WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1987

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.

(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.

(3) 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.

(4) 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 establishment 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 institution, 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 nonnegotiable installment consumer paper which carries a full recourse endorsement or unconditional 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, notwithstanding 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
document 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; and

(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; and

(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 Sec. 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 under an 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 Sec. 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 (b), section twenty-two, 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 Sec. 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; and

(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 Sec. 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 Sec. 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 at 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 fifteen percent of the unimpaired
capital and unimpaired surplus of that state-chartered banking institution.

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

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

(9) 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 or director 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 prior 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.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originated in the Senate.

In effect from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker House of Delegates

The within
Appealed ................ this the 18th.......
day of ................ March ............ 1987.

[Signature]
Governor