau, department, division or
33 instrumentality, political subdivision, county commission,
34 municipality, trust, syndicate, estate or any other legal
35 entity whatsoever, formed, created or existing under the
36 laws of this state or any other jurisdiction.

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
40 discount of commercial or business paper evidencing an
41 obligation to the person negotiating it with recourse shall
42 not be subject to any limitation based on capital and
43 surplus;

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

48 (C) Loans and extensions of credit secured by bills of
49 lading, warehouse receipts, or similar documents
50 transferring or securing title to readily marketable staples
51 shall be subject to a limitation of thirty-five percent of

52 capital and surplus in addition to the general limitations if
53 the market value of the staples securing each additional
54 loan or extension of credit at all times equals or exceeds one
55 hundred fifteen percent of the outstanding amount of such
56 loan or extension of credit. The staples shall be fully
57 covered by insurance whenever it is customary to insure
58 such staples;

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

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

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

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

85 (H) (i) Loans and extensions of credit arising from the
86 discount of negotiable or nonnegotiable installment
87 consumer paper which carries a full recourse endorsement
88 or unconditional guarantee by the person transferring the
89 paper shall be subject under this section to a maximum
90 limitation equal to twenty-five percent of such capital and
91 surplus, notwithstanding the collateral requirements set
92 forth in subdivision (2) of this subsection.

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

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

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

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

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

126 (K) Loans or extensions of credit to a corporation
127 owning the property in which that state-chartered banking
128 institution is located, when that state-chartered banking
129 institution has an unimpaired capital and surplus of not less
130 than one million dollars or when approved in writing by the
131 commissioner of banking, shall not be subject to any
132 limitation based on capital and surplus.

133 (5) (A) The commissioner of banking may prescribe
134 rules and regulations to administer and carry out the

135 purposes of this subsection including rules or regulations to
136 define or further define terms used in this subsection and to
137 establish limits or requirements other than those specified
138 in this subsection for particular classes or categories of
139 loans or extensions of credit;

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

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

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

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

161 (3) For purposes of this subsection:

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

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

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

- 177 (A) Obligations of the United States;
- 178 (B) General obligations of any state or of any political
179 subdivision thereof;
- 180 (C) Obligations issued under authority of the Federal
181 Farm Loan Act, as amended, or issued by the thirteen banks
182 for cooperatives or any of them or the Federal Home Loan
183 Banks;
- 184 (D) Obligations which are insured by the Secretary of
185 Housing and Urban Development under Title XI of the
186 National Housing Act (12 USC § 1749aaa et seq.);
- 187 (E) Obligations which are insured by the Secretary of
188 Housing and Urban Development hereafter in this sentence
189 referred to as the "Secretary" pursuant to section 207 of the
190 National Housing Act (12 USC § 1713), if the debentures to
191 be issued in payment of such insured obligations are
192 guaranteed as to principal and interest by the United
193 States;
- 194 (F) Obligations, participations or other instruments of
195 or issued by the Federal National Mortgage Association or
196 the Government National Mortgage Association, or
197 mortgages, obligations or other securities which are or ever
198 have been sold by the Federal Home Loan Mortgage
199 Corporation pursuant to Section 305 or Section 306 of the
200 Federal Home Loan Mortgage Corporation Act (12 USC §
201 1454 or § 1455);
- 202 (G) Obligations of the Federal Financing Bank;
- 203 (H) Obligations or other instruments or securities of the
204 Student Loan Marketing Association;
- 205 (I) Obligations of the Environmental Financing
206 Authority;
- 207 (J) Such obligations of any local public agency (as
208 defined in Section 110(h) of the Housing Act of 1949 (42
209 USC § 1460 (h)) as are secured by an agreement between the
210 local public agency and the Secretary of Housing and
211 Urban Development in which the local public agency agrees
212 to borrow from said Secretary and said Secretary agrees to
213 lend to said local public agency, moneys in an aggregate
214 amount which (together with any other moneys irrevocably
215 committed to the payment of interest on such obligations)
216 will suffice to pay, when due, the interest on and all
217 installments (including the final installment) of the
218 principal of such obligations, which moneys under the

219 terms of said agreement are required to be used for such
220 payments;

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

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

236 (ii) By a pledge of annual contributions under an annual
237 contributions contract between such public housing agency
238 and the Secretary if such contract shall contain the
239 covenant by the Secretary which is authorized by
240 subsection (b) of Section 22 (Section 6 (g) (42 USC Sec.
241 1421a (b)) of the United States Housing Act of 1937, as
242 amended, and if the maximum sum and the maximum
243 period specified in such contract pursuant to said
244 subsection (b), section twenty-two, shall not be less than the
245 annual amount and the period for payment which are
246 requisite to provide for the payment when due of all
247 installments of principal and interest on such obligations;
248 or

249 (iii) By a pledge of both annual contributions under an
250 annual contributions contract containing the covenant by
251 the Secretary which is authorized by Section 6 (g) of the
252 United States Housing Act of 1937 (42 USC Sec. 1437d (g))
253 and a loan under an agreement between the local public
254 housing agency and the Secretary in which the public
255 housing agency agrees to borrow from the Secretary, and
256 the Secretary agrees to lend to the public housing agency,
257 prior to the maturity of the obligations involved, moneys in
258 an amount which, together with any other moneys
259 irrevocably committed under the annual contributions
260 contract to the payment of principal and interest on such
261 obligations will suffice to provide for the payment when

262 due of all installments of principal and interest on such
263 obligations, which moneys under the terms of the
264 agreement are required to be used for the purpose of paying
265 the principal and interest on such obligations at their
266 maturity; and

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

273 (5) Notwithstanding any other provision in this
274 subsection, a state-chartered banking institution may
275 purchase for its own account shares of stock issued by a
276 corporation authorized to be created pursuant to Title IX of
277 the Housing and Urban Development Act of 1968 (42 USC
278 Sec. 3931 et seq.) and may make investments in a
279 partnership, limited partnership, or joint venture formed
280 pursuant to section 907 (a) or 907 (c) of that act (42 USC Sec.
281 3937 (a) or (c)), and may purchase shares of stock issued by
282 any West Virginia housing corporation and may make
283 investments in loans and commitments for loans to any such
284 corporation: *Provided*, That in no event shall the total
285 amount of such stock held for its own account and such
286 investments in loans and commitments made by the state-
287 chartered banking institution exceed at any time five
288 percent of the unimpaired capital and unimpaired surplus
289 of that state-chartered banking institution.

290 (6) Notwithstanding any other provision in this
291 subsection, a state-chartered banking institution may
292 purchase, for its own account, shares of stock of small
293 business investment companies chartered under the laws of
294 this state, which are licensed under the act of Congress
295 known at the "Small Business Investment Act of 1958," as
296 amended, and of business development corporations
297 created and organized under the act of the Legislature
298 known as the "West Virginia Business Development
299 Corporation Act," as amended: *Provided*, That in no event
300 shall any such state-chartered banking institution hold
301 shares of stock in small business investment companies
302 and/or business development corporations in any amount
303 aggregating more than fifteen percent of the unimpaired

304 capital and unimpaired surplus of that state-chartered
305 banking institution.

306 (7) Notwithstanding any other provision of this
307 subsection, a state-chartered banking institution may
308 purchase for its own account shares of stock of a bankers'
309 bank or a bank holding company which owns or controls
310 such bankers' bank, but in no event shall the total amount of
311 such stock held by such state-chartered banking institution
312 exceed at any time fifteen percent of the unimpaired capital
313 and unimpaired surplus of that state-chartered banking
314 institution and in no event shall the purchase of such stock
315 result in that state-chartered banking institution acquiring
316 more than twenty percent of any class of voting securities of
317 such bankers' bank or of the bank holding company which
318 owns or controls such bankers' bank.

319 (8) Notwithstanding any other provision of this
320 subsection, a state-chartered banking institution may
321 invest its funds in any investment authorized for national
322 banking associations. Such investments by state-chartered
323 banking institutions shall be on the same terms and
324 conditions applicable to national banking associations. The
325 commissioner of banking may, from time to time, provide
326 notice to state-chartered banking institutions of authorized
327 investments under this paragraph.

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

335 (c) No officer or director of any banking institution or
336 the commissioner of banking or any employee of the
337 department of banking shall borrow, directly or indirectly,
338 from the banking institution with which he is connected, or
339 which is subject to examination by the commissioner of
340 banking, any sum of money without the prior approval of a
341 majority of the board of directors or discount committee of
342 the banking institution, or of any duly constituted
343 committee whose duties include those usually performed by
344 a discount committee, embodied in a resolution adopted by
345 a majority vote of such board or committee, exclusive of the

346 director to whom the loan is made. If any officer, clerk or
347 other employee of any bank shall own or control a majority
348 of the stock of any other corporation, a loan to such
349 corporation shall, for the purpose of this section, constitute
350 a loan to such officer, clerk or other employee.

351 (d) Securities purchased by a banking institution shall
352 be entered upon the books of the bank at actual cost. For the
353 purpose of calculating the undivided profits applicable to
354 the payment of dividends, securities shall not be valued at a
355 valuation exceeding their present cost as determined by
356 amortization, that is, by deducting from the cost of a
357 security purchased at a premium, and charging to profit
358 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.

Bruce O. Williams
.....
Chairman Senate Committee

Bernard V. Kelly
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

Lodd C. Willis
.....
Clerk of the Senate

Donald J. Papp
.....
Clerk of the House of Delegates

.....*San Tombari*.....
President of the Senate

John C. Clark
.....
Speaker House of Delegates

The within *appeared* this the *18th*
day of *March* 1987.

Anna A. Shantz
.....
Governor



PRESENTED TO THE

GOVERNOR

Date 3/17/87

Time 4:19 pm